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sequent agreements are unaffected by the section and are accordingly enforceable against the appellant.

For the above reasons their Lordships will humbly advise His Majesty that these consolidated appeals fail and should be dismissed with costs.

Appeals dismissed.

Solicitors for the appellants:—*Barrow, Rogers and Nevill.*

Solicitors for the respondents:—*T. L. Wilson & Co.*

J.V.W.

PRIVY COUNCIL.*

1920, February 6, 9, 10, 12 and March 18.

KRISTNAYYA AND ANOTHER (DEFENDANT),

v.

LAKSHMIPATHI AND OTHERS (PLAINTIFFS).

[On appeal from the High Court of Judicature at Madras,

and another appeal, two appeals consolidated.]

Hindu Law—Adoption by widow who has no authority from her husband—Mitakshara law as administered in the Dravada district of the Madras Presidency—Consent of sapindas.

Under the law of adoption as administered in the Dravada district a Hindu widow, in the absence of any authority from her husband to adopt a son to him, may make such an adoption with the consent of his sapindas; *The Collector of Madura* v. *Mootoo Ramalinga Sathupathy* (1868) 12 M.I.A., 397.

There should be such proof of assent on the part of the sapindas as should be sufficient to support the inference that the adoption was made by the widow not from capricious or corrupt motives in order to defeat the interest of this or that sapinda, but on a fair consideration by what may be called a family council of the expediency of substituting an heir by adoption to the deceased husband; *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi* (1876) I.L.R., 1 Mad., 174; L.R., 4 I.A., 1.

The absence of consent on the part of the nearest sapindas cannot be made good by the authorization of distant relations whose assent is likely to be influenced by improper motives; *Veera Basavaraju* v. *Balasurya Prasada Rao* (1918) I.L.R., 41 Mad., 998 (P.C.); L.R., 45 I.A., 265.

The consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest

*Present:—Viscount CAVE, Lord MOULTON, Sir JOHN EDGE and MR. AMEER ALI.

judgment on the matter. But save in what are obviously exceptional cases the nearest sapindas must be asked, and if not asked it is no excuse to say they would certainly have refused; *Venkamma* v. *Subramaniam* (1907) I.L.R., 30 Mad., 50, 53; L.R., 34 I.A., 22, 26.

It is the duty of the Court to keep the power strictly within the limits which the law has assigned to it; *Sri Virada Pratapa Raghunatha Deo* v. *Sri Brozo Kishoro Patta Deo* (1876) I.L.R., 1 Mad., 69 (P.C.).

In this case, on a consideration of the evidence, the widow was proved to have applied for the consent of the third plaintiff, but not of the other four plaintiffs, and that none of these five nearest sapindas is proved to have withheld his consent for any malicious or corrupt reason. The necessary consent of sapindas was not obtained, and the adoption was invalid.

CONSOLIDATED APPEAL No. 150 of 1917 from a judgment and decree (27th October 1915) of the High Court at Madras, which substantially affirmed a judgment and a preliminary decree (4th December 1911) and a final decree (13 March 1912) of the Temporary Subordinate Judge of Masulipatam.

The question for determination in this appeal is whether the adoption of the first appellant, Krishnayya, is valid under the Hindu Law as administered in the Madras Presidency. The factum of the adoption is not now disputed. It was made on 20th February 1908, by Narasamma, a widow who admittedly had no power to adopt from her late husband, but who is purported to have made the adoption with the alleged assent of her husband's sapindas. It is not disputed that at the time of the adoption there were five next reversioners, but the adoption was admittedly made with the assent of only one of them and of some of the remoter sapindas. Both Courts in India have concurrently found that the widow never applied to the remaining four next reversioners for their assent, and have consequently held that the adoption in question is invalid.

The Subordinate Judge held that the adoption was made without consulting the plaintiffs (who were the four next reversioners who were not asked to give their assent) and that therefore the adoption did not comply with the requirements of the Mitakshara Law in Madras. He accordingly declared the adoption null and void, and made a preliminary decree substantially allowing the plaintiffs' claim. A final decree was made on 13th March 1912.

Against the decree of the Subordinate Judge the plaintiffs as well as the defendants appealed to the High Court. The appeals were all heard together by Sir JOHN WALLIS, C.J., and SESHAGIRI

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AYYAR, J., the latter delivering the judgment and the CHIEF JUSTICE concurring. The High Court agreed with the view of the Hindu Law taken by the Subordidate Judge and held that it 'was the duty of Narasamma to have applied to the plaintiffs for their consent, and as we have found that that has not been done we hold that the adoption is invalid.' In the result therefore the appeal of the defendants failed.

Defendants Nos. 1, 2 and 4 appealed to His Majesty in Council.

The further facts, and material portions of the judgments of the Courts appear in the judgment of the Judical Committee and a pedigree is set out showing the relationship of the parties.

ON THIS APPEAL

De Gruyther, K.C. and *B. Dube*, for the appellants, contended that the Courts below having found that the adoption was not made by the widow from capricious or corrupt motives, nor in order to defeat the interest of any of the sapindas, but on a consideration of her husband's spiritual welfare and with the consent of a family council of her near and distant kinsmen, the adoption ought not to have been held invalid according to the Mitakshara Law applicable to Madras. There was in fact a sufficient consent to validate the adoption: reference was made to *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*(1), *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi* (2), *Venkatakrishnamma* v. *Annapurnamma* (3) and Mayne's Hindu Law, 8th edition, paragraph 120. To obtain or even to ask the consent of the nearest sapinda was not essential. In *Venkamma* v. *Subramaniam* (4) it was not decided but it was merely an *obiter dictum*. In *Veerabasavaraju* v. *Balasurya Prasada Rao* (5), there was not the consent required by the law and it was inconsistent with the latest case, *Rangasami Gounden* v. *Nachiappa Gounden* (6); but that the respondents were applied to is, it is submitted, established by the evidence. The Subordinate Judge merely says an application was not probable because of enmity between the parties, which surely was a good

(1) (1868) 12 M.I.A., 397.
(2) (1876) I.L.R., 1 Mad., 174 (P.C.); L.R., 4 I.A., 1.
(3) (1900) I.L.R., 23 Mad., 486.
(4) (1907) I.L.R., 30 Mad., 50, 53 (P.C.); L.R., 34 I.A., 22, 26.
(5) (1918) I.L.R., 41 Mad., 998 (P.C.); L.R., 45 I.A., 265.
(6) (1919) I.L.R., 42 Mad., 523 (P.C.); L.R., 46 I.A., 72.

reason in law for not applying for the respondent's consent: it is possible they were asked but withheld their consent.

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Dunne, K.C. and *J.M. Parikh*, for the respondents, contended that both Courts in India had concurrently found that the widow never applied to the plaintiffs for their consent, and as she was bound to do so, the adoption made with the consent of only one of the five next reversioners is invalid. Here there is no reason for disturbing concurrent findings: and the certainty that consent will be withheld is not a sufficient reason in law for not asking for it. Reference was made to *Ram Anugra Narain Singh* v. *Chowdhry Hanuman Sahai* (1), *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi*(2), and *Veera Basavaraju* v. *Balasurya Prasada Rao* (3). All the authorities show that the consent of the sapindas is essential to the obtaining of a valid adoption where the widow has no authority from her husband; the adoption under these circumstances is invalid.

De Gruyther, K.C., replied.

The JUDGMENT of their Lordships was delivered by

Viscount CAVE.

Viscount CAVE.—These are consolidated appeals from a decree of the High Court of Judicature at Madras, which affirmed, with variations, a decree of the Subordinate Judge of Masulipatam. The question for determination is whether the adoption of the first appellant, Adusumilli Krishnayya, is valid under the Hindu Law as administered in the Madras Presidency.

The parties are subject to the Mitakshara Law of adoption as administered in the Dravida country; and that law, which has been considered by the Judicial Committee in several recent cases, is now free from doubt. It was decided in the Rāmnād case, *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy*(4), that under the law here referred to a Hindu widow, although not authorized by her husband to adopt a son for him, may nevertheless make such an adoption with the consent of his sapindas. In a later case, *Vellanki Venkata Krishna Rao* v. *Venkata Rama Lakshmi*(2), it was said that:—

"There should be such proof of assent on the part of the sapindas as should be sufficient to support the inference that the

(1) (1903) I.L.R., 30 Calc., 303 (P.C.); L.R., 30 I.A., 41.
(2) (1876) I.L.R., 1 Mad., 174 (P.C.); L.R., 4 I.A., 1.
(3) (1918) I.L.R., 41 Mad., 998 (P.C.); L.R., 45 I.A., 265.
(4) (1868) 12 M.I.A., 397.

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adoption was made by the widow, not from capricious or corrupt motives in order to defeat the interest of this or that sapinda, but upon a fair consideration by what may be called a family council of the expediency of substituting an heir by adoption to the deceased husband."

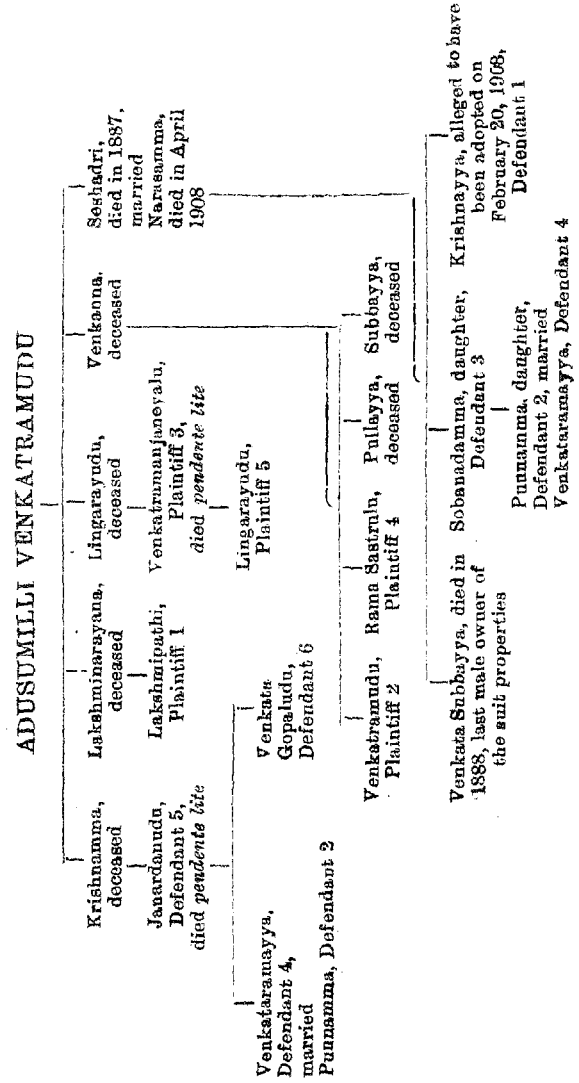
The reference in the last-mentioned case to a 'family council' gave rise to some doubt whether, where there were agnatic relations closely related to the deceased, the assent of those standing in a remoter degree was either necessary or sufficient; but this doubt was resolved in the recent case of *Veera Basavaraju* v. *Balasurya Prasada Rao*(1), where it was held that the absence of consent on the part of the nearest sapindas cannot be made good by the authorization of distant relatives whose assent is more likely to be influenced by improper motives. This does not mean that the consent of a near sapinda who is incapable of forming a judgment on the matter, such as a minor or a lunatic, is either sufficient or necessary; nor does it exclude the view that, where a near relative is clearly proved to be actuated by corrupt or malicious motives, his dissent may be disregarded. Nor does it contemplate cases where the nearest sapinda happens to be in a distant country, and it is impossible without great difficulty to obtain his consent, or where he is a convict or suffering a term of imprisonment. The consent required is that of a substantial majority of those agnates nearest in relationship who are capable of forming an intelligent and honest judgment on the matter. It must, however, be added that, save in exceptional cases such as those mentioned above, the consent of the nearest sapindas must be asked, and if it is not asked it is no excuse to say that they would certainly have refused: *Venkamma* v. *Subramaniam*(2). Regard must also be had to the following observations of the Board in *Raghanadha* v. *Brojo Kishoro*(3):

"But it is impossible not to see that there are grave social objections to making the succession of property—and it may be in the case of collateral succession, as in the present instance, the rights of parties in actual possession—dependent on the caprice of a woman, subject to all the pernicious influences which interested

(1) (1918) I.L.R., 41 Mad., 998; L.R., 45 I.A., 265.
(2) (1907) I.L.R., 30 Mad., 50 (P.C.); L.R., 34 I.A., 22.
(3) (1876) I.L.R., 1 Mad., 69; L.R., 3 I.A., 198.

advisers are too apt in India to exert over women possessed of, or capable of exercising dominion over, property. It seems, therefore, to be the duty of the Courts to keep the power strictly within the limits which the law has assigned to it."

Turning now to the facts of the present case, the relationship between the parties will be explained by the following pedigree:—



Seshadri, who was separated from his brothers, died in the year 1887, leaving a widow, Narasamma, and an only son,

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Venkata Subbayya, who was then about thirteen years of age and unmarried. In the month of October 1888, this son was murdered, and his mother succeeded to the property of her husband, taking a Hindu widow's estate. Pulliah and Subbiah, two of the sons of Seshadri's brother Venkanna, were charged with the murder, but were acquitted. They were then charged with the theft of some jewels which were on the person of the murdered boy before his death, but Pulliah died before the trial and Subbiah was ultimately acquitted on this charge also. On 8th September 1901, Narasamma called a meeting of her husband's gnatis and obtained from 14 of them a deed authorizing her to receive in adoption to her husband any boy she might like. At that time the nearest sapindas of Seshadri were six in number, viz., the fifth defendant, Janardanudu, and the five plaintiffs; but of these only Janardanudu signed the deed, and the other signatories were gnatis of remoter degrees. Narasamma did not at once act on this authority, but upwards of six years afterwards, viz., on 20th February 1908 she adopted the defendant Krishnayya, who was then of age. Before making the adoption she entered into agreements with Krishnayya and his natural father under which the greater part of the property of Seshadri was put at her absolute disposal; and she, in fact, disposed of it in favour of the issue of her daughter. Narasamma died in April 1908, and shortly afterwards this suit was brought by the plaintiffs to set aside the adoption.

From the above statement of facts, standing alone, the obvious conclusion would be that the adoption was invalid for want of the assent of five out of the six nearest sapindas. But the defendants by their written statement in the case alleged that Narasamma had applied, first to Venkanna (the only brother of Seshadri who survived him), and after his death to the plaintiffs and Subbiah, for their authority to make an adoption; and that all those persons "out of dishonest and corrupt motives" and by reason of the longstanding enmity caused by the charges of murder and theft made against Pulliah and Subbiah, and with the desire to succeed to the property of Venkata Subbayya, had refused or neglected to grant the authority asked for. In support of this plea the defendants called evidence of four attempts to obtain the desired authority. First, it was alleged that Narasamma, through her gumasta,

applied to Venkanna for his consent, and that he put off his reply and died shortly afterwards without giving the desired authority. Secondly, it was alleged that Narasamma personally requested the third plaintiff, Venkatramanjaneyalu, to consent to an adoption and to get the other plaintiffs and Subbiah to consent, that he promised to consult them and let her know, but that he never, in fact, gave her a reply. Thirdly, it was stated that the plaintiffs and Subbiah were invited to and were present at the meeting of gnatis on 8th September 1901, and that on being requested to agree to an adoption they replied that "there was no hurry" and shortly afterwards left the meeting. Fourthly, it was alleged that shortly before the actual adoption in 1903 Narasamma again sent an emissary to the plaintiffs (Subbiah being then dead) and asked for their consent to an adoption, but that they refused to give it except on payment of Rs. 10,000. The evidence relating to these allegations was examined both by the Subordinate Judge and by the High Court, and both tribunals came to the conclusion that none of the alleged requests had been proved. Notwithstanding these concurrent findings, their Lordships were pressed by counsel for the appellants to examine the evidence on this question; and as the findings of the Subordinate Judge were by no means clear and his reasons were somewhat inconsistent, they have considered the evidence which was brought to their notice by counsel on both sides. As the result of this consideration they have come to the following conclusions:—

1. The finding of the Courts on the question of these alleged applications was mainly based upon the view that, having regard to the hostility existing between the plaintiffs and Narasamma, it was unlikely that they would have been asked for their consent; but the evidence as a whole does not appear to support this view. The first plaintiff was not on unfriendly terms with Narasamma and at one time got her lands cultivated for her; and the Subordinate Judge in one part of his judgment says that there was 'no ill-feeling' between them. The third plaintiff was plainly on speaking terms with Narasamma and was from time to time consulted by her; and the Subordinate Judge himself says that

"it is not unlikely that he was requested by Narasamma to give his consent and also ascertain the wishes of his cousins, as probably

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the other persons were not quite so well disposed towards Narasamma as the third plaintiff."

As to the other plaintiffs there was no clear evidence; and although it is very probable that the charges made against their brothers caused an estrangement between the second and fourth plaintiffs and Narasamma, the Subordinate Judge expressed a doubt whether this feeling continued in the same intensity down to the year 1901. Upon the whole, the true inference appears to their Lordships to be that, while there was some unfriendliness between Narasamma and two of the plaintiffs, this did not extend to the other plaintiffs and was not in any case such as to prevent Narasamma from asking for their consent to an adoption. Further, in no case is there evidence of such malice on the plaintiffs' part as would prevent them from forming an honest judgment on the matter.

2. It appears probable that Venkanna was asked for his consent; but as he died without giving a reply and there is no evidence of ill-feeling on his part, this circumstance is immaterial.

3. It is also not improbable that shortly before the meeting of September 1901, the third plaintiff was consulted on the question of an adoption and was asked to ascertain the views of the other plaintiffs and Subbayya; but there is nothing to show that he did in fact ask for their consent or that his reply was delayed by reason of spite or malice. This circumstance, therefore, is also of little importance.

4. With regard to the meeting of 8th September 1901, the evidence is conflicting. The defendants' witnesses say that the plaintiffs were present, and on being consulted said that there was no hurry about the matter and went away; but this is denied by the surviving plaintiffs. The defendants' witnesses were not believed by the Subordinate Judge, and it must be held that this allegation is not proved.

5. As to the alleged request in 1908, the defendants' evidence is conflicting and unreliable, and this allegation also breaks down.

The result of the above survey of evidence is that, in their Lordships' view, Narasamma is proved to have applied for the consent of the third plaintiff, but not of the other four plaintiffs, and that none of these five nearest sapindas is proved to have

withheld his consent for any malicious or corrupt reason. It follows that the necessary assent of sapindas was not obtained, and the adoption was invalid.

Counsel for the appellants put forward an alternative argument, viz., that in view of the finding of the Courts in India that there was great hostility between the plaintiffs and Narasamma, it was unnecessary for her to ask for their consent; but this argument cannot be entertained. It is inconsistent, not only with the defendants' pleading, but with the whole of their evidence and arguments in the Courts below; and it is not open to them to make an entirely new case before this Board. In any case the argument derives no support either from the facts or from the law as above explained.

Apart from the absence of the necessary assent, other objections to the adoption were put forward on behalf of the respondents. It was said (1) that an authority given by sapindas to adopt "any boy at any time" is invalid [(see *Suryanarayana* v. *Venkataramana*)(1)]; (2) that an authority given by sapindas in 1901 could not validly be executed in 1908 when several of the signatories were dead and the opinion of others might have altered; and (3) that an authority to adopt asked and given for religious motives and in order to keep up the line of succession to Seshadri was not properly exercised by the adoption of Krishnayya on the terms that he should give up to the adopting widow or to her relatives the greater part of her late husband's estates. These questions, although raised in the Courts below, were not the subject of decision there; and their Lordships accordingly refrain from expressing any opinion upon them. But it is certain that these circumstances do not detract from the obligation imposed upon the Courts in cases of this character to require a strict compliance with the conditions imposed by law.

For the above reasons their Lordships will humbly advise His Majesty that these appeals be dismissed with costs.

Appeals dismissed.

Solicitor for the appellants:—*Douglas Grant.*

Solicitors for the respondents:—*Barrow, Rogers* and *Nevill.*

J.V.W.

(1) (1903) I.L.R., 26 Mad., 681.