PRIVY COUNCIL

Sri Kanchumarthi Venkata Seetharama Chandra Row

Vs.

Kanchumarthi Raju alias Venkata Krishna Row

P.C.A No. 92 of 1924
(Lords Atkinson, Shaw and Darling JJ.)

23.06.1925

JUDGMENT

LORD SHAW J.

1. This is an appeal from a decree and judgment of the High Court of Judicature at Madras, dated the 18th October, 1922, reversing a decree and Judgment of the Court of the Additional Sub ordinate Judge of Rajahmundry, dated the 29th April, 1921.

2. The appeal raises a question of fact. One Subbayya died on the 1st November, 1878, leaving two widows and with out natural issue. His first widow had been for some time separated from him. His second widow resided with him. Some days after his death she adopted the first respondent, a young boy as son to her husband Subbayya. The boy was accordingly handed over by his natural father whose household he left and he lived and grew to manhood as member of the household of Subbayya's widow, his adoptive mother. The lapse of time between the adoption and the date of suit was about 42 years. The challenge of the adoption is made by the plaintiff, not only of course after the death of Subbayya, but after the death of his senior widow, who died in 1895, and after the death of the Junior widow, the adoptive mother, who survived as long as 1907.

3. It was not contended before the Court that no adoption was made. It was an adoption perfectly suitable in all respects" it was acted on for the long period of years mentioned" but the sole argument on the appeal was a challenge of any authority having been given by Subbayya to his widow to make the adoption. The case accordingly is restricted even on fact to this question. Were it not that the plaintiff has obtained, on this part of the case the support of a judgment of the Subordinate Judge, the case and the appeal might be justly characterised as not only unfounded but

audacious.

4. It is fair to the Subordinate Judge to give his conclusion on the issue of fact in the case. He puts it thus:-

5. Sixth issue. - The point for decision is whether Ammayamma adopted 1st Defendant as the son of Subbayya, and if so whether she was given by him the required authority to adopt" and, given my very best and anxious consideration to the recorded evidence, probabilities of the case and the decisions cited on both sides, paying due attention to the facts that the adoption of 1st Defendant was celebrated about forty-two years ago and that he was, all through and till the filing of the suit, being treated as the adopted son of Subbayya and a member of the Kanchumarthi family by all its members, inclusive of the Plaintiff, by a wide circle of relatives and friends, by the tenantry of the Kalavala palli estate, by the Government and its officials and by the outside public" and bearing in mind the presumptions that can be properly and legitimately made in favor of his adoption from the long time that had elapsed (about 42 years) after the adoption and from the acquiescence there in all through this very long period of those inside and outside the family, as shown by some of the decisions cited on either side, I come to the conclusion that Ammayamma did in fact adopt 1st Defendant as the son of her deceased husband Subbayya on a day within a month of the death of Subbayya."

6. Up to this point this is an admirable and correct summary. But the learned Judge after this state’s his conclusion :-

7. That she had not the authority of her husband to make the adoption and that therefore it is not a valid adoption."

8. The singularity of this result is obvious when it is considered that the four principal witnesses who proved the adoption also proved the authority to adopt. They knew both the husband and wife. They saw the husband, and heard him, in his last illness, give the authority to the wife a few days before his death, and a few days after his death they saw the ceremony of the adoption. The learned Subordinate Judge believes them on the latter point, but, for some reason, does not give effect to their testimony on the former point. It is not as if there was anything singular in the giving of such an authority. The adoption was itself in accord with what a pious Hindu would wish to be done so that someone would remain after his death to perform the sacrificial and other ceremonial and pious duties resting upon a child.

9. So far as the widow was concerned, her conduct had no element of usurpation in it, but simply the element of carrying out her husband's dying wish. So far as the adopted son was concerned, he was transferred from his natural home to his adopted home and he has lived there all his life as a member of that household.

10. So far as the plaintiff is concerned he denied the adoption in this suit, a thing which now stands amply proved and admitted. He did not question the authority to adopt during the late widow's life which extended for 30 years beyond that of her husband, and his suggestion now is that the idea of the young man's adoption being unauthorized was put into his head as a result of a conversation with someone who is not produced as a witness.

11. The record, however, does not stop there, because the local authorities, having made the ordinary enquiries as to the necessary entries upon the register consequent upon Subbayya's death, made the enquiries and took the depositions, and the second wife was entered as guardian of the minor and adopted son - that is to say, the first respondent. There were litigation's of various characters during the course of this long term of years and the plaintiff acted along with the adopted son, acknowledging, in the course of the proceedings, his right.

12. It is at the end of this long chapter that the challenge is made. Their Lordships have considered all the documents produced and read all the evidence. They can not understand why it should not be held to be quite conclusive, not only of the fact of adoption, but of the authority to adopt. It stands to reason that after such a long term of years, and the variety of transactions of open life and conduct, upon one footing alone - namely, that the adoption was recognized as a valid act - the burden, resting altogether apart from the law of limitation, upon any litigant who challenges the authority of an admitted adoption, is indeed of the heaviest order. In their Lordships' view it is not, however, necessary to invoke any doctrine of presumption in this case. The facts, the evidence, and the documents are all one way - namely, in the direction of establishing that the view taken by the learned Judges of the High Court, is in result sound.

13. Their Lordships will accordingly humbly advise His Majesty that the appeal should be refused with costs.

Appeal refused.