G. Appaswami Chettiar and Another

Vs

R. Sarangapani Chettiar and Others

Civil Appeal No. 2028 of 1968

(R. S. Sarkaria, P. N. Kailasam JJ)

22.03.1978

JUDGMENT

KAILASAM, J. -

1. This appeal is preferred by the plaintiffs against the judgment of the Division Bench of the High Court of Madras on certificate. Appellants are the sister's grandsons of one Gopalasami Chettiar. The first defendant Ramathilakam Ammal is the daughter of Gopalasami Chettiar and the second defendant the adopted son of the first defendant is the sister's grandson of her husband Sethu Chettiar. The two defendants are respondents 1 and 2 in this appeal. Defendants 3 and 4 are the alienees of certain properties of Gopalasami Chettiar from respondents 1 and 2.

2. The suit was filed by the appellants for (1) a declaration that the adoption of the second respondent by the first respondent is not true and valid; (2) declaring that in any event the second respondent as an adopted son could not take the estate of Gopalasami Chettiar either under the will of Gopalasami or by succession; (3) a declaration that alienations made by respondents 1 and 2 on December 16, 1956 in favour of respondents 3 and 4 are not binding on the reversioners of Gopalasami Chettiar and will not enure beyond the lifetime of the first respondent.

3. The trial Court found that the adoption was true but not valid since the agnates of her husband namely Pattalam Ramasami Chettiar, another Ramasami Chettiar and Kuppusamy Chettiar were not consulted and their consent obtained. In view of this finding the trial Court left open the construction of will of Gopalasami Chettiar and the question as to whether second respondent is entitled to claim under the will of Gopalasami Chettiar or by way of succession on intestacy. The Court found that the alienation made by respondents 1 and 2 in favour of respondents 3 and 4 is not valid.

4. On appeal by respondents 1 and 2 to the High Court the Court held that the adoption of the second respondent by the first respondent was true and valid but agreed with the contention of the appellants that the second respondent as the adopted son of the first respondent could not take any bequest under the will. But as Sethu Chettiar, the adoptive father of the second respondent, took a vested interest under the will, the respondent will be entitled to that interest as the adopted son. The High Court also dismissed the claim of the appellants for any declaration in respect of alienations made by respondents 1 and 2 in favour of respondents 3 and 4. In the result the High Court dismissed the suit and hence this appeal before us.

5. The validity of the adoption was questioned by the appellants on various grounds. First of all it was contended that Sethu Chettiar, the husband of Ramathilakam Ammal had prohibited her from

making any adoption to him. The trial Court found against this plea of the appellants and the finding was confirmed by the High Court. The plea was not put forward before us and therefore need not be considered. The second ground that was taken was that the adoption was not valid for want of consent of the sapindas of the husband of Ramathilakam Ammal, the first respondent. The third ground of attack was that the motive for adoption by the widow was improper as the adoption was made for the purpose of depriving the sapindas of their right to property and not on any consideration of spiritual benefit to her husband.

6. The power of a Hindu widow to adopt a son to her husband is well recognised in Hindu Law. The widow is the surviving half of the husband and the widow adopts according to the texts in her own right though the later view appears to be that she acts as a delegate or representative of her husband. When the adoption is authorised by the husband the widow's power is co-extensive with that of her husband. Equally, when the consent of the husband's kinsmen is obtained the widow's power is co-extensive with that of her husband (vide Balusu Gurulingaswami v. Balusu Ramalakshamam (ILR 22 Mad 398)). The power of adoption can be exercised by the widow alone and nobody can compel her to adopt. When there is no specific authority by the husband her authority is co-terminus with that of her husband subject only to the assent of the sapindas. It is not disputed that the consent of the sapindas is necessary in the absence of the husband's authorisation under the school of Hindu law to which the parties belong. The assent of the sapindas is only advisory in nature. The necessity for obtaining the assent of the sapindas has been laid down in the Ramnad's case (Collector of Madura v. Moottoo Ramalinga Sathupathy, (1868) 12 MIA 397, 441-42) where the court held that "where the authority of her husband is wanting, a widow may adopt a son with the assent of his kindred in the Dravida Country". The reason for requiring the assent of the kinsmen is stated by their Lordships as follows :

> The assent of kinsmen seems of be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption.
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> There should be evidence of the assent of the kinsmen as suffices to show that the adoption by the widow was in the proper and bona fide performance of a religious duty and not due to capricious or corrupt motive. The reason for the rule requiring the consent of the sapindas is not due to deprivation of proprietary interest of the reversioners but for an assurance that the adoption was a bona fide performance of the religious duty and not due to any capricious action by the widow. In the case of a joint family it is necessary that the widow should consult the elders in the husband's family particularly the father of the husband who is her venerable protector, but when the family is divided the duty of the widow is to consult the agnates of the husband at the first instance. If the consent by the nearer agnates is withheld for improper reasons she can proceed to consult and obtain the consent of remoter agnates.

7. The main ground on which the validity of the adoption was questioned by the appellants is that the adoption is invalid due to want of consent of the sapindas of the first respondent's husband. This plea found favour with the trial Court though the High Court did not accept it. The High Court considered the matter elaborately and found that requisite consent was obtained. As we agree with the reasoning and the conclusion arrived at by the High Court it is not necessary for us to set out all the facts and reasons for our conclusion in detail. It is sufficient to state that amongst the relations of the first respondent's husband the two appellants who are the brother's sons of Sethu Chettiar were

admittedly consulted but refused their consent. Pattalam Ramaswami Chettiar is an agnate removed by three degrees. Ramaswami Chettiar and Kuppusami Chettiar are two other agnates of Sethu Chettiar. It is mainly on the ground that these three agnates were not consulted that the trial Court upheld the plea of the appellants that the necessary consent from sapindas had not been obtained. Pattalam Ramasami Chettiar had attested the adoption deed Ex. B-4 executed immediately after the adoption ceremony was over. The High Court found on evidence that Pattalam Ramasami Chettiar was present at the adoption and attested the adoption deed and concluded from the circumstances that he as an attesting witness had knowledge of the purport of the document which he was called upon to attest and therefore it could be reasonably inferred that he was a consenting party to the transaction. Regarding Ramasami Chettiar and Kuppusami Chettiar the High Court found after reference to the evidence of one of the appellants and PW 5 examined on their behalf that the two agnates were not proved to be dayadis of Sethu Chettiar. The High Court rightly pointed out that the attack in paragraph 10-C of the plaint was that the consent of the sapindas has not been obtained but there was no reference to the failure to obtain consent of the sapindas of the husband of the first respondent. The High Court has pointed out that Ramasami Chettiar and Kuppusami Chettiar were admittedly 3 to 4 degrees removed and that Ramasami Chettiar died about 10 years ago. There is no whisper in the plaint about the widow having failed to obtain consent of Ramasami Chettiar or Kuppusami Chettiar are not proved to be the dayadis of Sethu Chettiar. The Court also found that on their own admission the appellants withheld the consent improperly as they did not want to lose the right to property. The widow had consulted Govindasami Chettiar, Govindarajulu Chettiar, Devaraju Chettiar and Ramasami Chettiar, the father of the adopted boy, who were all cognates of the first respondent's husband. The High Court also found that Devarajulu Chettiar another sister's son of Sethu Chettiar who was examined as DW 9, had given his consent. The trial Court has found that the refusal of the appellants to give their consent is improper and that they had more or less abused their fiduciary position. The first appellant who examined himself as PW 1 stated that he had withheld his consent because he was afraid that he would lose his reversionary right to the estate. It is also clear that the appellant was negotiating a price through several persons for giving his consent. On the facts the trial Court as well as the High Court rightly came to the conclusion that the appellants improperly withheld their consent to the adoption. On a consideration of the evidence, we agree with the conclusion arrived at by the High Court that the widow had consulted all the necessary sapindas and that the withholding of the consent by the appellants was due to improper motives which would not have the effect of invalidating the adoption.

8. It was strongly contended by the learned Counsel for the appellants that the widow was induced by improper motive to make the adoption. It was submitted that the object of the adoption was to deprive the reversioners of their right to property and not for conferring any spiritual benefit on her husband Sethu Chettiar. Ramathilakam Ammal, the first respondent, in her evidence admitted that as the appellants were pestering her with litigation and demanding money, in order to put an end to these troubles, she resorted to adoption. She questioned the advocate whether these troubles would be dispelled if she resorted to adoption and the advocate stated that the appellants would not be able to make any claim for the property if she adopted and that she could live without anxiety. In her chief examination she stated that according to the instructions of the Purohit she made a request to the parents of the boy in the following terms :

> Give your son in adoption so that my husband and I shall attain salvation, so that funeral obsequies shall be performed, and so that my family shall be propagated.

This request was made to the hearing of all the people assembled. The adoption deed Ex. B-4 recites that for the purpose that her husband may derive spiritual benefit and that his soul may rest in peace

and the annual ceremonies and the other vedic rites of herself and her husband may be performed properly, and that her husband's lineage may be propagated and perpetuated and that heir be found for him, she considered it proper to take in adoption to her husband the second respondent. In re-examination the first respondent was questioned about her statement as to the reasons for her adoption and she stated that it was for the spiritual benefit "paralokasthanam" of her husband that she had adopted. Reading the evidence as a whole we are satisfied that the reason for adoption was for spiritual benefit of her husband as seen from her declaration at the time of the adoption ceremony and the recitals in the adoption deed which was prepared at the time of the adoption. The statement by her on the stress of the cross-examination that she resorted to adoption for putting an end to the troubles by the sapindas which she had in plenty would only disclose how bitter she was against them. The evidence taken as a whole would not justify our coming to the conclusion that the adoption was due to any improper motive by the widow and not for the spiritual benefit of her husband. The trial Court was of the view that the appellants were anxious to take money and at the same time the first respondent was willing to give but the negotiations failed because the parties could not agree on the exact figure and having regard to the circumstances the conduct of both the parties is open to criticism. The High Court did not record any clear finding as to the motive of the widow in making the adoption but observed that even conceding that the real motive of the widow in making the adoption was to create an heir husband after her demise, if that act incidentally created a son for her husband far from such act being considered the consequence of an improper motive for making the adoption, it would be an altruistic motive with reference to the adoption. The learned Counsel questioned the correctness of the view taken by the High Court and submitted that improper motive of the widow would vitiate the validity of the adoption.

9. The law is well-settled that when there is express authority by the husband or when consent of the sapindas has been properly obtained the motive of the widow is irrelevant. In Kandulapati Kanakaratnam v. Kandulapati Narasimha Rao (ILR 1942 Mad 173 : AIR 1941 Mad 937, 939), it was held that when a widow has received valid authority to adopt, her motive in making the adoption should be ignored, inasmuch as the benefit conferred on her decreased husband by the adoption is in no way affected by her motives. The Full Bench of the Madras High Court was considering the case in which the widow had valid authority to adopt and held that her motive is entirely irrelevant. It proceeded to state :

> However spiteful her action may be towards others, the benefit conferred upon her deceased husband by her action is in no way affected, and the fact that she cannot act without authority makes the position all the more clear.

The decision will lead to the inquiry as to how far the motive is relevant in a case in which the widow has not got the requisite authority. In Ramnad's case (supra) it was held that the adoption should not be from capricious or from a corrupt motive. Widow's motive in making the adoption is not really a factor for the emphasis in Ramnad's case was regarding the consent of the nearest sapindas. If such consent had been obtained the motive is irrelevant and in the absence of the authority of the husband and without valid consent of the sapindas the adoption will be invalid whatever her motive may be. In the circumstances, the motive of the widow would not normally be relevant.

10. The relevancy of the motive of the widow became important in a case in which the nearest sapinda refused his consent on the ground that the widow for improper motive capriciously wanted to deprive him of his reversionary right. The question arose whether withholding of consent by the sapinda under the circumstances was justified. In Sri Rajah Ravu Sri Krishnayya Rao v. Rajah of

Pittapur (1928 ILR Mad 893 : AIR 1928 Mad 994), the widow entered into a contract by which it was stipulated that the reversioner and the boy to be adopted should settle upon the widow absolutely one-half of her husband's estate to pay the debts and the widow should be given a maintenance of Rs. 500 a month out of the other half which would belong to the son on adoption. The case was decided by a Full Bench of the Madras High court. Justice Odgers and Justice Jackson (Kumaraswami Sastri, J. dissenting) held (1) that on the facts the agreement to execute the settlement and the maintenance deeds was a condition precedent to the making of the adoption; (2) that the motive of the widow in making the adoption was therefore corrupt; (3) that the plaintiff was entitled to refuse his consent on the ground that she capriciously wanted to deprive him of his reversionary right; (4) that on account of his refusal, which was proper, there was no consent of the majority of the reversioners, which was necessary to validate the adoption, and (5) that in the Madras Presidency, where a widow not having her husband's authority, can adopt with the consent of her nearest reversioners entitled to the inheritance, the Court can scan (a) whether the widow in making the adoption is actuated by proper or corrupt motives and (b) whether the reversioner's refusal to consent is proper or is based upon purely personal grounds. Kumaraswami Sastri, J. in his dissenting judgment expressed the view that on the fact of the case, the adoption was valid and the widow's motive in making the adoption was not corrupt. He expressed the view that the agreement to adopt was long prior to and was independent of the agreement to execute the settlement and the maintenance deeds, and moreover as it is legally open to the widow to stipulate with the natural father of the boy to be adopted for her enjoyment of her husband's estate for the full term of her natural life, her agreement to convert such a right into an absolute estate of an adequate portion is legal, especially if the boy to be adopted is, as in this case, a major. The learned Judge proceeded to state that though the debts were not binding on the reversioners there was nothing illegal in a stipulation that the debts which were morally binding on her should be discharged by some means by the son to be adopted. Regarding the validity of an adoption made by a widow for getting a gain for herself the learned Judge even if the motive was for getting a gain for herself the adoption would not be invalid but the agreement for her personal benefit if not within the limits allowed by law will be void. This decision was taken up in appeal to the Privy Council (Infra footnote 5) and their Lordships of the Privy Council made certain observations regarding the relevancy of the motive of the widow in making an adoption and the views expressed by Kumaraswami Sastri, J. in his dissenting judgment which are material for the present discussion. It was contended before the Privy Council that the widow did not make the adoption for the benefit of her husband or upon religious grounds, but merely in order to get hold of a substantial part of the property. The Privy Council doubted if where the consent of the sapindas had been obtained, the motive of the adopting widow is relevant. Declining to decide the question as to the relevancy of the motive of the widow their Lordships observed that they did not consider it necessary to decide this question in the present case as they were of the view that there is no ground for imputing corrupt motive to the lady. They agreed with the view of Kumaraswami Sastri, J. that according to Hindu notions unpaid debts are regarded as sins as much in the case of a woman as in that of a man and agreed with the learned Judge when he state "I do not think that a widow who makes an adoption and stipulates that the adopted son should pay her debts is doing anything corrupt or immoral". Further, referring to the relevancy of the motive of the widow the Privy Council expressed that it was unnecessary to decide the question as to whether Kumaraswami Sastri, J. was right in holding that when the adoption is made in fulfilment of both her religious duty and also for the purpose of getting a gain for herself, the adoption would be valid while any arrangement for her personal benefit, if not within the limits actually allowed by law, would be void. While observing the view expressed by the majority Odgers, J. and Jackson, J. that as the motive of the widow was a mercenary one and that in itself was sufficient to invalidate the adoption and therefore the ground of sapinda's refusal was justified

(sic the Privy Council), did not take into account the religious aspect of adoption in the eye of a Hindu widow, left the matter at that by observing that the dictum of Kumaraswami Sastri, J. may require serious consideration on a future occasion. The learned Counsel for the appellants submitted that the occasion has now arisen for determination of this important question.

11. The courts are bound to presume that the act is done by a widow in the proper and bona fide performance of religious duties and neither capriciously nor from a corrupt motive. Ordinarily, it is presumed that the motive of the widow in making an adoption is for the performance of religious duties. The question as to whether an improper motive on the part of the widow in making an adoption would invalidate the adoption has been left open by the Privy Council in Krishnayya Rao v. Venkata Kumara Mahipathi Surya Rao (AIR 1935 PC 190 : (1935) 69 MLJ 388 : 157 IC 881), but it is significant that the Privy Council hesitated to dissent from the view expressed by Kumaraswami Sastri, J. who according to their Lordships was well qualified to speak on the matter under discussion. Kumaraswami Sastri, J. in his dissenting judgment in Sri Rajah Ravu Sri Krishnayya Rao v. Rajah of Pittapur (Supra) observed that so far as the adoption is concerned, it is a religious sacrament according to Hindu law-givers, like a marriage. The necessity for the adoption of a son in the case of childless Hindus is insisted upon as an act necessary for their salvation and is looked upon as very meritorious. The learned Judge pointed out that the Bombay School wherein adoption is looked upon as so meritorious that the authority of the husband is unnecessary and as such authority according to the leading commentators may be presumed for so meritorious an Act. The learned Judge also referred to the decision of the Privy Council in Bhasba Rabidat Singh v. Indar Kunwar ((1889) ILR 16 Cal 556 (PC) : IA 53), where the adoption was questioned on the ground that the widow agreed with the natural father that she should retain the whole estate during her lifetime. The Privy Council expressed its view that it did not render the adoption conditional and did not affect the rights of the adopted son but the condition would be void without invalidating the adoption. The learned Judge pointed out that secular motives do come into play and influence persons in making adoption and where an adoption is made by a widow both in fulfilment of her religious duty and also for the purpose of getting a gain for herself, it seemed to him that the proper thing is to hold that the adoption would be valid while any arrangement for her personal benefit, if not within the limits actually allowed by law, would be void. Taking into account the religious and the sacramental view which is involved in the act of adoption and the benefits which the Hindus believe in, namely that an adoption of a son in the case of a childless Hindu is necessary for his salvation and for performing religious rites, it will not be proper to hold that improper motive of the widow for adopting would invalidate the adoption. To accept such a contention would be to apply modern concepts of law to an ancient sacramental institution of adoption. We do not feel any hesitation in accepting the view propounded by Kumaraswami Sastri, J. in holding that the motive of the widow in making an adoption is irrelevant for the purpose of validating the adoption. Consequently, the refusal of the consent by sapindas on the ground that the motive of the widow is improper would amount to improperly withholding the consent.

12. We cannot ignore the development that has taken place in the society at large during the space of one hundred years since the Ramnad's case (supra) was decided and 50 years since Kumaraswami Sastri, J. gave expression to his views on the matter.

13. The basis for requiring the assent of the sapindas is on the ground of the presumed incapacity of a woman. According to the text of Yagnavalkya in Chapter I, Verse 85 and in Chapter II, Verse 130 it is stated that the father should protect a maiden, husband a married woman and sons their mother as she is not fit for independence. In Ramnad's case (supra) this doctrine was recognised and the Privy Council ruled :

> The assent of Kinsmen seems to be required by reason of the presumed incapacity of women for independence, rather than the necessity of procuring the consent of all those whose possible and reversionary interest in the estate would be defeated by the adoption.

There should be such evidence of the assent of Kinsmen as suffices to show, that the act is done by the widow in the proper and bona fide performance of a religious duty, and neither capriciously nor from a corrupt motive. Justice Subba Rao, as he then was, summed up the law thus in V. T. S. Chandrasekhara Mudaliar (Died) v. Kulandaivelu Mudaliar ((1963) 2 SCR 440 : AIR 1963 SC 185) (SCR p. 458) :

> It will be seen that the reason for the rule is not the possible deprivation of the proprietary interests of the reversioners but the state of perpetual tutelage of women, and the consent of kinsmen was considered to be an assurance that it was a bona fide performance of a religious duty and a sufficient guarantee against any capricious action by the widow in taking a boy in adoption.

The basis for the assent of the kinsmen by reason of the presumed incapacity of women for independence seems to have disappeared. During the hundred years society has advanced and the presumption of incapacity of women for independence can no longer be taken for granted. Apart from the constitutional guarantee that there will be no discrimination against any citizen on the ground of sex, it is clear that women have established that the presumption of incapacity for independence is no longer available. It is well-known that women have occupied highest positions and have proved themselves equal to men in all professional and other avocations. In the changed circumstances therefore the basis for the requirement of the assent of kinsmen by a widow due to incapacity no longer exists and it may well be asked whether the sapinda's assent is any more necessary. Added to this circumstance is the codification of personal law of the Hindus on several branches of Hindu law. The Hindu Marriage Act, 1955 has codified the law on the subject of marriage and divorce. The Hindu Succession Act, 1956 has codified the law relating to intestate succession. The Hindu Minority and Guardianship Act, 1956 has codified the law relating to minorities and guardianship among Hindus and the Hindu Adoptions and Maintenance Act, 1956 has codified the law of adoption and maintenance. The codified law has made several changes in the law of adoption. With the passing of the Hindu Succession Act, 1956, sons and daughters are treated equally in the matter of succession. Equality in status is recognised the matter of adoptions also. The Hindu Adoptions and Maintenance Act, 1956, provides for adoption of boys as well as girls. Formerly, a woman could adopt only to her husband but now she can adopt for herself. A widow can now adopt a son or daughter to herself in he own right. No question of divesting of any property vested in any person arises for under the Succession Act she is entitled to taken the property absolutely. Under the changed circumstances therefore the questions of the sapinda's consent or depriving him of his reversionary interest of the motive of the widow for adoption do not arise. But as in this case the second respondent was adopted on September 10, 1953 i.e. three years before the Hindu Adoptions and Maintenance Act, 1956 came into force, the law that was applicable before the Act came into force will be applicable to the present case. Thought the act came into force in 1956 and this adoption was in 1953 before the Act came into force, we have to take into account the changed circumstances particularly disappearance of the basis of the requirement of sapinda's assent on the ground of presumed incapacity of the women.

14. It may also be noted that the facts of the present case are different from the case of Krishnayya Rao v. Venkata Kumara Mahipathi Surya Rao (supra) where the widow stipulated that half the estate

should be given over to her absolutely and maintenance provided. In the present case there has been no stipulation by the widow for any settlement of property or maintenance on her by the adopted son or his father. The only ground on which the adoption was attacked was that the motive of the widow was to deprive the sapindas of the property and not for the spiritual benefit of the husband. We have already recorded a finding that the motive for adopting the son was spiritual benefit. The circumstance that led to the consideration of the motive of the widow in the case referred to namely a provision for settlement of half the properties for discharging debts at the time of the adoption does not arise in this case.

15. It was next contended on behalf of the appellants that even if the adoption is held to be valid the adopted son would not be entitled to succeed to the property of Gopalasami Chettiar as a legatee under the will. The plea was that the expression "putra poutrathi santhathies" would mean only sons born and would not include an adopted son. The will provided that on the failure of male issue of Ramathilakam Ammal, the first respondent, the estate would go to her female issue and on the failure of such female issue the estate would go to Sethu Chettiar and his santhathies. Construing the terms of the will, the High Court came to the conclusion that the testator could not have intended an adopted son of Ramathilakam Ammal to take after her as her santhathies. In this view the High Court upheld the contention of the appellants that the second respondent would not be entitled to succeed as the adopted son of Ramathilakam Ammal under the will. But the High Court held in favour of the second respondent on the ground that as Ramathilakam Ammal did not bear any child and as Ramathilakam Ammal's father's estate devolved on he husband and his santhathies after the death of Ramathilakam Ammal, the property vested in Sethu Chettiar who under the will was entitled to the vested interest. In the view that Sethu Chettiar who under the will was entitled to the vested interest. In the view that Sethu Chettiar took a vested interest, the High Court found that the second respondent who is the adopted son is entitled to the property by devolution.

16. To consider the question whether the second respondent is entitled to inherit as the adopted son of Ramathilakam which claim was negatived by the High Court and the question whether the High Court was right in its conclusion that the second respondent would be entitled to the legacy as the adopted son of Sethu Chettiar, it is necessary to set out the relevant parts of the will. Paragraph 2 of the will refers to charities specified in List II. The charities were to be performed by the testator's third wife Seshammal and after her by his daughter Ramathilakam Ammal and after her by her sons and grandsons failing them by her female heirs and if they are not available by Sethu Chettiar, husband of Ramathilakam Ammal and his putra pouthra santhathies permanently from generation to generation. Immovable properties are described in List III and according to the will after the lifetime of the third wife Seshammal, the immovable properties specified in List III as well as cash and movable properties should be taken and enjoyed by Ramathilakam Ammal and after her by her putra pouthra santhathies, and if they are not in esse, by her female descendants and in case they too are not in esse, by his sister's son Sethu Chettiar, the husband of the aforesaid Ramathilakam Ammal and after him by his santhathies. According to the terms of the will the properties are to be enjoyed by Ramathilakam Ammal and after her by her putra pouthra santhathies. The contention of the learned Counsel for the appellants is that the words "putra pouthra santhathies" would only include the sons born to Ramathilakam Ammal and would not include an adopted son. Support for this contention is sought to be derived by the subsequent clause in the will which provides that if putra pouthra santhathies are not in esse, by her female descendants. The High Court accepted the contention holding that if the intention was to Sethu Chettiar, the husband of Ramathilakam Ammal. From this the High Court inferred that the intention of the testator was that after the failure and in the absence of male issue the property is to be succeeded by the daughters of Ramathilakam Ammal. This would indicate that the property was to be given to the children born of the body of

Ramathilakam Ammal. We are unable to construe the will in the manner in which the High Court has done. The words "putra pouthra santhathies" would indicate son, grandson and descendants. We are unable to infer that the word "putra" is confined only to children born of the body of Ramathilakam Ammal. Hindu law has recognised the institution of adoption and once a boy is adopted validly he for all purposes is recognised as the son. We do not see any justification for excluding an adopted son from the term "putra". Neither are we satisfied that the term "santhathies" would exclude adopted son and his descendants. In Tirupathi Naicker v. Venkatasubba Naicker ((1928) 28 Law Weekly 819), a Bench of the Madras High Court held that the term "santhathi" is wide enough to include adopted son also. In Rajah Velugoti Govinda Krishna Yachendra Bahadur Varu v. Raja Rajeswara Rao (1939) 1 MLJ 831 : AIR 1939 Mad 614 : ILR 1939 Mad 622) a Bench of the Madras High Court had to consider the question whether an illegitimate offspring would fall within the words "purusha santhathi". Chief Justice Leach while expressing his view that the words in their widest sense would cover illegitimate descendants, in the context it should be understood as excluding illegitimate sons. In the deed of settlement the fifth clause provided that where a male member of any of the three branches should die without purusha santhathi either by way of aurasa or by way of adoption, his allowance should go to the agnates who are nearest to him in his own branch. The learned Chief Justice expressed his view that the reference to the aurasa issue or sons by adoption left no doubt in his mind that the parties only contemplated the right of maintenance being conferred upon aurasa and adopted sons. Justice Krishnaswami Aiyangar in his concurring judgment in dealing with the words "purusha santhathi" held that the words are Sanskrit in origin but used in the language of the Madras Presidency.

The word "purusha" is translated as "male" and "santhathi" as "issue, progency or descendants". By aurasa son it is meant "produced from the breast, born of oneself, or legitimate". According to the text of Manu and Yagnavalkya the word is defined as son born of lawful wedlock only. According to Yagnavalkya and aurasa son is he who is produced by a Dharmapatni (lawfully wedded wife). The word "purusha santhathi" is wider than aurasa son. Purusha santhathi though would exclude illegitimate son may include the adopted son. In the context of the settlement deed because both aurasa as well as adopted son were included, the Bench came to the conclusion that purusha santhathi included both aurasa and adopted son. This case was taken up to the Privy Council and in Raja Velugoti (Krishna Bahadur) v. Raja Rajeshwara Rao (68 IA 181, 186 : AIR 1942 PC 3) the Privy Council agreed with the High Court and held that both the learned Judges of the High Court have rightly decided that if the clause to which the plaintiffs make their appeal is considered in the light of its immediate context, it becomes clear that as the words are used in this deed, a man is said to die without purusha santhathi if he dies leaving neither a legitimate nor an adopted son. Though the case does not specifically decide that "santhathi" would include an adopted son it must be noted that the learned Judges of the High Court expressed their view that the word "santhathi" used in its widest sense would cover illegitimate descendants also. Whatever may be the position regarding illegitimate children, we are of the view that an adopted son cannot be excluded from the words "purusha santhathi" though an adopted son may not rank as an aurasa son.

17. The learned Counsel for the appellants referred to V. S. Apte's Students' Sanskrit English Dictionary where the meaning of the word "santhathi" is given at page 582 as "offspring, progeny". The learned Counsel also referred to the Tenth Skandam, Second Part, Sixty-first Chapter of Srimad Bhagavatham and submitted that the term "putra pouthra santhathi" would include only children born of the body. We are unable to accept this contention and to read the passages cited as excluding an adopted son. Further, neither the dictionary meaning nor the passage in Srimad Bhagavatham can be accepted as laying down principles of Hindu law. We are satisfied that the term "Putra pouthra santhathies" cannot be construed as confined to sons, grandsons and their descendants born out of

the body excluding the adopted son or his descendants. The High Court, in our view, was in error in coming to the conclusion that the second respondent is not entitled to take the properties under the will as the adopted son of Ramathilakam Ammal, the first respondent.

18. The view of the High Court that the second respondent would succeed to Sethu Chettiar as his adopted son is right but as we have held that the second respondent would succeed under the earlier clause of the will which provides that after Ramathilakam Ammal her "putra pouthra santhathies" resort need not be had to the subsequent clause in the will which provides for Sethu Chettiar, the husband of Ramathilakam Ammal and his descendants taking the property. In our view, as the second respondent being the adopted son not only of Ramathilakam Ammal but also of her husband Sethu Chettiar, his rights as the adopted son of Ramathilakam Ammal as well as Sethu Chettiar cannot be denied. On the failure of Ramathilakam Ammal (sic in) not having putra pouthra santhathies or female descendants the property would be taken by Sethu Chettiar and his santhathies. The fact that Sethu Chettiar died during the lifetime of Ramathilakam Ammal would not affect the vesting in favour of Sethu Chettiar's santhathies.

19. The learned Counsel for the respondents submitted that in any event the appellants cannot succeed as after the Hindu Succession Act came into force in 1956 the life estate which Ramathilakam Ammal had, would ripen into an absolute estate under Act 30 of 1956. This contention was rightly rejected by the High Court as the life estate to which Ramathilakam Ammal was entitled was under the will of her father and therefore Section 14(2) of the Act would be applicable and the life estate would not be enlarged into an absolute estate.

20. As we have held that the adoption is valid and that the second respondent is entitled to take the estate of Gopalasami Chettiar under the will the appellants are not entitled to any declaration in respect of the alienations made by respondents 1 and 2 in favour of respondents 3 and 4 as they are not entitled to any interest in the properties.

21. The result is that the appeal fails. Taking into account the circumstances of the case, we direct that each party will bear his own costs in this Court. As the appeal was filed in forma pauperis and as they have failed, they are directed to pay the court fees leviable in the memorandum of appeal.

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