

PRIVY COUNCIL

Krishna Rao

Vs.

Sundara Siva Rao

P.C.A.No.33 of 1929

(Lords Atkin, CJ. Thankerton Macmillan, J. Sir George Lowndes and Sir Dinshah Mulla JJ.)

11.02.1931

JUDGMENT

LORD THANKERTON J.

1. This appeal relates to the succession to the immovable property of the late Krishna Rao, a Brahmin and a karnam, who died on 20th April 1913, without issue, but leaving a widow.

2. The suit was instituted on 16th December 1918, by Kruttiventi Surayya, who admittedly is the nearest reversioner to the estates after the death of the widow, against the widow, as defendant 1, Vempati Satyanarayanamurti, as defendant 2 and other defendants, who were the purchasers under two deeds of sale and the mortgagee under a mortgage deed executed by defendant 2 in the years 1914 and 1916. Defendant 2 is now dead, and is represented by the appellant.

3. A few months before his death the late Krishna Rao, while he was ill, executed a document in favour of defendant 2, who was a son of his wife's sister, and whom he had brought up. The material part of that document (Ex. 1) which is dated 16th December 1912, is as follows :

"As I have had no issue I have brought you up while you were young and have adopted you and celebrated your upanayanam, etc., and have chosen you as a son; so I have communicated this fact to the revenue authorities and got your name registered for the office of the karnam held by me. Further, you shall be my son and you shall be entitled to my entire property as a son."

4. The deceased presented the document for registration, and it was registered in Book

IV, "Miscellaneous Register," on 23rd December 1912, under the Registration Act 16 of 1908.

5. After the death of Krishna Rao mutation was effected in the name of defendant 2 and he entered on possession of one properties of the deceased. In 1914 defendant 2 sold two portions of the properties and in 1916 he borrowed money on mortgage; it has been held by both Courts below as established that the proceeds of these sales and the mortgage were applied by him in discharge of debts of the deceased.

6. In this suit the plaintiff asked for a declaration (a) that the adoption alleged by defendant 2 was not true and valid, and (b) that the sale deeds and mortgage were not valid and could not bind the plaintiff's right.

7. It is now undisputed that there was in fact no valid adoption of defendant 2 by the deceased, but the Subordinate Judge of Masulipatam, who tried the case, appears to have held that the document was valid and operative to convey the properties to defendant 2 and that, as the plaintiff had failed to have it set aside within three years from; 1913, when he came to know of it, he was barred by limitation from maintaining the present suit. He therefore, on 15th November 1920, dismissed the suit. The learned Judge does not express any view as to whether the document is of a testamentary character.

8. On an appeal by the plaintiff the High Court of Judicature at Madras held on 1st October 1924, that the document was neither a will nor a da presenti conveyance of the properties, but was merely an "adoption deed," which conferred no title on defendant 2, and remitted to the Subordinate Judge to submit findings as to whether the deeds of sale and the mortgage deed were binding on the plaintiff and whether the alienees were entitled to compensation for any improvements made by them on the properties. The learned Subordinate Judge on 8th July 1925, pronounced findings to the effect that the deeds were not binding on the plaintiff and that the alienees were not entitled to any compensation. By formal decree dated 12th October 1926 the High Court accepted the findings, and ordered and declared that the alleged adoption of defendant 2 was not true and valid, and that the deeds were not binding on the deceased plaintiff's representatives after the death of the widow, defendant 1, the question of any equities that might arise when the deceased plaintiff's representatives should seek to obtain possession of any of the lands fold under these sale deeds being left open.

9. The present appeal is taken by the appellant as representing defendant 2 against the

decree of 12th October 1926. At the hearing before their Lordships the respondents were not represented, and the main contention of the appellant was that the document of 16th December 1912, was of a testamentary nature and entitled the appellant to the succession irrespective of the question of adoption, although the upbringing of the appellant by the late Krishna Rao was a circumstance to be regarded in considering whether the document was intended to have testamentary effect.

10. In their Lordships' opinion the document does not purport to convey anything *de presenti*, and further, it cannot be read either as being itself intended as an act of adoption or as being an authority to adopt. The writer, a Brahmin and a karnatii, must have been well aware that the document could not of itself constitute the adoption-a formal ceremony being essential for that purpose -and its terms refer to adoption in the past tense and cannot be read as an authority to adopt in the future. Moreover, it is reasonable to assume that the writer must have been fully aware of the fact, now admitted, that no actual adoption had taken place, and also to assume that his anxiety was to do all he could to secure the succession of defendant 2 whom he had brought up and treated as a son, to his office as karnam, which would open on his death. The writer was ill at the time and died about four months later. Their Lordships are of opinion that the last sentence of the document clearly refers to succession to the writer's entire property on his death, and has testamentary effect in favor of defendant 2, who is now dead, and is represented by the appellant. The document having been executed in the mofussil, is outside the Hindu Wills Act, and requires no formalities. While it is true that a will should be registered in Book No. 8, this point is insufficient, in their Lordships' opinion, to outweigh the terms of the document itself and the other surrounding circumstances.

11. Accordingly their Lordships will humbly advise His Majesty that the appeal should be allowed, that the decree of the Subordinate Judge of 16th November 1920, should be restored, the appellant's costs in this appeal, and in the High Court to be paid by respondents 1 to 3 in this appeal.

Appeal allowed.