PRIVY COUNCIL.*

THAYAMMÁL AND ANOTHER (DEFENDANTS)

and

VENKATARÁMÁ (PLAINTIFF).

P. C. 1887. Feb. 12.

[*On appeal from the High Court at Madras.*]

Adoption—Widow adopting to her deceased husband, with consent of sapindas—Effect of estate having already vested in the widow of a son.

A son's widow having obtained her widow's estate in the property inherited by her deceased husband from his father, the widow of that father cannot adopt a son to the latter, whether she acts under authority from her husband or as widow with the assent of sapindas.

That the power of the father's widow to adopt a son to him is brought to an end upon the vesting of the estate in the son's widow was decided in *Mussumat Bhoobun Moyee Debia* v. *Ram Kishore Acharj Chowdhry* (1) and *Padmakumari Debi* v. *The Court of Wards.* (2)

APPEAL from a decree (21st March 1884) of the High Court affirming a decree (18th January 1882) of the District Judge of Trichinopoly.

In the suit, out of which this appeal arose, a son, adopted by the widow of a son of one of two brothers deceased, claimed a declaration that an adoption by the widow of the other brother, sapindas assenting, was invalid; and he had obtained a decree to that effect on the ground that, before the adoption now disputed, the estate had already vested in the widow of a son.

Of two brothers, Dorasámi, deceased in 1858, and Subha Aiyan, also deceased, the former left a son, Kuttisámi, who died in 1866, and a widow, Thayammál, the first defendant in this suit. The latter brother left a son named Rangasámi, who died in 1861. Kuttisámi, son of Dorasámi, left a widow, Thangammál.

The plaintiff, claiming as adopted son of Rangasámi, alleged that an adoption purporting to be made in 1877 by Thayammál, widow of Dorasámi, whereby she attempted to adopt Chitambara

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* *Present*: Lord WATSON, Lord FITZGERALD, Lord HOBHOUSE, Sir BARNES PEACOCK, and Sir R. COUCH.

(1) 10 M.I.A., 279. (2) 1 L.R., 8 Cal., 302; L.R., 8 I.A., 229.

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Aiyan, the second defendant, was invalid by law. One of the reasons alleged for the invalidity of the adoption was the existence of Thangammál, the widow of Kuttisámi, who had (it was alleged as another reason) adopted a son to her deceased husband, thereby, although this son had since died, preventing any further adoption in the line of succession to Dorasámi. Another objection was that Chitambara Aiyan was too old for the adoption to be valid; also that his upanayana had already been performed before 1877. On this last ground the Court of First Instance decreed the claim, deciding, also in favour of the plaintiff, a question of fact raised by the defence, viz., whether the plaintiff had himself been adopted, as he alleged, to Rangasámi.

A Divisional Bench of the High Court (Sir C. Turner, C.J., and Muthusámi Aiyar, J.) dismissed an appeal from that decree. They affirmed the finding of the plaintiff's adoption, pointing out that it was supported by what appeared in *Ramasámi Aiyan* v. *Venkataramaiyah*,(1) a suit in which the present plaintiff was also plaintiff as heir of Rangasámi in virtue of this same adoption, suing to set aside some dispositions of property made by the widow.

As to the other part of the case, the High Court put the decision on a different ground from the first Court. The Judges held the adoption to be invalid for the reason that an adoption cannot be made by a widow after the estate has vested in the widow of the son. They referred to *Padmakumari Debi* v. *The Court of Wards*.(2) The judgment is reported in *Thayammál* v. *Venkatarámá*.(3)

On this appeal, Mr. *J. D. Mayne* and Mr. *H. H. Shephard* appeared for the appellants.

The respondent did not appear.

For the appellant it was argued that the High Court had misunderstood the application of the judgment in *Padmakumari Debi* v. *The Court of Wards*,(2) the decision in that case not having been, as it had been held to be, entirely applicable to the facts now presented; nor had it been kept in view that the adoption of the second appellant, having been intended to operate for the benefit

(1) I.L.R., 2 Mad., 91. (2) I.L.R., 8 Cal., 302; L.R., 8 I.A., 229.
(3) I.L.R., 7 Mad., 401.

of the widow's deceased husband, accorded with principle. It was clear that if an infant son, left by the husband, had died, the widow, with the assent of the sapindas, could have adopted a son to him—See *Vellanki Venkata Krishna Row* v. *Venkata Rama Lakshmi Narsayya.*(1)

It did not appear why this power should be taken away by reason of the son having grown up, married, and then died, leaving a widow; although it must be admitted that this widow, having inherited, would not be liable to be deprived of her widow's estate. Notwithstanding, however, that the adoption would be so far inoperative, as regards the latter purpose, it did not follow that it would be invalid altogether; and it was consistent with law that the adopted son should take on the death of the widow, and not before.

As to the prior adoption of Krishnásámi since deceased by Thangammál, in order to make that adoption a valid ground of objection to the adoption now in dispute, it must be shown to have taken place before the latter adoption which occurred in May 1877; and due authority for it must be shown, or else, that the appellants were estopped from disputing it.

[*Sir Barnes Peacock* inquired whether, in regard to the ground of the High Court's decision, the appellant's counsel would dispute that, when once the estate had vested in the son's widow, the rights of the heirs, coming in after the widow, could not be altered. He also asked whether it was not clear that an adoption must be valid at the time when it was made, if it was to be valid at all.]

It was submitted that there might be a suspension of the rights following upon the adoption. The power and duty of adopting was continued, as for three generations male offspring, or its admitted substitute was required. It was true that an adoption must be either valid or invalid at the time when it took place; but it did not follow that this adoption was invalid for that reason, as it might be that the right of the adopted son to take possession did not accrue till after the death of the widow—an argument which none of the decisions appeared altogether to negative.

(1) I.L.R., 1 Mad., 174; L.R., 4 I.A., 1.

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Reference was made to—

Digest of the Hindú Law, by West and Bühler, Vol. II, Book II, Section III, 3rd Ed., p. 995.

Mayne's Hindú Law and Usage, paras. 163, 178.

Tagore Law Lectures, 1882.

Judgment of Jackson, J., in *Puddo Kumaree Debee* v. *Juggut Kishore Acharjee*.(1)

Mussumat Bhoobum Moyee Debia v. *Ram Kishore Acharj Chowdhry*.(2)

The Collector of Madura v. *Muttu Ramalinga Sethupati (Ramnad Case)*.(3)

Sri Raghunadha v. *Sri Brozo Kishoro*.(4)

Vellanki Venkata Krishna Row v. *Venkata Rama Lakshmi Narsayya*.(5)

Ram Soonder Singh v. *Surbanee Dossee*.(6)

On a subsequent day, 26th February, their Lordships' judgment was delivered by

Sir BARNES PEACOCK.—This is an appeal from a judgment of the High Court at Madras in a suit instituted by the respondent to have it declared that an alleged adoption of the second defendant by the first defendant was invalid. It appears that Dorasámi, who was entitled to certain property, died many years ago, leaving Thayammál, the first defendant, his widow, and also an only son, Kuttisámi, his heir-at-law, surviving him.

Kuttisámi, the son, married Thangammál, and subsequently died without issue, leaving Thangammál, his widow, who, upon the death of her husband, succeeded as heir to the property.

It is alleged that, after the death of Kuttisámi, the son, and during the life of Thangammál, his widow, Thayammál, with permission of sapindas, adopted the second defendant as a son of her deceased husband. Several objections have been taken to that adoption, and, among others, that the son's widow having lawfully adopted a son to him, the father's widow had no power to adopt. The adoption by the son's widow was disputed, but it was objected on behalf of the respondent that it was immaterial whether she had adopted or not, for that, even in the absence of such adoption,

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(1) I.L.R., 5 Cal., 615.
(2) 10 M.I.A., 279.
(3) 2 M.H.C.R., 206; 12 M.I.A., 397.
(4) L.R., 3 I.A., 154.
(5) I.L.R., 1 Mad., 174; L.R., 4 I.A., 1.
(6) 22 W.R., 121.

the survival of the son's widow and the vesting of the estate in her put an end to the right of Thayammál, his mother, to adopt a son to his father.

Their Lordships are of opinion that the objection is fatal to the adoption of the second defendant. It is therefore unnecessary to express an opinion as to other objections to that adoption, or to consider whether there was or was not a valid adoption by the son's widow.

Their Lordships are of opinion that the High Court was correct in considering that the case is governed by the decision of this Committee in the case of *Padmakumari Debi* v. *The Court of Wards* (1) which was founded upon the case of *Mussumat Bhoobum Moyee Debia* v. *Ram Kishore Acharj Chowdhry*.

It was contended by the learned counsel for the appellant that all that was decided by the Judicial Committee in *Bhoobum Moyee's case* was that the son adopted by the mother could not recover the estate from the widow of the son. This appears to have been the view taken by the Lower Courts in *Padmakumari's case*. But this Committee, upon appeal, held that the case went much further. Nothing can be clearer or more explicit than the language used by the Committee in that case. They said: "The substitution of a new heir for the widow was, no doubt, the question to be decided, and such substitution might have been disallowed, the adoption being held valid for all other purposes, which is the view which the Lower Courts have taken of the judgment; but their Lordships do not think that that was intended. They consider the decision to be that, upon the vesting of the estate in the widow of Bhowani (*i.e.*, the son), the power of adoption was at an end and incapable of execution, and if the question had come before them without any previous decision upon it, they would have been of that opinion." Their Lordships entirely concur in that view, and they are of opinion that the adoption, with the permission of sapindas in the present case, could have no greater effect as regards the right to property than the adoption under the deed of permission in the cases to which reference has been made.

For the above reasons they will humbly advise Her Majesty that the judgment of the High Court ought to be affirmed. The

(1) I.L.R., 8 Cal., 302; L.R., 8 I.A., 229.

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respondent not having appeared, there will be no costs of the appeal.

Appeal dismissed.

Solicitors for appellants: Messrs. *Burton*, *Yeates*, *Hart* and *Burton*.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1887. January 21. March 4.

REFERENCE UNDER S. 39 OF ACT V OF 1882.*

Madras Forest Act,—Act V of 1882, *ss.* 14, 39—*Indian Limitation Act,—Act XV of* 1877, *ss.* 5, 6—*Period of limitation—Power to excuse delay.*

Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s. 14 of that Act, may be excused under s. 5 of the Indian Limitation Act, 1877.

THIS case was referred by the Collector of Salem, under Madras Act V of 1882—the Madras Forest Act, s. 39.

The question referred and the circumstances under which it arose appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J).

Counsel were not instructed.

JUDGMENT.—The appeal as to which this reference is made is preferred under s. 14 of the Madras Forest Act V of 1882, which prescribes the term of 60 days as the period within which the appeal must be preferred.

The appeal was preferred two days out of time.

The question referred by the Collector is whether he has power to excuse the delay under paragraph 2, s. 5 of the Limitation Act of 1877, regard being had to the provisions of s. 6 of the same Act that, when a period of limitation is specially prescribed by any special or local law, nothing in that Act (*i.e.*, the general Limitation Act) shall affect or alter the period so prescribed.

The Collector has recorded his opinion that the general provisions of the Limitation Act cannot apply to a case in which the period of limitation is fixed by a special or local law, and the decision in *Thir Sing* v. *Venkatarámier*(1) would at first sight

* Referred Case 2 of 1886. (1) I.L.R., 3 Mad., 92.