

## APPELLATE CIVIL.

*Before Mr. Justice Sankaran Nair and Mr. Justice Spencer.*

KALLEPALLE VENKATARAMA RAJU (PLAINTIFF), APPELLANT,

v.

1914.  
October  
21 and 28.

KALLEPALLE PAPAMMA AND ANOTHER (DEFENDANTS),  
RESPONDENTS.\*

*Hindu Law—Adoption—Consent of sapindas—Refusal of consent by nearest sapinda on personal grounds, improper—Consent of remoter sapindas—Adoption, validity of.*

Where the nearest sapinda refused to give his consent to an adoption by a widow on the ground that he would forfeit the right to property which he would otherwise get, and the widow made the adoption with the consent of remoter sapindas :

*Held*, that the refusal of the nearest sapinda was based on improper grounds and that the adoption made with the consent of the remoter sapindas was valid.

APPEAL against the decree of G. KODANDARAMANJULU NAYUDU, the Temporary Subordinate Judge of Kistna at Masulipatam, in Original Suit No. 12 of 1910.

The material facts appear from the judgment of SPENCER, J.

*T. Prakasam* for the appellant.

*V. Ramados* for the second respondent.

SPENCER, J.—This is a suit to set aside an adoption. Two SPENCER, J. questions arise for decision : (1) whether the alleged adoption of the second defendant is true ; and (2) whether the refusal of the plaintiff to give his consent to the adoption invalidated any adoption made by the first defendant as the widow of the deceased Lakshmpatiraju.

Although the adoptive mother, the first defendant, has, in this suit, taken the part of the plaintiff and denied the factum of the adoption, I have no doubt that the Subordinate Judge was correct in finding that the second defendant was adopted. All the documents produced in the case from 1906 onwards describe him as an adopted son. Exhibit III is a promissory note executed by the first defendant as guardian of her adopted son, the second defendant, which purports to have been attested by the plaintiff. Defendant's witness No. 5 proved the fact that

\* Appeal No. 61 of 1912.

VENKATA-  
RAMA RAJU  
v.  
PAPAMMA.  
SPENCER, J.

the plaintiff attested this promissory note executed in his (witness's) favour. The plaintiff, in the witness-box, professed himself unable to say whether the signature in Exhibit III was his or not. The first defendant made several statements before the public authorities acknowledging that she had adopted the second defendant, and when her attention was drawn to these statements in her examination, she flatly denied having made the statements. It is unnecessary to refer to the oral evidence, as, in our opinion, there is overwhelming proof that the adoption is true.

On the second point, the plaintiff is the divided brother of the late Lakshmipatiraju and, as such, is the nearest reversioner entitled to succeed to his properties after his death. He states that he was not asked by the first defendant to give his consent to the adoption of a boy. On the evidence of plaintiff's witness No. 5 and defendant's witness No. 4, I must take it that this denial is not true. Defendant's witness No. 4 states that the plaintiff was asked to give his son in adoption and that he refused, as the son was his only son. Plaintiff's Witness No. 5 states that the reason for the plaintiff's refusing his consent was that he said that he would forfeit the right to property which he would otherwise get. The Subordinate Judge treats this as a refusal based on "an evil intention to usurp the property after the death of the first defendant." Without using such language to characterise the refusal, we may see whether the refusal was based on improper grounds.

In *Venkatakrishnamma v. Annapurnamma*(1), it was held that, if a sapinda refused to consent, but withheld his grounds for such refusal, the refusal would not affect the adoption; and also if the assent was withheld from improper considerations, such dissent would be of no avail to the party relying on it. In *Ganesa Ratnamaiyar v. Gopala Ratnamaiyar*(2), the Privy Council held that the consent of a sapinda given on the ground that by consenting he gained some material profit from the adoption was improper. On the same principle, it would appear that a refusal on similar grounds might equally be condemned as an improper refusal. In *Parasara Bhattar v. Rangaraja Bhattar*(3),

(1) (1900) I.L.R., 23 Mad., 486.

(2) (1880) I.L.R., 2 Mad., 270 (P.C.).

(3) (1880) I.L.R., 2 Mad., 202 at p. 207.

the test applied was whether the refusal was "from interested or improper motives or without a fair exercise of discretion." The object of getting the consent of sapindas to adoption is declared in *Venkamma v. Subramaniam*(1) as being to get an independent judgment on the expediency of the proposed adoption. This being so, there can be no doubt that a sapinda who is called upon to exercise his discretion ought to be guided not by reasons personal to himself, but ought to act with a deliberate consideration of what is for the benefit of the family especially that part of it which the widow represents.

Applying such principles to the facts of this case, it is immaterial that the plaintiff did not give his consent to the adoption.

Other sapindas executed a document (Exhibit X) which fully authorised the first defendant to adopt the second defendant. Only Chinna Bapi Raju was not a party to this document; his brother Peda Bapi Raju signed it; and there are indications that these two brothers were undivided at the time, the elder, Peda Bapi Raju, being the natural father of the boy.

I am of opinion that the Subordinate Judge rightly found that the adoption set up by the second defendant was valid. The appeal is dismissed with costs.

SANKARAN NAIR, J.—I agree.  
K.R.

VENKATA-  
RAMARAJU  
v.  
PAPAMMA.  
SPENCER, J.

SANKARAN  
NAIR, J.

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(1) (1907) I.L.R., 30 Mad., 50 (P.C.).