

## **PRIVY COUNCIL**

(Vytla) Sitanna

Vs.

Marivada Viranna

P.C.A.No.105 of 1931

(Lord Thankerton, J. Sir John Wallis and Sir George Lowndes JJ.)

19.02.1934

### **JUDGMENT**

#### **SIR JOHN WALLIS J.**

1. These are two appeals from judgments and decrees of the Madras High Court on appeal from the Subordinate Judge of Cocanada which have been consolidated and heard together. In 1880 one Tirupayya, son of Dorayya, died leaving a widow Venkataramanamma hereinafter referred to as the widow) who survived him for forty-one years. On her death the plaintiff, as next reversioner to her husband's estate, instituted the present suit to recover the properties that had stood in his name. The family belonged to the agricultural caste of Kammas, among whom the illatom custom obtains. After Tirupayya's death there were disputes which was referred to a panchayat who gave an award under which the estate was partitioned between the widow and one Ammanna, who was married to Tirupayya's sister and according to the defendants' case had been adopted by Tirupayya's father Dorayya as an illatom son-in-law, and had thereby acquired a share in the family properties.

2. In 1888 the widow executed a conveyance to Ammanna of the properties which had been awarded to him, and conveyed the remaining properties to her daughter Nagamma on the occasion of her marriage, reserving only 6 acres odd for her own maintenance. On Nagamma's death in 1894 these properties descended to her daughter Ramalakshamma, who died in 1896, when her father Muneyya took possession of them without title, and they subsequently passed into the possession of some of the defendants. If the widow's conveyance to her daughter Nagamma amounted to a surrender of the whole estate to the next reversioner and so accelerated the succession, then the male reversioner's' right to sue arose on her death in 1894, and the present

suit as regards these properties is barred. If it did not, their right of suit arose on the widow's death in 1921 and the suit is in time. The Additional Subordinate Judge of Cocanada gave the plaintiff a decree for the properties conveyed by the widow to her daughter and otherwise dismissed the suit. The plaintiff and the defendants both appealed to the Madras High Court, who dismissed the plaintiff's appeal. On the defendants' appeal with reference to the properties conveyed by the widow to her daughter it was held that the suit was barred, and the decree of the lower Court was modified accordingly.

3. From these two appellate decrees of the High Court the plaintiff has preferred these appeals to His Majesty in Council. As regards the properties awarded to defendant 1's father Ammanna by the panchayat and subsequently conveyed to him by the widow, both Courts held that Ammanna had acquired a good title but for different reasons. The Subordinate Judge found that Ammanna was not adopted by Dorayya as an illatom son-in-law, and that the question of the adoption was not referred to the panchayat, but that the subsequent conveyance to him by the widow was good, because, as recited in the deed, it was made in accordance with her husband's directions. In the High Court both the learned Judges rejected this contention, which had not been pleaded, and it has not been put forward in the present appeal.

4. Phillips, J., observed that it was not surprising that the evidence as to Ammanna's illatom adoption was unsatisfactory, seeing that it must have taken place some fifty or sixty years before the suit. He had admittedly married Dorayya's daughter, but it was uncertain whether the marriage occurred in Dorayya's lifetime and whether Dorayya adopted him as an illatom son-in-law as the evidence was conflicting. Ammanna seemed to have been treated as one of the family members, as he gave up his rights in his own family and looked after the affairs of Dorayya's family. On the whole the learned Judge came to the conclusion that the award was a *bona fide* settlement of disputes which was binding on the estate which had been represented by the widow; Reilly, J., expressed himself with more hesitation. He agreed with the Subordinate Judge that the illatom adoption was not proved, and had not been set up at the time of the award. What had been referred to the panchayat was, he thought, the claim put forward by Dorayya's widowed sister Venkamma, who had lived in his family, that on account of the additions to the estate which had been made by her she was entitled to a share and wished that it should be given to Ammanna. Ammanna had assisted her by taking part in the cultivation, and there was therefore a moral claim which had been urged in good faith and should not be disturbed.

5. Their Lordships find themselves most in agreement with Phillips, J. The panchyats refrained from stating in their award the contentions of the parties or the reasons for their decision; and this way of dealing with the case appears to have satisfied everybody at the time, as the widow and Ammanna both signed a muchilika addressed to the Sub-Collector of the Godavari District informing him of the award and binding themselves to abide by it, and it was never questioned until the widow's death forty-one years later. The award did not in terms decide that Ammanna was Dorayya's illatom son-in-law, which the widow had not admitted or there would have been no dispute, and she apparently preferred to base the conveyance which she executed eight years later in Ammanna's favour on the grounds that he had been brought up "in our house" from his infancy, and had married her husband's sister and Dorayya's daughter, and that the conveyance was "in accordance with the arrangements made by my husband and the directions given to me." These statements are borne out by the fact that in the muchilika already mentioned Ammanna is described as Venkamma's foster son.

6. What seems to have happened is that when she came to live in her brother's house as a childless widow, there was no male child in the house, and Ammanna, one of their sister's children who was then an infant was taken to live with them and brought up by Venkamma. As Dorayya afterwards had a son, Tirupayya, Ammanna could not be adopted, but it was only natural that he should be married to Dorayya's daughter and go on living in the family. As to whether he was married during Dorayya's lifetime the evidence, as observed by Phillips, J., is conflicting, and there may also have been some question as to whether after Tirupayya's birth there could be a valid illatom adoption (see Mayne's Hindu Law, Edn. 9, 278). Dorayya is said by one of the witnesses to have died in the year of the great cyclone of 1st November 1864, when Tirupayya, who was about 30 in 1880, was still a minor; and this would be an additional reason for taking Ammanna as an illatom son-in-law. However this may be, the fact that Ammanna never troubled about his share in the property of his own family and went on living jointly with Tirupayya, attending to the cultivation while Tirupayya attended to his duties as Village Munsif, coupled with the widow's statements, suggests that he enjoyed the status of an illatom son-in-law, during Tirupayya's lifetime, and that it was only to be expected that he should claim a share after Tirupayya's death.

7. The plaintiff's case that the increase in the estate, from 8 to 44 acres, was the work of the widowed Venkamma, and that the disputes arose because she claimed on this

ground that a share should be given to her foster son, rests mainly on the evidence of the second witness for the plaintiff, a niece of Dorayya but a member of the plaintiff's branch of the family, who went so far as to depose that Ammanna was not Venkamma's foster son and that he was not taken into the family until after Dorayya's death. Venkamma was no doubt a party to the arbitration, but this is accounted for by the fact that, as stated in the award, the widow claimed that the jewels in Venkamma's possession belonged to the estate. This claim was upheld by the panchayat, who directed that they should be included in the partition "with the exception of the jewels which the panchyatdars had ignored," that is to say, left in Venkamma's possession, without going into the question of her title to them. That the main dispute was between Ammanna and the widow is further suggested by the fact that it was they who each nominated two panchyatdars, the fifth being nominated by the Village Munsif and the karnam. The illatom custom among the Reddis and Kammas of the Madras Presidency is based on the necessity of having men in the family to look after the cultivation, and the case that the increase in the property was due not to Dorayya himself and to Ammannia and Tirupayya after him, but to Venkamma, a widow, who is not shown to have had any property of her own appears highly improbable and may well have been set up owing to the fact that, as already mentioned, the award does not show what were the claims put before the panchyat.

8. Reference to a village panchayat is the time-honoured method of deciding disputes of this kind, and has these advantages, that it is generally comparatively easy for the panchyatdars to ascertain the true facts, and that, as in this case, it avoids protracted litigation which, as observed by one of the witnesses, might have proved ruinous to the estate. Looking at the evidence as a whole their Lordships see no reason for doubting that the award was a fait and honest settlement of a doubtful claim based both on legal and moral grounds, and are therefore of opinion that there are no grounds for interfering with it. This appeal must therefore fail.

9. The question in the other appeal is merely one of, limitation and may be very briefly dealt with. Assuming, as their Lordships have now decided, that the award in Ammanna's favour was good, it is not disputed that the conveyance by the widow of the rest of the property, reserving only a few acres for her own maintenance, would have amounted to a surrender of her estate and accelerated the succession of her husband's next heir if he had been a man as held by the Board in *Bhagwat Koer v. Dhanukdhari Prasad Singh* and *Rangasami Gounden v. Nachiappa Gounden* but it has been held by the Subordinate Judge that this rule does not apply when the

conveyance is made by a widow to her daughter who, though her husband's next heir only takes an estate for life. This he considered was not a surrender to the next reversioner. But though the doctrine of surrender by a widow has undergone considerable development in recent years, it must be remembered that the basis of it is the effacement of the widow's interest, and not the ex facie transfer by which such effacement is brought about. The result is merely that the next heir of the husband steps into the succession in the widow's place. There is in their Lordships' opinion, nothing in the Hindu law which would exclude the succession of a female heir in such cases, and no reason for differentiation according, to the nature of the estate she would take. This question has been fully considered in the judgment of Banerji, J., in *Sartaji v. Ramjas* which does not appear to have been brought to the Subordinate Judge's notice, and in which it was held that there was no sufficient reason for making any difference between surrender to a daughter and surrender to the nearest male reversioner. The learned Judges of the High Court have followed this decision and their Lordships think that they were right.

10. It follows therefore that the widow's conveyance to her daughter Nagamma in 1888 was a surrender of her estate and an acceleration of her daughter's succession and that on the daughter's death in 1891 the succession opened to her father's male reversioner's, and that the present suit filed by the plaintiff as next reversioner is barred under Article 141 Lim. Act. Their Lordships are therefore of opinion that both appeals should be dismissed and will humbly advise His Majesty accordingly. The appellant will pay the respondents' costs.

Appeals dismissed.

Cases Referred.

AIR 1919 PC 75=53 IC 347=46 IA 259= 47 Cal 466 (PC),

AIR 1918 PC 196=50 IC 498=46 IA 72= 42 Mad 523 (PC),

AIR 1924 Allahabad 166=79 IC 25=46 All 59,