GOPAL v. BANK OF MADRAS.

Under these circumstances the plaintiff is not entitled to a decree declaring the instrument to be void. In addition to the Bombay case above referred to see *Sankarappa* v. *Kamayya*(1), *Gnanabhai* v. *Srinivasa Pillai*(2), and *Pullen Chetty* v. *Ramalinga Chetty*(3).

The decree of the lower Court must be set aside and plaintiff's suit dismissed with costs of second and third defendants in both Courts.

Barclay, *Morgan* and *Orr*, Attorneys for respondent.

APPELLATE CIVIL.

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

In Appeal No. 148 of 1891.

1892.
Nov. 15, 16.
December 23.

JAGANNADHA (PLAINTIFF), APPELLANT,

v.

PAPAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.

In Appeal No. 183 of 1891.

BUCHAMMA (DEFENDANT No. 2), APPELLANT,

v.

JAGANNADHA (PLAINTIFF), RESPONDENT.

In Appeal No. 20 of 1892.

PAPAMMA (DEFENDANT No. 1), APPELLANT,

v.

JAGANNADHA (PLAINTIFF), RESPONDENT.*

Hindu law—Adoption by widow—Agreement between adoptive mother and natural father.

A Hindu, who is taken in adoption by a widow, acting under an authority from her husband, is not bound by an agreement entered into by her with his natural father at the time of the adoption.

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(1) 3 M.H.C.R., 231. (2) 4 M.H.C.R., 84. (3) 5 M.H.C.R., 368.

* Appeals Nos. 148 and 183 of 1891 and 20 of 1892.

CROSS APPEALS against the decrees of G. T. Mackenzie, District Judge of Kistna, in original suit No. 25 of 1889.

Suit for possession of land.

The facts of this case appear sufficiently for the purposes of this report from the judgment of the High Court.

Parthasaradhi Ayyangar and *Seshacharyar* for the plaintiff, appellant in appeal No. 148 of 1891.

Mr. *P. A. DeRozario* and *Rangacharyar* for respondent No. 1.

Ramachandra Rau Saheb for respondents Nos. 2 and 3.

Ramachandra Rau Saheb and *P. Subramanya Ayyar* for defendant No. 2, appellant in appeal No. 183 of 1891.

Parthasaradhi Ayyangar and *Seshacharyar* for respondent.

Mr. *P. A. DeRozario* and *Rangacharyar* for defendant No. 1, appellant in appeal No. 20 of 1892.

Parthasaradhi Ayyangar for respondent.

JUDGMENT.—These are appeals against the decree of the District Court of Kistna in original suit No. 25 of 1889.

In that suit plaintiff, a minor, by his natural father as next friend sued for a declaration that he is the adopted son of one Rajah Kamadana Sobhanadri Row, deceased, and for recovery of the property, movable and immovable, of his adoptive father. The adoption is alleged to have been made by the two widows of Sobhanadri under an authority given by his will. First defendant is the surviving widow and second and third defendants are her daughters. Defendants denied the genuineness of the will of Sobhanadri and pleaded that it was concocted by his senior wife Seetamma who persuaded first defendant to join in the adoption and other proceedings in order to secure the continuance of the Government allowance. They also pleaded that the 109 acres 14 cents of her lands claimed in the plaint were the stridhanam property of Seetamma who had given them by will to second defendant. They denied possession of any movable property belonging to Sobhanadri or Seetamma. They also set up an agreement entered into between the widows and the natural father of plaintiff at the time of the adoption recognizing Seetamma's right to dispose of the above-mentioned inam lands and providing that the widows should have the guardianship of the adopted boy and management of the property till he attained his majority, on

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which event happening if disputes should arise between them and him, he should enjoy a moiety of the property and they the other moiety until the death of the survivor of the widows when the adopted son should take the whole.

The District Judge found that the adoption was duly performed, but that the will put forward as that of Sobhanadri was not genuine and the adoption was therefore invalid. He held, however, the first defendant was estopped by her conduct in making the adoption and otherwise from denying the validity of the adoption. He found that the alleged will of Seetamma was not genuine, but that the inam lands with which it purported to deal were her stridhanam property and being undisposed of by her went to plaintiff as her heir by virtue of the estoppel. He held that plaintiff was not bound by the agreement between his natural father and the widows. He gave a decree that plaintiff should have possession of the whole estate against first defendant during her life-time, that the 109 acres 14 cents of Seetamma's stridhanam should pass to him absolutely and that on first defendant's death the estate of Sobhanadri should pass to his reversioners.

Plaintiff appeals in appeal No. 148 of 1891, first defendant in appeal No. 20 of 1892 and second defendant in appeal No. 183 of 1891.

(Their Lordships after discussing the evidence continue :—)

In our opinion on the evidence and the probabilities of the case the balance is in favour of the genuineness of the will of Sobhanadri, and upon the first issue we must differ from the learned District Judge, and find that Rajah Kamadana Sobhanadri Row left a will authorizing his widows to adopt a son.

The *factum* of adoption is found by the District Judge and his finding on that point is not disputed on appeal. It follows that plaintiff is entitled to a decree for possession of the property of his adoptive father, subject to the question as to the effect of the agreement (exhibit I) to be considered in appeal No. 20 of 1892.

Next we have to consider the question of the genuineness of the alleged will of Seetamma, the senior widow, raised in appeal No. 183 of 1891. There are in fact two wills of Seetamma put forward (exhibit IV) of 8th August 1887 and exhibit III of 9th August 1887. By exhibit IV she gives to second defendant 109 acres 14 cents of inam land and by exhibit III she makes certain

provisions as to the Government pension being enjoyed by first defendant and her maintaining their mother-in-law, and as to movable property and debts and a Government bond which stood in her name and recites that she had made a will the day before as to the immovable property.

The first point in favour of the genuineness of these documents is that it is improbable that any one intending to forge a will of Seetamma should increase the risk of detection by forging two documents. And here again the evidence in support of the wills appears to be very strong and the reasons for discrediting them very weak. The attesting witnesses to the will (exhibit IV) were the father of Seetamma, now dead, and defence eighth withness, a man apparently of some position. Plaintiff's first witness admits that the signature to exhibit IV is like Seetamma's and that he produced the document before the Tahsildar with a vakalutnamah. Plaintiff's tenth witness says that Seetamma did make a will on the day of her death as to movables and that something was said in that will about immovable property. Exhibit G, the petition by first defendant, of 26th August 1887, mentions that Seetamma died on 9th August having made a will in her favour. Exhibit III is proved by the writer and two of the attesting witnesses and defence witnesses 10, 11 and 13. Against all this evidence in favour of the genuineness of these two wills the only objection seems to be that they were not mentioned publicly till 26th August, and that in certain documents by first defendant before that date (exhibits U, V and Y) she does not mention the will. The non-mention of the will in these documents is to some extent explained by exhibit W, and we do not think it is fatal to the genuineness of the will. The Judge says he can place no confidence in the evidence of the writer of the will (exhibit IV), because he says he was persuaded also to write exhibit O, which purports to be a copy of the will which plaintiff says was executed by Seetamma. What this witness (defence ninth witness) does say is that he wrote exhibit O not as a copy from any original, but at the dictation of another man. We do not see that this seriously impairs the value of his evidence. It is not clear what exhibit O is, and it has not been proved that any will of which this is a copy was executed by Seetamma.

On the whole, we think, the balance of testimony is in favour

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of the genuineness of the wills (exhibits III and IV), and we find issue 5 (*a*) for second defendant.

The Judge has found that the property disposed of by exhibit IV was the stridhanam property of Seetamma, and that she had power to dispose of it by will, and that finding is not questioned in appeal.

There remains the question raised by appeal No. 20 of 1892 whether plaintiff is bound by the terms of the agreement (exhibit I) between his natural father and the widows.

As to this we agree with the learned District Judge that the decision of the Privy Council in *Bhasba Rabidat Singh* v. *Indar Kunwar*(1) is an authority for holding that an agreement between a widow making an adoption under an authority derived from her husband and the natural father of the adopted son cannot prejudice or affect the rights of the son which can only arise when the parental control and authority of the natural father determine. The case of *Lakshmi* v. *Subramanya*(2) relied on for appellant was one of an agreement between the adoptive father and the natural father, and is not, in our opinion, in conflict with the decision of the Privy Council above quoted. The Madras case rests upon the principle that the adoptive father, inasmuch as he can, before adoption, dispose of his property as he chooses, can, at the time of adoption, impose such conditions as he thinks fit upon the enjoyment of his property by the adopted son. But a widow, with a power of adoption, derived from her husband, has no such power of disposition over the property, and cannot therefore impose any conditions as to the enjoyment of the property by the adopted son. The question becomes therefore simply one of agreement between the widow and the natural father of the adopted son, and the natural father cannot bind his son by any such agreement for the reason given by the Privy Council.

The result of this judgment is that the decree of the Lower Court must be modified, and there will be a decree declaring that plaintiff is the adopted son of Rajah Kamadana Sobhanadri Row deceased, and as such entitled to possession of his property, movable and immovable, and that he do recover from first defendant possession of the immovable property and of the movable

(1) I.L.R. 16 Cal., 556. (2) I.L.R., 12 Mad., 490.

property found by the District Judge to be in her possession with proportionate costs, that his suit be dismissed as to the 109 acres 14 cents of inam land in the possession of second defendant and as to the other movable property with proportionate costs. In appeal No. 148 of 1891 first defendant must pay plaintiff's costs. In appeal No. 183 of 1891 plaintiff must pay second defendant's costs. Appeal No. 20 of 1892 is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

AMMUNNI (PLAINTIFF), APPELLANT,

v.

KRISHNA (DEFENDANT No. 1), RESPONDENT.*

1892. October 3, 4.

Succession Certificate Act—Act XXVII of 1860—*Suit to set aside certificate granted by the Resident at Cochin.*

Defendant No. 1, who was domiciled in the Native State of Cochin, obtained from the Resident a certificate to collect the debts of the deceased karnavan of the plaintiff's tarwad. The plaintiff, whose domicil was the same as that of defendant No. 1, now sued in British Cochin for a declaration of his right to receive the interest accrued due on certain Government promissory notes, being the property of his deceased karnavan:

Held, that the suit did not lie, and that the appellant should either have established his representative right by suit in the Court of Native Cochin and then applied to the Resident for a certificate, or have brought his action against the Government of India, joining defendant No. 1 as a party to such action.

SECOND APPEAL against the decree of L. Moore, District Judge of South Malabar, in appeal suit No. 951 of 1890, reversing the decree of B. M. D'Cruz, Subordinate Judge of Cochin, in original suit No. 51 of 1889.

Suit to establish the plaintiff's right to recover a certain sum, being the interest due on certain Government promissory notes, the property of Raman Menon deceased, the late karnavan of his tarwad.

The plaint alleged that defendant No. 1 had obtained from the British Resident at Cochin a certificate under Act XXVII of

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* Second Appeal No. 1817 of 1891.