PRIVY COUNCIL

Kachireddi Nagireddi

Vs.

Sakireddi Chinna Narayanareddi

Privy Council Appeal No.166 of 1924
(Lords Phillimore, Sinha Blanesburgh and Mr. Ameer Ali JJ.)

25.11.1926

JUDGMENT

LORD PHILLIMORE J.

1. The appellant in this case, claiming to be the nearest agnate, brought a suit to recover the estate of one Kachireddi Balireddi against Sakireddi Peddasubbareddi, now deceased, of whom the present respondents are representatives.

2. The deceased defendant denied that the plaintiff was an agnate of Balireddi and further relied upon a will which the said Balireddi had made in his favour. The plaintiff said that Balireddi had made such will and further that he was a minor and incapable of making a will.

3. The Subordinate Judge decided that the plaintiff had made out his title as agnate, and that the alleged will was not proved. With regard to the question of the majority or minority of Balireddi he held that the burden of proof was upon the defendant who set up the will, and that burden had not been discharged.

4. On appeal, the High Court came to the conclusion that the plaintiff had not proved that he was an agnate and was therefore not entitled to maintain the suit.

5. This was enough to dispose of the case; but the learned Judges proceeded to the questions relating to the will, and they found that the will was genuine, but on the other hand they agreed with the Subordinate Judge in holding that the majority of Balireddi was not proved. Therefore, the genuineness of the will was not material. The High Court dismissed the suit.

6. The appellant has, if he is to succeed, to prove in the first instance that he was the

nearest agnate. If he progresses so far, he has then to meet the contention of the respondents that they can rely upon the will; and their Lordships will proceed to discuss these questions in their logical order.

7. The plaintiff's case is that he had a grandfather named Kachireddi Bangarureddi, who married one Akkamma and had three sons, Subbareddi, Seshireddi and Balasubbareddi; that he is the son of the last named, while the deceased was the great-grandson of Subbareddi and therefore the great-great-grandson of Bangarureddi. The descent of the plaintiff and his relationship to Seshireddi are admitted, and the descent of the deceased from Subbareddi is admitted; but it is denied that Subbareddi was the son of Bangarureddi, the case for the defendant being that the father of Subbareddi, who would be the deceased's great-great-grandfather, was one Venkatareddi. The deceased, who, whether major or minor, was certainly young, had been brought up since his father's and mother's death in the house of the defendant, who was his maternal uncle and would therefore have no claim to succeed to his property unless, as he alleged, a will had been made in his favour. Much oral evidence was given on both sides, but the only written evidence consisted in documents relating to certain properties. The deceased died on the 25th May 1918, and the suit was brought on the 18th November following. Previously to this there had been a dispute as to the guardianship of the deceased, both the plaintiff and defendant applying, the plaintiff then alleging that he was the nearest agnate and the defendant then denying this. In the event, the Judge who tried this matter appears to have come to the conclusion that neither was a fit guardian and made no order, and the defendant remained de facto guardian. The plaintiff, who was 60 years old when he gave his evidence, had the opportunity of recollecting the family for some time back. In the opinion of the Subordinate Judge, who heard him, he gave his evidence about the relationship and division and enjoyment of properties in a straightforward manner, and it left a favourable impression in my mind that his evidence about plaint relationship was true.

8. A point was made against the plaintiff that he at first said that his father had no sisters, and then on second thoughts said that he had one named Pullamma, but denied that there was another sister named Guramma.

9. Now, upon the defendant's story, Guramma was the sister of the deceased grandfather and would therefore be, if the two families were related, the plaintiff's aunt. The plaintiff knew Guramma, but said she was the sister of Kesamma, who was the wife of the deceased's great-grandfather.

10. There is this piece of documentary evidence as to Guramma that in an award by arbitrators made in June 1896, to which nobody connected with the plaintiff was a party, it was stated that the father of the deceased filed a deposition to the effect that Guramma was his father's paternal aunt, but there is nothing in the award which is consequential on this statement.

11. With regard to the other witnesses in the case, the Subordinate Judge did not apparently think that much trust could be placed upon them. Many were interested, they were all in a humble position in life with no documents and nothing special to call their attention or fix their memory. Some gave evidence of reputation, the admissibility of which is questioned, and which their Lordships without any definite pronouncement have laid aside. The rest could only speak as to the attendance or non-attendance at funerals and the observance or non-observance of pollution upon the death of a relation. and one at least of the defendant's witnesses, while insisting that the deceased's male ancestor was Venkatareddi, accepted for his wife Akkamma, which was the name of the plaintiff's ancestress.

12. There was one matter on which the oral testimony was valuable, and that was in relation to certain property. This is a point on which their Lordships will make further observations. That testimony of the Subordinate Judge to the apparent honesty of the plaintiff is of further value because of the charge made against him by the defendant.

13. In the guardianship matter, the defendant's brother had taken the plaintiff's side and was even a co-petitioner with him, and the defendant's case was that he and his brother had quarrelled, and that the plaintiff was a man of straw and a mere tool of his brother, who had invented the whole case out of spite. This case was clearly disbelieved by the Subordinate Judge.

14. The other evidence to which the Subordinate Judge attached weight - and in their Lordships' opinion rightly - was on two points. First, it was said that there was an ancestral common house, now divided into three parts, one for each of the descendants of Bangarureddi, the father of the deceased having one, and the plaintiff two parts in virtue of his ! father and of his uncle Seshireddi under a partition, to which reference will be made.

15. The three houses are certainly touching each other, and between the plaintiff's house and Seshireddi's there is nothing but a partition wall. It is not clear whether there are two walls between Seshireddi's former house and the deceased's father's house or whether there is merely a partition wall. There is some difference in the

shape of the third house, and its door is now to the west while the doors of the other two houses are to the south. It is said that at one time the third house had a door to the south, but, as the Subordinate Judge says, this third house has been largely altered and re-built since it was sold, and it is not possible to speak definitely. It is not suggested that this block of three is touched by other houses on either side. Without attaching too much weight to the proximity of the houses, there appears to be, as the Subordinate Judge thought, at least a consistency in their occupation with the case of the plaintiff.

16. The High Court dismissed this part of case rather summarily, relying on the fact that the witnesses described the houses as separate but adjoining. This however, at the time that the witnesses spoke, must on any view have been a correct description.

17. The plaintiff's stronger point is with regard to certain lands. If, as the plaintiff says, there was a common ancestor, the lands would be found to have been held in common or to have been divided between the three lines, that of the plaintiff's father, the deceased's greatgrandfather, and the line of Seshireddi.

18. Now Seshireddi had no son, but he had a daughter who, if there had been a partition, would succeed to a third share for a Hindu woman's estate; and upon her death Seshireddi's share would be divisible in halves between the line of the plaintiff and the line of the deceased. There were certain properties held under two pattas, one dated 1878 and the other in 1884. The first patta comprises four separate fields, and it was granted to Nagireddi, the deceased's grandfather, Balasubbareddi, the plaintiff's father, and Seshireddi. The second patta was granted to Nagireddi and Balasubbareddi and to Seshireddi's daughter and also to two Mahomedans. The fact that these two strangers are found as co-holders diminishes the strength of the inference which would otherwise be drawn from the joint tenure, but does not wholly destroy it. The plaintiff says that there must have been - and indeed was - one partition when Seshireddi or his daughter were alive which would be into thirds, and that if you give two fields of which the deceased was in possession to his great-grandfather and leave the other two fields of the first patta and the one field of the second patta to the other two lines, you will get a very nearly equal division - the deceased's line would get 8 acres and 29 cents and each of the other lines would get 8 acres 97? cents.

19. The High Court says that this is too uneven; but, as counsel for the appellant has pointed out, if you look at the revenue rather than at the acreage, the division is nearly equal.

20. Following out this line of argument, the appellant then suggests a second division

after the death of the daughter of Seshireddi. Under this arrangement, a third field in Patta No. 1. goes to the deceased's father, the 4th field goes to the plaintiff's branch, and so much of the field in Patta 2 as is not allotted to the Mahomedan tenants is divided as to an area equalling quarter to the deceased's branch and as to three-quarters to the plaintiff's branch, the plaintiff also taking the whole of Seshireddi's house. The acreage here is again not even, because the deceased's branch gets 14 acres and 49 cents and the plaintiff's branch 11 acres and 77 cents. But there are materials upon which one can see that the house was of value and might reasonably form a compensation.

21. The defendants insist upon the fact that the plaintiff said that his father got the house because he had a larger family and was poor, and because the deceased's ancestor had sold his house or share of house and gone away. But this statement does not seem inconsistent. It would not have been practical to divide the house; one would have to take it and naturally would expect to make compensation in land.

22. It is true that the land of the second patta is not inherited as in a quarter arid three-quarters, but in definite portions, the deceased's branch having one acre 87 cents and the plaintiff's branch the rest. But it is remarkable that the patta extends over two survey numbers and each takes a fraction of each. This jointness of holding with no explanation offered other than that of common descent is in, their Lordships' opinion, of considerable weight.

23. Here again the credibility of the plaintiff becomes important. The case for the defendant was that this was all moonshine, that there had been no partitions, and that his branch had enjoyed their fields and shares as far back as memory went; and witnesses were called on both sides as to this. But the plaintiff, who must have known, deposed positively as to the second partition, and it is with regard to, amongst other things, the division and enjoyment of properties that the Judge said that he gave his evidence in a straightforward manner.

24. As regards the High Court, it is not as if the learned Judges had come to the conclusion that the defendant's case was right. They founded their judgment upon a perfectly correct ground if it could be maintained that the plaintiff had not given sufficient evidence to prove his case. Their Lordships agree with the Subordinate Judge in holding that he had given sufficient evidence, and that his relationship was proved.

25. With regard to the defendant's case under the will, the matter stands in this way. It

is useless to enquire whether the High Court was right in saying that the will had been executed, or the Subordinate Judge was right in thinking that it was not shown to be a genuine document. If the deceased was not of age at the time that it was supposed to be made, the defendant's case fails.

26. Now both Courts are in agreement that the majority of the deceased was not proved, and there being considerable evidence both ways, their Lordships would follow their usual rule of not displacing a conclusion of fact upon which both Courts in India had concurred.

27. But on behalf of the respondents, application had been made for leave to produce further evidence and to put in a register of birth which, if it were a genuine record and related to this particular youth, would be conclusive proof that he was of full age when the will was made. He died on the 25th May 1918, and the will is supposed to have been made two days before, on the 23rd. The age of competency is 18, and it is suggested on behalf of the respondents that he was born on the 17th April 1899.

28. When the case stood for trial, this issue having been clearly raised, there was produced on behalf of the plaintiff an extract from a register of another village which was said to be that of the birth of this youth there, and at a later date. The names, however, do not wholly correspond and the Subordinate Judge was not able to rely upon it.

29. The defendant produced no certificate, but he put in evidence two applications which he had made to the tahsildar of the district that a search should be made in the birth register of the village in which the deceased lived and died for the years 1898 and 1899 and for copies of the extract, with a further request that if they were not in the office the tahsildar should summon the karnam of the village and get copies.

30. The first of these applications was made on the 17th February 1919, and the reply made from the office was that the birth registers were not in the office. A second application for the registers of the three years 1898, 1899 and 1900 was made shortly before the 22nd October 1920, when again the answer was made that the birth registers of the village for the three years were not in the office. The advisers of the defendant took no further step, and the case went to trial without production on his behalf of any birth register.

31. The defendant gave evidence that he was the village munsif and that he and the karnam used to prepare registers, sign them and send them to the taluk office; that he

himself noted in the register the birth of the deceased and that of one of his own sons, who was born a few days after the deceased. In fact, it was because his own wife was expecting her confinement that he could not have the deceased's mother confined in his house. He further said that he could fix his own son's birth because it was on the anniversary of his father's death. He died shortly after the decision in the Court of first instance. After the ease had been heard in the High Court and while the appellant was taking steps to bring his appeal before His Majesty in Council, application was made on behalf of the respondents to the High Court to include in the record what was said to be an extract from the birth register showing that the boy had been born on the 17th day of April 1899, and was consequently of full age. The appellant did not appear upon the application and the order was accordingly made. Thereupon he did take action and filed a counter-petition and affidavit and applied that the original birth register should be sent to England, suggesting that upon inspection it would be found to have been tampered with.

32. The High Court refused to order the original register to be sent, but their Lordships directed it to be brought, and it has been before them.

33. They cannot, however, pronounce any opinion upon its genuineness ex facie. It is a document kept for European months, with the dates of the month written in European figures. In it on the proper dates, the 17th April and an early day in May, are found the entries of two births, while on the 16th of April there appears another birth which becomes important. The entries were translated to the Board out of the vernacular by the respondents' junior counsel. There is comment to make upon them; and it being the practice to add up the totals for each month, though there is no special place for this purpose, the addition for April corresponds, three boys and two girls.

34. All that can be said against this is that three entries appear in blacker ink than other entries, and ink a good deal less faded than one would expect.

35. When, however, application is made at a late stage in the case to put in evidence res noviter ad notitiam perventa, one of the primary duties of the applicant is to show that it was owing to no want of diligence on his part that the matter was not discovered before. Here the respondents are in serious difficulty. The applications made on behalf of their father while he was alive to the tahsildar were that he should send certified copies or, if he had not the registers, should send to the karnam and summon him. The answers from the office made no reference to this latter request.

36. Now the defendant said that he and the karnam acted together, made entries, kept

the registers and sent them in due course to the tahsildar. If these registers had not been sent, they would still be with him or with the karnam, and he had only to produce them, or, if the latter gave trouble, remind the tahsildar of the second branch of his application. If, on the other hand, he knew that they had been sent to and should be in the tahsildar's office, he would not have let the matter rest; he would have issued a subpoena to the record keeper, a step which did produce the register later, as will be stated, or he would have asked for an enquiry, or with less formality (for all were in the same village) he would have talked to the record keeper. The failure to take any of these steps lends colour to the suggestions made for the appellant, that at that time the register either was silent or had entries made in such obviously new ink that it was too dangerous to produce them, at least, till all other means failed.

37. Then the explanation of the discovery is a strange one. On the 2nd of March 1923 (after the decision in the High Court, but while the present appellant was taking steps to prosecute his appeal to the Privy Council), a suit was brought in the Small Cause District Munsif's Court against the person (his name does not appear) whose birth is apparently recorded the day before the supposed date of the birth of the deceased Balireddi. The suit was on a promissory note, and the defendant pleaded that he was a minor. To prove his majority, a subp? was issued, the register was forthwith produced, and then the pleader, who happened to be the pleader for the respondents in this cause, saw Balireddi's name and realised its importance. So at least it is said, for the pleader has made no affidavit himself.

38. Now strange coincidences do occur, but this is a remarkable one. The appellant says that this suit was a sham one, brought to give a reason for the supposed discovery of the register, and that the parties or several of them are connected with the respondents; and his counsel points to the surprising rapidity with which judgment in it was obtained, if it was a really genuine contested suit.

39. Some explanation also would seem to be required of the contrast between the facility with which the register was acquired in the later case and its non-production on the earlier occasions. The respondents have some answer to this. The first respondent says that the karnam was at enmity with his father and that the record keeper has been changed, with an innuendo that his predecessor was also faithless in the discharge of his office. These charges and countercharges might have been examined by the judges of the High Court, to whom it appears that some suggestion of an enquiry was made. Their Lordships cannot deal with them adequately on the materials before them.

40. But on the whole the circumstances are so suspicious and the burden on the applicants of showing that their father showed due diligence has been so imperfectly discharged, that their Lordships decided not to admit the document. In these circumstances the genuineness or otherwise of the will of the deceased does not call for decision, and the conclusion is that their Lordships will humbly advise His Majesty that the appeal should be allowed, and the judgment of the Subordinate Judge should be restored with costs here and below.

Appeal allowed.