VEERAPPA CHETTIAR v. SUBRAMANIA AYYAR.

COUTTS TROTTER, C.J.

to satisfy the requirements of the Registration Act, and cannot therefore be invoked in aid for another purpose, viz., attestation under the Transfer of Property Act, though in fact all the conditions laid down by the latter Act are fulfilled. The Registering officer and the identifying witnesses had exactly the same duty imposed upon them by the Registration Act as would have rested upon them as attesting witnesses under the Transfer of Property Act, and that duty they discharged. We think that this argument is, at its best, too artificial to prevail, and we agree with *Sarada Prasad Tej* v. *Triguna Charan Ray*(1), and *Radha Mohun Dutta* v. *Nripendra Nath Nandy*(2) in rejecting it.

(3) As Appeal No. 170 of 1925 has not been reported, it is unnecessary to express any opinion on the correctness of the decision.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Venkatasubba Rao.

1928, August 6.

T. RAJU (PLAINTIFF), APPELLANT,

v.

NAGAMMAL AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Hindu Law—Adoption by widow—Ante-adoption agreement by natural father giving absolute estate in a reasonable portion of the estate to the widow—Binding nature of the agreement on the adopted son.

An agreement by which a Hindu widow proposing to adopt a son stipulates with the boy's natural father for a portion of

(1) (1922) I.L.R., 1 Pat., 300. (2) (1927) 47 C.L.J., 118.

* Appeal No. 32 of 1924.

her husband's estate being settled upon her for her absolute use and enjoyment with powers of alienation is valid and binding on the son on adoption, if the agreement is fair, reasonable and beneficial to him; *Krishnamurthi Ayyar* v. *Krishnamurthi Ayyar*, (1927) I.L.R., 50 Mad., 508 (P.C.), explained and applied.

APPEAL against the decree of the Court of the Subordinate Judge of Mayavaram in Original Suit No. 25 of 1923.

The following facts are taken from the judgment of RAMESAM, J. :—

"The facts of this case may be briefly stated as follows: One Kothandarama Ayyar of Pungavur (Tanjore district) died on 25th April 1905 leaving two daughters (1) Nagammal, first defendant, who is a widow and (2) Gnanambal, his adoptive mother Valambal, and his widow Parvathi Ammal. Prior to his death he had executed a will, dated 20th September 1902, Exhibit XIII (2) a will, dated 8th September 1903, of which we have no record, (3) a will, dated 29th October 1903, cancelling the previous will (Exhibit VI) and (4) a last will, dated 13th March 1905 (Exhibit A) in which all previous wills were cancelled. Along with the will of September 1903 he executed a deed of settlement, dated 3rd September 1903, but it was never registered and therefore never came into operation. Under his last will (Exhibit A) he gave power to his widow to adopt either a son of his daughter Gnanambal provided she begets a son before January 1908, or a son of any one of his nephews, T. Subrahmanya Ayyar or T. Venkatarama Ayyar. He made certain dispositions to come into effect in the event of either contingency. At the time of his death (viz., 25th April 1905) Gnanambal had no son. The widow Parvathi Ammal resolved upon adoption immediately after his death. Necessarily she had therefore to adopt a son of one of the testator's nephews named in the will. She resolved

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to adopt the son of Subrahmanya Ayyar and an agreement was executed settling the terms on which adoption was to be effected. This is Exhibit I, dated 26th April 1905. The boy was adopted on the same date but the deed of adoption evidencing it (Exhibit II) was executed on 2nd May. The present suit is filed by the adopted son T. Raju praying for a declaration of his title to the suit lands, namely, the lands of the village of Nallathakudi which formed part of the property of the deceased Kothandarama Ayyar. Parvathi Ammal died on 2nd July 1918 and Valambal died on 10th June 1917. The present suit was filed on 30th August 1919. The Subordinate Judge who tried the suit dismissed it on the ground that the adopted son was not entitled to the suit properties relying on the terms of Exhibit I. The plaintiff appeals."

Further facts appear from the judgment.

S. Varadachari (with *S. V. Venugopalachari*) for appellants.—Exhibit A is the last will by which a life-interest alone is given to the widow. On the widow's death the adopted son will succeed to the whole estate. The question is whether Exhibit I the ante-adoption agreement by which the widow got from the natural father of the boy an absolute estate in some of the lands belonging to the deceased testator are valid and binding on the boy on adoption. Though this agreement has been found to be fair, reasonable and beneficial to the boy it is not binding on the adopted boy according to the dictum in *Krishnamurthy Ayyar* v. *Krishnamurthy Ayyar*(1), which expressly prohibits an agreement granting an absolute estate in any portion of the estate either on the adoptive mother or on strangers, though the grant of a life-estate to the widow in the whole of the deceased's estate may be valid by custom. All the previous decisions to the contrary, e.g., *Visalakshi Ammal* v. *Sivaramier*(2), must now be taken to have been overruled.

T. V. Ramanathan, *K. S. Venkataramani* and *S. Panchapagesa Ayyar* for the respondent.—The Privy Council case referred

(1) (1927) I L.R., 50 Mad., 508 (P.C.). (2) (1904) I.L.R., 27 Mad., 577 (F.B.).

to dealt with a case of gift of an absolute estate to strangers and not to the widow. What is prohibited by the dictum therein is the grant of an absolute estate in the whole estate of the deceased to the widow and not in a reasonable portion. This would be clear from the Privy Council upholding the grant of a life-estate to the widow in all the properties. Grant of an absolute estate in a reasonable portion is not prohibited. *Visalakshi Ammal* v. *Sivaramier*(1) is not overruled by the Privy Council and is still good law.

JUDGMENT.

RAMESAM, J., after stating the facts above extracted, continued:—Two points have been argued before us in appeal: (1) What are the terms of the deed of settlement, dated 3rd September 1903, bearing on the suit lands and (2) how far does Exhibit I bind the plaintiff? It becomes necessary to decide the first question, because the terms of the deed of settlement were incorporated into Exhibit I by reference to it, and though the deed of settlement itself was not registered, we have yet to ascertain its contents. The document itself is not forthcoming having been filed for refund of stamp duty and never taken back. [His Lordship then discussed the evidence and concluded that the whole of the suit lands (Nallathakudi lands) were given by the settlor to his wife for her absolute use and enjoyment after the life-estate in half of those lands in favour of his mother Valambal and that that arrangement was adhered to in Exhibit I. His Lordship also found that the wife disposed of the suit properties by means of a will in favour of the defendants.]

The second question that arises is how far is Exhibit I binding on the plaintiff. As we have seen, the terms of the settlement are incorporated in Exhibit I. It is conceded on all hands that, but for Exhibit I, the

(1) (1904) I.L.R., 27 Mad., 577 (F.B.).

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plaintiff is entitled to the suit properties on the construction of Exhibit A. The only question that now remains is whether Exhibit I is binding upon the plaintiff. The Subordinate Judge held that it was binding on the plaintiff with reference to the then case law on the subject. At the time when the Subordinate Judge decided the case he had not the benefit of the latest decision of the Privy Council in *Krishnamurthi Ayyar* v. *Krishnamurthi Ayyar*(1) and we have now to decide the case in the light thrown on the question by this decision of the Privy Council. That decision modified the judgment of the Madras High Court reported in *Krishnamurthi Aiyar* v. *Krishnamurthi Aiyar*(2). Up to the decision of the Privy Council, according to the law as understood in India and specially as laid down by decisions of the Madras and Bombay High Courts, an agreement brought about at the time of adoption by the adoptive father acting on behalf of the adopted son may be binding on him if it is fair and beneficial to him though it cuts down part of the interest which he would get but for such agreement and would not be binding on him if it is not fair and beneficial. The decision of the Judicial Committee has now modified this view. Viscount DUNEDIN who delivered the judgment of the Board referred at length to the Bombay and Madras cases. The noble Lord summed up the Bombay cases thus:

> "As a question of actual decision, the Courts have always upheld the grant to the widow of her interest for life. But when the gift is to outsiders it has been held invalid. The reasons given have varied."

Then the noble Lord summed up the Madras cases thus:

> "As regards decisions, the general result has been to validate the arrangements so far as provision is made for the

(1) (1927) I.L.R., 50 Mad., 508 (P.C.). (2) (1924) 49 M.L.J., 252.

widow just as in Bombay . . . As regards reasons, again they vary . . . "

Then the Board's conclusion is stated thus :—

"They are of opinion that there is such a consensus of decision in the cases . . . that they are fairly entitled to come to the conclusion that custom has sanctioned such arrangements in so far as they regulate the right of the widow as against the adopted son. It seems part of the custom that one *sine qua non* of such an arrangement should be the consent of the natural father.

"The mere postponement of his interest to the widow's interest, even though it should be one extending to a life interest in the whole property, is not incompatible with his position as a son. Their Lordships are, therefore, prepared to hold that custom sanctions such arrangements.

"As soon, however, as the arrangements go beyond that, i.e., either give the widow property absolutely or give the property to strangers, they think no custom as to this has been proved to exist and that such arrangements are against the radical view of the Hindu Law."

I think, as I understand their Lordships' judgment, the effect of it seems to be this: (1) If an agreement provides a gift to strangers it is void, (2) If the arrangement confers advantages on the widow, it will continue to be valid if it is fair and beneficial as before, and invalid, if unfair. As illustrative of the last proposition, even if the agreement confers a life interest on the widow in the whole property and the adopted son's enjoyment begins after the death of the widow, it will still be regarded as fair and valid. If the whole property is given absolutely to the widow, it will be regarded as unfair.

I infer from the above summary that if absolute interest is given to the widow in some items of the property which do not amount to practically the whole of the property, or in other words, if a substantial part of the property is still left for the adopted son, the arrangement may still be regarded as fair and beneficial and therefore may be valid. I do not understand the

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last sentence which I quoted from the Privy Council judgment to lay down that if a very small item of property is given absolutely to the widow and if the adopted son gets very large property still the whole disposition will be invalid. Such a view seems to be against the reasons given by their Lordships and would be anomalous comparing it with the other illustrations referring to the gift of life interest in the whole property to the widow. The word "property" in the last sentence, I think, refers to the whole of the property. In construing that sentence, one must remember that the actual case before their Lordships related to a gift to strangers and this they held to be invalid. They were not considering in detail particular cases of gifts to the widow. Only one case was given as illustration. On this part of the case I have had the advantage of reading my brother's judgment and I entirely agree with his view of the decision of the Privy Council and also his view on the question whether the agreement Exhibit I can be regarded as fair and beneficial to the adopted son which is also that of the trial Judge.

The result is that the appeal fails and is dismissed with costs.

The defendants have not given up one of the points they raised in the first Court, i.e., that there was an oral disposition of the suit lands by the testator after Exhibit A. But we found it unnecessary to hear them on this point.

VENKATA-SUBBA RAO, J.

VENKATASUBBA RAO, J.—This is an appeal from a judgment dismissing the plaintiff's suit. He seeks to recover as the adopted son of one Kothandarama Ayyar, a village known as Nallathakudi from the latter's daughters, the 1st and 2nd defendants. Kothandarama Ayyar died on the 25th of April 1905 having executed a will (Exhibit A), dated the 13th March 1905. It is

unnecessary to state in any detail the terms of that will, beyond mentioning that the testator conferred by it upon his wife Parvathi, an authority to adopt. On the very day after the testator died, his widow adopted the present plaintiff as her son. Before the adoption was made, an arrangement was come to (Exhibit 1, dated the 26th of April 1905) regarding the enjoyment of certain properties and to that arrangement the natural father of the boy was an assenting party. Two questions are raised in the suit, first, a question of fact relating to the terms of this ante-adoption arrangement; secondly, a question of law regarding its validity.

The plaintiff bases his title on the will which bequeaths to him the village in question after the deaths of the testator's mother and widow, who were to enjoy it for their lives. The former died in 1917, the latter in 1918 and the suit was filed in 1919.

The suit is resisted on the ground that under the ante-adoption arrangement, Nallathakudi was given absolutely to the adoptive mother, who, before her death, made a will disposing of it in favour of her daughters, the defendants. As I have said, the first point to decide is a question of fact: Is it a part of the arrangement that Nallathakudi was to be taken absolutely by the testator's widow? The learned trial Judge upholding the contention of the defence, has found that, under the arrangement, Nallathakudi was given absolutely to her. My learned brother has dealt with that point fully and, for the reasons given by him, I agree in the conclusion arrived at by the lower Court.

This leads me to the consideration of the next question. Is the arrangement valid? The lower Court, applying the test laid down in the cases decided by this Court, has come to the conclusion that the agreement was fair and reasonable, that it was for the benefit of

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the adopted son and is therefore binding upon him. The argument for the appellant is, that the law on this point has since been declared by the Judicial Committee to be entirely different in *Krishnamurthi Ayyar* v. *Krishnamurthi Ayyar*(1). The point raised is thus of far-reaching importance and it is our duty to very carefully consider the scope and effect of the Privy Council decision. It is undoubtedly true that the case itself decides a narrow point, but the judgment contains a valuable exposition of the principles relating to ante-adoption agreements—an exposition to which the greatest weight must be attached.

The argument for the appellant may be shortly put thus. If the effect of the arrangement is to allow the adoptive widow to retain a life interest in the property, even though it may extend to the whole property, that arrangement is valid; but if a portion of the property, however small that portion may be, is allotted absolutely to the widow, that offends against the principle laid down by the Judicial Committee. To take a concrete case, if the property is worth a crore and the widow who, let us assume, is in her teens, makes the adoption, there is nothing in law to prevent her from having for her whole life at her absolute disposal, the entire income from this large property, which may amount to lakhs; but if a small fraction of this extent, say, a property worth Rs. 10,000, is allotted to her absolutely, that arrangement is bad, and cannot be upheld. This is, in short, said to be the effect of the *dicta* contained in the judgment. I am decidedly of the opinion that this contention is wrong.

To understand the decision correctly, we must first look at the facts of that case. The question there

(1) (1927) I.L.R., 50 Mad., 508 (P.C.).

raised was, whether the provisions of a will made by the adoptive father were valid by reason of an ante-adoption arrangement. By that will, certain lands were devised to persons "who were connections but were in no case within the degrees entitled to maintenance," that is to say, some distant relations of the adoptive father. The suit was filed after the death of the testator by the legatees against the adopted son for the recovery of those lands. The case thus raised a question regarding persons "not within the degrees entitled to maintenance" and this distinction is of fundamental importance and is emphasized throughout the judgment. The opening paragraph refers to this important factor and several subsequent passages lay stress upon it. In summing up the Bombay cases, their Lordships draw a clear distinction between what the Courts did in regard to gifts to the widow of her interest for life and gifts made to outsiders. They point out that

> "the Courts have always upheld the grant to the widow of her interest for life" whereas "when the gift is to outsiders it has been held invalid."

Then again, when the effect of the Madras decisions is stated, similar language is used. Their Lordships say: —

> "As regards decision, the general result has been to validate the arrangements so far as provision is made for the widow just as in Bombay."

To quote a further passage, the same idea underlies the following remarks:—

> "They are of opinion that there is such a consensus of decision in the cases with the exception of the case of *Jagannadha* v. *Papamma*(1) that they are fairly entitled to come to the conclusion that custom has sanctioned such arrangements in so far as they regulate the right of the widow as against the adopted son."

(1) (1892) I.L.R., 16 Mad., 400.

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This I consider to be the most essential part of the judgment. The antithesis is, between the right of the widow on the one hand, and on the other, the right of the "outsiders" or "strangers" or persons "in no case within the degrees entitled to maintenance." It must be borne in mind that the actual decision itself as I have already said, was in respect of outsiders, that is, those not entitled to maintenance.

In regard to gifts to widows, the matter stood thus: They were upheld by the Indian Courts, but the reasons on which they were so upheld were various. Their Lordships examine the soundness of these reasons and reject them as being totally opposed to principle. But — and this is significant—the result of the decisions was accepted however, not on the ground that they were based on sound reasoning, but, as it might be inferred from their all but uniform course, that by Hindu custom and usage the law was modified to the extent of sanctioning arrangements "in so far as they regulate the right of the widow as against the adopted son." The arguments of SUBRAHMANYA AYYAR, J., in his referring order in *Visalakshi Ammal* v. *Sivaramier*(1), were clearly opposed to the opinion of the Full Bench expressed later in the same case. The Judicial Committee approves of the reasons mentioned by that learned Judge, but is not prepared to adopt at the present day his conclusion. There is no warrant for saying that the decision of the Full Bench, which was at that time regarded as of binding authority in Madras, was overruled by the Privy Council. Indeed, on the contrary, it is patent from their judgment, that this was the course which their Lordships were not prepared to, and did not, adopt. In this connexion, I may observe that

(1) (1904) I.L.R., 27 Mad., 577 (F.B.).

in the Full Bench case, though other reasons are given, reasons which must now be taken to be unsound, the ground of custom is specifically mentioned. BENSON, J., with whom the other Judges concurred, quotes from West and Buhler :

"Fair arrangements for the protection of the widow's interest during her life, are commonly made, and are always supported by the authority of the caste"

—a view which found favour with the Full Bench. What then is the effect of the Privy Council decision? It unequivocally holds that such arrangements cannot be upheld as give property to strangers ; in other words, *Ganapati Ayyar* v. *Savitri Ammal*(1) is inferentially overruled, where it had been held that a disposition in charity by the adoptive father was binding : on the other hand, *Balakrishna Motiram* v. *Shri Uttar Narayan Dev*(2) is inferentially upheld where a gift by the adopting father in favour of a charity was by the High Court held bad. It may not be out of place to enquire why the Bombay High Court held that gift bad. The reason is contained in a passage in the judgment of HAYWARD, J., which has been cited by the Privy Council. And what is that reason ?

"Agreements for reasonable provision for widows ought to be upheld as valid according to general custom modifying the strict terms of Hindu Law."

But, there is no reason to recognize the custom in support of a more general extension of the modification. This is precisely the view that the Judicial Committee itself has now taken. The point on which I wish to lay stress, I may again refer to in this connexion. In the judgment of HAYWARD, J., the words used are "agreements for reasonable provision for widows" without a distinction being made between an absolute gift and a life estate.

1) (1897) I.L.R., 21 Mad., 10. (2) (1918) I.L.R., 43 Bom., 542.

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I am clearly of the opinion therefore, that in the matter of arrangements in favour of widows, the law has not been in the least disturbed. For determining their validity, the tests that were laid down in *Visalakshi Ammal* v. *Sivaramier*(1) must still be applied. Did the arrangement receive the consent of the natural father and was it a fair and reasonable one and for the minor's benefit? If these tests are satisfied, the Courts will uphold the arrangement; if not, they will not.

Mr. Varada Acharya for the appellant seeks support for his argument in the passage in the judgment of the Judicial Committee which reads thus:

"As soon, however, as the arrangements go beyond that, that is either *give the widow property absolutely* or give the property to strangers, they think no custom as to this has been proved to exist and that such arrangements are against the radical view of the Hindu Law."

If this sentence stood alone, it would doubtless support the contention that their Lordships were intending a contrast between a gift of a life estate, and an absolute gift, to a widow. But, can we disregard the tenor and the tendency of the whole judgment taken together, by laying undue stress on a stray word or an isolated phrase? The dangers that follow from such a course are quite apparent. For instance, take the following passage from the same judgment:—

"But the consensus of judgments seems to solve these two questions in this way—namely, that the consent of the natural father shows that it is for the advantage of the boy, and that the mere postponement of his interest to the widow's interest, even though it should be one extending to a life interest in the whole property, is not incompatible with his position as a son. Their Lordships are therefore prepared to hold that custom sanctions such arrangements."

(1) (1904) I.L.R., 27 Mad., 577 (F.B.)

Can it, on the strength of this passage, be contended that however unfair or unreasonable, an arrangement must in every case be upheld, on the ground that what is given to the widow is a mere life interest although it extends to the whole property? I think not. And again, on the strength of the same passage, can it be contended that the consent of the natural father has always the effect of validating an arrangement, irrespective of its being fair or not fair? These considerations show that what we must have regard to, is the judgment taken as a whole and understood reasonably and not merely a passage here or there taken out of its context.

The learned Subordinate Judge has come, on the evidence, to the conclusion that the arrangement assented to by the plaintiff's natural father was fair and *bona fide* and for the minor's benefit. I entirely agree in that view and shall shortly state my reasons. The Sub-Judge points out that if the plaintiff had remained in his natural family he would have been entitled, as it was then constituted, to properties worth about Rs. 20,000, whereas, in virtue of the adoption, he obtained an estate worth at least five times that value, that is, about a lakh. There is another fact to which I may call notice. Kothandarama Ayyar's intentions in regard to the village in question varied from time to time. He made a will (Exhibit 13) in 1902 devising the village absolutely to his wife in the case of her adopting one of his nephews—the event which has actually happened. In September 1903, he prepared a settlement deed whereby again the village was given absolutely to his wife. In October 1903, he made a second will (Exhibit VI) by which he confirmed the provision made in the settlement deed. Only by Exhibit A his last will, he made a disposition somewhat different in this respect, that is to say, he conferred only a life estate upon his widow.

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Thus we find that in the view of the testator a gift of this village to his wife, in the event that has happened, was not an unreasonable provision. He declared his intentions as I have shown on four occasions and on three out of them what he intended his wife to take was an absolute and not a mere life estate. Judged from any point of view, the arrangement seems to be a fair and reasonable one as the Sub-Judge has found and it must therefore be upheld.

I therefore agree that the appeal fails and it is dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Venkatasubba Rao.

1928, August 16.

JANAPAREDDI VENKATAREDDI (FIRST CLAIMANT), APPELLANT,

v.

JANAPAREDDI ADINARAYANA RAO (SECOND CLAIMANT), RESPONDENT.*

Land Acquisition Act (I of 1894), ss. 30 and 54—Reference to the Court of a Subordinate Judge under sec. 30 of the Act—Decision by Court as to person entitled to claim compensation—Subject-matter below Rs. 5,000—Decision, whether an award under Part III of the Act—Decree—Appeal, whether lies to High Court as from an award or to District Court as from a decree.

The decision of the Court of a Subordinate Judge upon a reference made to it under section 30 of the Land Acquisition Act, is not an award under Part III of the Act, but is a decree, and, if the subject-matter of the *lis* is below Rs. 5,000, an appeal from the decision lies to the District Court and not to the High Court under section 54 of the Act.

*Appeal Suit No. 109 of 1927.