PRIVY COUNCIL.*

NALLURI KRISTNAMMA AND ANOTHER (PLAINTIFFS),

v.

KAMEPALLI VENKATASUBBAYYA AND OTHERS (DEFENDANTS).

1919, February 6, 7, 25.

[On appeal from the High Court of Judicature at Madras.]

Hindu law—Adoption—Custom of illatom *adoption of son-in-law—Adoption by person who had a natural son living at the time and was a member of a joint family—Parties to suit, Sudras and members of the Kamma caste.*

In this case in which the parties were Sudras of the Kamma caste and governed by the law of the Mitakshara except where that law had been altered by custom, a custom was alleged by which an adoption made by a member of the caste of an *illatom* son-in-law was valid though the adoptive father had a natural son living at the time, and was a member of a joint family with his brothers. The appellant contended that no such custom had been proved, and that such a custom, even if proved, would be invalid. The Courts below found that the custom had been judicially recognized by the High Court in an unreported case (*Hammayya* v. *Yellamanda*, Second Appeal No. 45 of 1905) in which many instances of *illatom* adoption by persons who had sons living were proved, and upheld it on that ground together with the evidence in the case.

Held, that having regard to the decision in *Hammayya* v. *Yellamanda*, S.A. No. 45 of 1905, and to the fact that the Courts below agreed that the adoption was valid in law, and had been so treated by the family for many years, their decisions should be affirmed and the appeal dismissed.

APPEAL No. 9 of 1917 from a judgment and decree of the High Court of Madras, dated 11th September 1914, which affirmed a judgment and decree of the Court of the Subordinate Judge of Guntūr, dated 19th December 1910.

The parties to the suit out of which the present appeal arose are Sudras, governed by the Mitakshara law as administered in the Madras Presidency, and the question for decision in the appeal is whether the *illatom* adoption of the paternal grandfather of the first two respondents, Ramakristnamma, by one Lingayya, the paternal grandfather of the appellants, was valid in law.

The facts are sufficiently stated in the Judgment of the Judicial Committee.

ON THIS APPEAL, which was heard ex parte:

* *Present*: Viscount HALDANE, Viscount CAVE, Sir JOHN EDGE and Mr. AMEER ALI.

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DeGruyther, K.C., and *J. M. Parikh*, for the appellants, contended that by the Hindu law no such adoption as was made in this case could legally take place, and that a special custom must therefore be proved to support the alleged adoption. The burden of proving such an adoption lay on the respondents—*Ram Nundun Singh* v. *Jankikoer*(1)—to prove a custom by which a male member of the sect of Kammas, to which the parties in the present case belong, can make an *illatom* adoption, when he has at the time of making it a son living, or is living jointly with his brothers; and both Courts have found that the respondents had not discharged that onus. Such a custom if proved would be contrary to the rule of Mitakshara law under which a co-parcener or a father cannot alienate any portion of the joint family property without the consent of his co-parcener or son respectively, and be therefore invalid. The decision in *Hammayya* v. *Yellamanda*(2) relied on by the High Court as recognizing an *illatom* adoption such as is alleged in the present case did not, it was submitted, govern this case. Reference was made in the course of the argument to the following cases which recognized a custom of adopting an illatom son-in-law: *Tayamana Reddi* v. *Perumal Reddi*(3), *Challa Papi Reddi* v. *Challakoti Reddi*(4), *Hanumantamma* v. *Rambi Reddi*(5), *Balasami Reddi* v. *Pera Reddi*(6), *Chenchamma* v. *Subbaya*(7), *Ramakristna* v. *Subbakka*(8), *Malla Reddi* v. *Padmamma*(9), *Narasimha Razu* v. *Veerabhadra Razu*(10) and *China Obayya* v. *Sura Reddi*(11).

The JUDGMENT of their Lordships was delivered by

SIR JOHN EDGE.

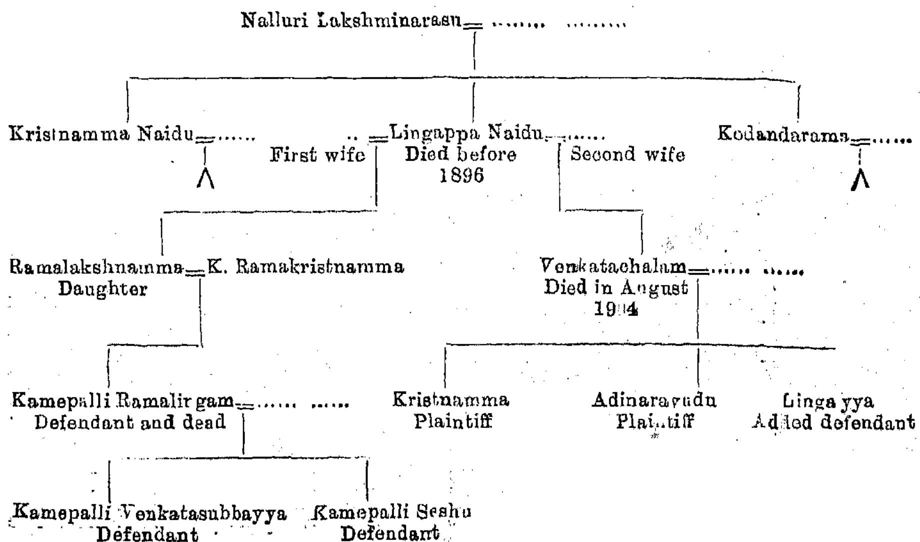
SIR JOHN EDGE.—This is an appeal by the plaintiffs from a decree, dated the 11th September 1914, of the High Court at Madras, which affirmed a decree, dated the 19th December 1910, of the Subordinate Judge of Guntūr, which dismissed the suit. The suit in which this appeal has arisen was instituted on the 27th April 1906, in the Court of the District Judge of Guntūr, and was subsequently transferred to the Court of the Subordinate Judge in which it was entered as Original Suit No. 1 of 1910. The plaintiffs in this suit (No. 1 of 1910) were

(1) (1902) I.L.R., 29 Calc., 828; s.c. L.R., 29 I.A., 178.
(2) Second Appeal No. 45 of 1905 (unreported).
(3) (1862) 1 Mad. H.C., 51.
(4) (1872) 7 Mad. H.C., 25.
(5) (1881) I.L.R., 4 Mad., 272.
(6) (1883) I.L.R., 6 Mad., 267.
(7) (1885) I.L.R., 9 Mad., 114.
(8) (1889) I.L.R., 12 Mad., 442.
(9) (1893) I.L.R., 17 Mad., 48.
(10) (1893) I.L.R., 17 Mad., 287.
(11) (1897) I.L.R., 21 Mad., 226.

Nalluri Kristnamma and his brother, Nalluri Adinarayudu. The original defendants in this suit were Kamepalli Ramalingam, who is now dead, and his sons, Kamepalli Venkatasubbayya and Kamepalli Seshu. Nalluri Lingayya, who is a natural brother of these plaintiffs, was added as a defendant to the suit on the 17th September 1908, and is a nominal respondent to this appeal. He has not appeared, and it has been stated by counsel for the appellants that Nalluri Lingayya has been adopted, according to Hindu law, into another family, and is not interested in the suit or in this appeal.

In 1907 Kamepalli Ramalingam and his sons, Kamepalli Venkatasubbayya and Kamepalli Seshu, instituted a suit in the Court of the District Judge of Guntūr against Nalluri Kristnamma, Nalluri Adinarayudu, and others, which was subsequently transferred to the Court of the Subordinate Judge, in which it was entered as Original Suit No. 2 of 1910. The two suits (No. 1 of 1910 and No. 2 of 1910) were tried together by the Subordinate Judge, and the evidence in each suit was used in the other. The Subordinate Judge made a separate decree in each suit. Those decrees were appealed to the High Court at Madras, which dismissed the appeal from the decree in Suit No. 2 of 1910, and from that decree of the High Court there has been no appeal.

The relationship of the parties to the suit will be seen from the following pedigree :—



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The main question in this appeal relates to an alleged *illatom* adoption of Ramakristnamma as his *illatom* son-in-law by Lingappa Naidu. If that *illatom* adoption is established as valid in law the suit of the plaintiffs fails and must be dismissed. The factum of that adoption cannot now be disputed and is not disputed in this appeal, but it is contended on behalf of the appellants that Lingappa Naidu could not legally take Ramakristnamma as his *illatom* son-in-law because at the time of the adoption he had a natural son, Venkatachalam, living, and also because at that time Lingappa Naidu was joint with his brothers, Kristnamma Naidu and Kodandarama, and no custom authorizing an *illatom* adoption under such circumstances has been proved. The parties are Hindus of the Sudra caste and sub-caste Kamma, and are governed by the law of the Mitakshara except in so far as that law has been altered by custom. The law of the Mitakshara would not allow a Hindu to adopt a son when he had a natural born son living. But if a custom was proved allowing a Kamma to take an *illatom* son-in-law when he had a natural born son living, both grounds of objection to the *illatom* adoption in this case would fail.

The three sons of Nalluri Lakshminarasu with their families lived together as a joint Hindu family in the village of Mangamoor, and as a joint family possessed a large ancestral estate and some movable property. Mangamoor is a village of Guntūr in Nellore. Lingappa Naidu was twice married. He had by his first wife, a daughter, Ramalakshmamma, who over 60 years ago married Kamepalli Ramakristnamma, and bore to him a son, Kamepalli Ramalingam, who was the father of the defendants-respondents, Kamepalli Venkatasubbayya and Kamepalli Seshu. By his second wife Lingappa Naidu had a son, Venkatachalam, who was the father of the plaintiffs and of the added defendant. Kamepalli Ramakristnamma was a near relation of Lingappa Naidu, and lived in his house as one of his family, and assisted in the management of the property. Lingappa Naidu took Kamepalli Ramakristnamma as his *illatom* son-in-law, after Venkatachalam was born and when Venkatachalam was three or four years of age, promising to give him a share of his property. Lingappa Naidu died before 1896. In 1896 his two surviving brothers, Kristnamma Naidu and Kodandarama, and their nephew, Venkatachalam, separated and partly partitioned the

family estate. Venkatachalam died on the 23rd August 1904. The Subordinate Judge found as a fact that Ramakristnamma lived in the family with his wife and children, and that after his death Kamepalli Ramalingam, Kamepalli Venkatasubbayya, and Kamepalli Seshu continued to live in the family, and lived with Venkatachalam after the division of 1896 until about six months before Venkatachalam's death ; that finding was not dissented from by the High Court. The Subordinate Judge considered that those facts corroborated the evidence, which he believed that there had been an *illatom* adoption.

In 1904 it was arranged between Kamepalli Ramalingam, as representing himself and his sons, and Venkatachalam, as representing himself and his sons, in the presence of mediators that their joint family properties should be divided into three shares, and that Kamepalli Ramalingam and his sons should take one share and should leave the remaining two shares to Venkatachalam and his sons.

On 5th September 1905, the plaintiff, Nalluri Kristnamma, signed and presented to the Tahsildar the following statement:—

"The deceased Nalluri Venkatachalam, who was *pattadar* Nos. 2312, 2313, in Mangamoor, is my father. In the said *pattas*, which stand in my father's name, the following 13 names should be included:—

"1. Myself, Nalluri Kristnamma.

"2. Nalluri Adinarayadu.

"3. Nalluri Lingayya.

"4. Kamepalli Ramalingam.

" . . . . . .

"All these are sharers in the family."

The evidence shows that a joint *patta* was accordingly issued.

In this suit the Subordinate Judge framed the following issues amongst others :—

(ii) Whether Ramakristnamma, father of the first defendant, was taken as *illatom* son-in-law by Lingappa Naidu, and, if so, whether such taking is valid in law ?

(iii) Whether there was an agreement or arrangement that a one-third share of the family properties should be given to the first defendant as alleged in his written statement, and, if so, this agreement or arrangement is valid or binding on plaintiffs ?

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(iv) Whether, as alleged by the defendants, there was a partition in November 1904, and, if so, what properties were divided and allotted to what shares and what properties were reserved for future division or joint enjoyment?

(v) Whether defendants have joint right with the plaintiffs to the suit properties, items Nos. 8, 15 to 55, and 59 in the plaint-schedule A; if so, is the suit for declaration in respect of these items maintainable?

For the reasons recorded in his judgment in Original Suit No. 2 of 1910 the Subordinate Judge found the issues (ii) to (v) against the plaintiffs.

On the question whether Lingappa Naidu, having at the time of the *illatom* adoption a natural born son and two undivided brothers living, could lawfully have taken Ramakristnamma as an *illatom* son-in-law, the Subordinate Judge stated:

"The parties in the present case belong to the Kamma caste, and in this respect (the right to make *illatom* adoptions) there is no difference between them and the Reddis. The practice of *illatom* affiliation is very common in both castes."

There is evidence in this record that the custom of taking an *illatom* son-in-law is the same in the Kamma caste and in the Reddi caste. The Subordinate Judge then referred in general terms to the witnesses who had given evidence on behalf of Kamepalli Ramalingam and his sons as to the custom of *illatom* adoptions, and particularly observed that one of their witnesses, a Kamma, had given two instances in which, where brothers were living jointly, one of them had taken an *illatom* son-in-law. The Subordinate Judge then stated:—

"Defendants' witnesses (that is, witnesses on behalf of the defendants in Suit No. 2 of 1910, who are the plaintiffs in this suit) Nos. 5, 6, 8, 9 and 11 say that a Kamma takes an *illatom* son-in-law only when he has no son or undivided brother. This is a matter of opinion. The evidence in this case is insufficient to establish a special custom. But I think that as the custom of *illatom* affiliation has been judicially recognized, it is for the defendants (the plaintiffs in this Suit No. 1 of 1910) to show that a father living with a son and an undivided brother cannot exercise that right. In the present case the first plaintiff's (Kamepalli Ramalingam's) father was, I think, treated by all members of the family as an *illatom* son-in-law, and after his death the plaintiffs (original defendants in Suit No. 1 of 1910) continued to live as members of a joint family till six

months before Venkatachalam's death. I therefore find the first issue in the affirmative."

The first issue which the Subordinate Judge so found in the affirmative was "Whether the plaintiffs' brother (Ramakristnamma) was taken as *illatom* son-in-law by Lingappa Naidu, and, if so, whether such taking is valid in law."

In the judgment on the appeal the learned Judges, SANKARAN NAYAR and SPENCER, JJ., say :—

"The adoption took place more than 50 years ago, when Lingayya was living with his two brothers as members of an undivided family. Ever since the adoption or marriage, Ramakristnamma was living with the other members of the family. An *illatom* son is adopted when assistance is needed by the adoptor in the cultivation of the family estate or for its management; and, in this case there is no doubt that Ramakristnamma participated in the management of the estate. When a partition was effected between Lingayya and his brothers, Ramakristnamma was treated as member of Lingayya's (Lingappa's) branch and remained with them. Shortly before Venkatachalam's death in August 1904, there was an agreement for partition between him and Ramakristnamma.

"This, no doubt, is denied by the appellants. But Ramakristnamma's descendants are admittedly in exclusive possession of certain properties which were in the possession of Venkatachalam, and the appellants' plea that such possession was obtained by trespass is not proved. Their complaint was dismissed by the Magistrate; and the Judge rightly points out that possession by trespass is inconsistent with the fact that the respondents are in possession of portions of properties. After Venkatachalam's death, his son, one of the appellants before us, called Ramakristnamma's son a co-sharer (exhibit B2). This conduct of the family for about 50 years and the agreement for partition in particular is very strong evidence against the appellants.

"It is contended before us that an *illatom* adoption made when there is a son living is invalid. It is true that an adoption is invalid under Hindu law when the adoptive father has a son. But *illatom* adoption itself is opposed to Hindu law, and no presumption of invalidity, therefore, arises on the ground suggested.

"The evidence of appellants' witnesses is not that the existence of a son alone precludes an adoption, but no adoption can be legally made when there is a son or brother alive. This finds no support in Hindu law, and is in favour of the view that we should not look to the principle of the Hindu law to determine the incidents of the

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custom. The respondents have proved only two instances of adoption where there was a son, and the Judge rightly observes that the evidence is insufficient to prove a custom." But we find that it has been judicially recognized. In the suit out of which *Hammayya* v. *Yellamanda*(1) arose many instances of *illatom* adoption by persons who had sons were proved, and this Court held that the evidence was sufficient to prove the custom.

"We are, therefore, of opinion that Ramakristnamma's adoption is valid and dismiss this appeal with costs."

Their Lordships have had the opportunity of reading the judgments of the Subordinate Judge and of the learned Judges of the High Court at Madras in *Hammayya* v. *Yellamanda*(1). That case has not been reported. In that case, which depended upon the existence of a custom in the Kamma families to which the parties belonged, "fifteen instances were cited in support of it (the custom), in the majority of which *illatom* took place when there were sons existing." Before the decision in *Hammayya* v. *Yellamanda*(1), it seems never to have been expressly decided that a Kamma or a Reddi could not or could lawfully take a son-in-law in *illatom* adoption when he had a son living, but having regard to the decision in that case and to the fact that the two Courts in the present suit agree that the adoption was valid in law, and as the family for very many years treated the *illatom* adoption as valid, their Lordships think that this appeal should be dismissed, and they will humbly advise His Majesty accordingly. The respondents, who did not appear at the hearing, will have such costs as they may be entitled to.

Appeal dismissed.

Edward Dalgado for the appellants.

Chapman, Walker and Shephard for the respondents.

J.V.W.

(1) Second Appeal No. 45 of 1905.