that it does not appear to me that the correctness of my decision in *Maharajah of Pittapuram* v. *Gokuldoss Goverdhandoss*(1) is open to doubt on the strength of the English decisions referred to, unless my interpretation of the order appointing the receiver in *Maharajah of Pittapuram* v. *Gokuldoss Goverdhandoss*(1) is held to be wrong. I may also add that the general question did not fall to be decided in the three English cases referred to.

G.R.

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## APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and Mr. Justice Madhavan Nair.*

C. S. NATARAJA PILLAI AND ANOTHER (DEFENDANTS 1 AND 2), APPELLANTS,

1938, November 15.

*v.*

C. S. SUBBAROYA CHETTIAR (PLAINTIFF), RESPONDENT.*

*Foreign judgment—Declaration of status as adopted son of a Hindu widow by—Suit relating to immovable property in British India—Binding nature of judgment in.*

A foreign judgment declaring a person to be the adopted son of a Hindu widow is binding on British Indian Courts in a suit relating to immovable property in British India.

APPEAL against the judgment and decree of WADSWORTH J. dated 1st December 1936 and passed

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(1) (1931) I.L.R. 54 Mad. 565.
* Original Side Appeal No. 79 of 1936.

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in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Civil Suit No. 596 of 1928.

*K. Krishnaswami Ayyangar* and *P. R. Ramakrishna Ayyar* for appellants.

*K. Rajah Ayyar* and *V. Ramaswami Ayyar* for respondent.

*Cur. adv. vult.*

LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—In this appeal the Court is called upon to decide the question whether a foreign judgment declaring the respondent to be the adopted son of a Hindu widow is binding on the Court in a suit relating to immovable property. On 26th April 1891 one Calve Sadasiva Chetti, a French citizen, died in Pondicherry leaving a widow, but no issue. The deceased was a man of considerable wealth and had immovable properties in Pondicherry and in the Madras Presidency. By a will and a codicil dated 25th July 1889 and 20th May 1891 respectively, the deceased directed that the bulk of his estate should be devoted to charitable purposes and he appointed five executors and trustees. The will and the codicil were proved both in Pondicherry and in this Court by four of the trustees, but one of them, Calve Krishnaswami Chetti, refused to join in, and in 1892 instituted proceedings in Pondicherry for the removal of the trustees who had proved the will. As the result of this action the trustees were removed in 1906 and fresh trustees were appointed. The final decision was given by the Court of Cessation in Paris. There was also litigation in Pondicherry with regard to the validity of the will and this led in 1917 to a declaration by the French Courts that the will was invalid and that Vasavambal Ammal, the widow, took the Pondicherry assets as on

an intestacy. On 12th December 1906 Vasavambal Ammal executed in Madras a deed by which she purported to adopt the second respondent. It is said by the appellants that this adoption was invalid as the widow had no authority to adopt. In fact they say that the will should be construed as embodying a prohibition against adoption. They also say that the widow was induced to sign the adoption deed under pressure from the trustees who were removed by the decree passed in Pondicherry. The deed of adoption was registered in Pondicherry and the French Courts have held the respondent to be the adopted son of Calve Sadasiva Chetti and also of Vasavambal Ammal. I will return to the decisions of the French Courts later, but as there has been considerable litigation with regard to the estate in this Court it will be convenient first to refer to the suits in Madras.

On 19th February 1908 the respondent who was then about four years of age instituted, through Vasavambal Ammal as his next friend, Civil Suit No. 49 of 1908 of this Court, for a declaration that he was the lawfully adopted son of Calve Sadasiva Chetti and that the will was in consequence invalid. On this basis he asked that he be given possession of the Madras properties. On 24th November 1908 this suit was withdrawn with liberty to bring a fresh suit on the same cause of action. In 1910 the persons who were appointed trustees, as the result of the suit filed in Pondicherry by Calve Krishnaswami Chetti in 1892, filed Civil Suit No. 312 of 1910 of this Court for a declaration that the respondent's adoption by Vasavambal Ammal was invalid and for possession of the properties situated in Madras. The defendants in this suit were three of the four trustees who had

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been removed, Krishnaveni Ammal (the respondent's natural mother), Vasavambal Ammal, and the respondent. The fourth trustee had died in the meantime. This suit was tried by WALLIS J. who was then a puisne Judge of this Court. WALLIS J. held that the adoption of the respondent by Vasavambal Ammal was invalid as it was contrary to the provisions of the will and also because the nearest sapinda had not been consulted. Accordingly he directed that the properties in the Madras Presidency should be handed over to the plaintiffs. An appeal (Original Side Appeal No. 72 of 1913) was filed against this judgment and was heard by ABDUR RAHIM and PHILLIPS JJ. ABDUR RAHIM J. held that the Pondicherry Court had no power to remove the trustees appointed by the Madras Court in respect of immovable properties situated in Madras and in order to remove the old trustees a suit under section 92 of the Code of Civil Procedure would be necessary. PHILLIPS J. held that this was not a suit for the removal of trustees. The old trustees had been removed and the plaintiffs had been appointed in their places. This was a suit based upon a foreign judgment which recognised the title of the plaintiffs to administer the trust and to recover the trust properties. He agreed that the adoption was invalid for the reasons stated by WALLIS J. and also on the ground that the factum of adoption had not been proved. In view of this disagreement a Letters Patent Appeal, No. 229 of 1916, followed and was heard by AYLING, SESHAGIRI AYYAR and BAKEWELL JJ., who dismissed the suit on the ground that there was a defect in the appointment of the plaintiffs as trustees and that they therefore had no *locus standi*. No opinion was expressed on the question of the validity of the adoption.

In 1920 Calve Subraya Chetti, son of Calve Krishnaswami Chetti, and two others, with the sanction of the Advocate-General, instituted in this Court Civil Suit No. 226 of that year for the removal of the three surviving trustees who had proved the will in Madras, for the appointment of new trustees and for the settlement of a scheme. The respondent, Krishnaveni Ammal and Vasavambal Ammal were also made defendants. This suit also resulted in a compromise. The compromise was sanctioned by KUMARASWAMI SASTRI J. who passed a decree in the terms agreed upon. The respondent gave up his claim to be the adopted son of Calve Sadasiva Chetti. To Krishnaveni Ammal was allotted one item of immovable property in Madras, subject to her paying a sum of Rs. 50,000 to the respondent, and to the widow was allotted the property which is the subject-matter of the suit out of which this appeal arises. The other properties of Calve Sadasiva Chetti in Madras were to be regarded as constituting valid bequests to charities and a scheme for their management was settled. The respondent was still a minor, but the Court considered that it was in his interest that there should be a decree in the terms agreed upon.

Vasavambal Ammal died on 25th January 1922. Calve Subraya Chetti then claimed to be entitled to the property which was allotted to Vasavambal Ammal under the compromise decree passed in Civil Suit No. 226 of 1920, on the ground that he was the reversioner to the estate of Calve Sadasiva Chetti, and purported to transfer it to the Madras trustees for the benefit of the charities mentioned in the will of Calve Sadasiva Chetti, who was his great uncle. Sankara Chetti, one of the trustees who had been removed by the order of the French Court, set up a claim to the

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property as the nearest reversioner of the widow and purported to transfer it to the appellants, who claim to be illegitimate sons of Calve Sadasiva Chetti. In 1924 the Madras trustees filed Civil Suit No. 53 of 1924 to recover possession of the property and also of a rest-house which had been managed by Vasavambal Ammal. In addition to the appellants, Sankara Chetti, Chockanathan Chetti (who was also one of the original trustees), the then tenant of the property, the respondent and the person in possession of the rest-house were made defendants. In spite of the compromise decree passed in Civil Suit No. 226 of 1920 the respondent advanced the claim to be the adopted son of Calve Sadasiva Chetti as well as the adopted son of the widow. This suit was dismissed on 24th August 1928 by KUMARASWAMI SASTRI J. on the ground that Sankara Chetti and not Calve Subraya Chetti was the nearest reversioner of Calve Sadasiva Chetti. Civil Suit No. 696 of 1924 was tried with this suit. Civil Suit No. 696 of 1924 had been filed by the respondent to recover the rest-house from the caretaker. The respondent claimed the right to possession of the rest-house as the adopted son of the widow, but without prejudice to his claim that he was also the adopted son of Calve Sadasiva Chetti. This suit was decreed by KUMARASWAMI SASTRI J. on 5th September 1928 on the ground that the respondent had been validly adopted to Vasavambal Ammal according to French law by which she was governed. The learned Judge left open the question of the respondent's adoption to the testator.

In Civil Suit No. 591 of 1928 of this Court Sankara Chetti sought to recover from Krishnaveni Ammal possession of the property which had been allotted to her under the decree in Civil Suit No. 226 of 1920.

Sankara Chetti claimed to be entitled to the property as the nearest reversioner of Calve Sadasiva Chetti. He also claimed the right to manage the rest-house. The suit came before KRISHNAN PANDALAI J. who dismissed it on the ground that the respondent was the validly adopted son of Vasavambal Ammal. The Court also held that Sankara Chetti could not challenge the adoption to Calve Sadasiva Chetti as Sankara Chetti had been instrumental in bringing it about.

In 1930 the respondent instituted in this Court Civil Suit No. 257 of 1930 to set aside the compromise decree passed in Civil Suit No. 226 of 1930. The defendants were the Madras trustees. The respondent again claimed that he had been validly adopted both to the husband and the wife and that he was entitled to their estates. This suit was also compromised. The decree passed in Civil Suit No. 226 of 1920 was confirmed subject to the payment to the respondent of Rs. 1,000 plus a like sum for costs and the payment by the trustees of Rs. 35 per mensem for his maintenance.

I will now return to the litigation in Pondicherry. I have already mentioned that in 1906 the trustees who had proved the will were removed and this led to the appointment of new trustees under the provisions of the will. In 1917 it was held by the Court of Appeal at Pondicherry that the bequests to charities were invalid because the sanction of the administration had not been obtained before the will was executed, and it was further held that in the absence of any other heir the widow took the French estate subject to certain non-charitable legacies. In 1920 Calve Subraya Chetti filed a suit in Pondicherry for a declaration that he was the reversioner to the estate of Calve Sadasiva Chetti. The defendants in this suit were the widow

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and the respondent. The adoption was challenged but the Court of first instance held that the respondent had been validly adopted both to the testator and to Vasavambal Ammal and ordered that all those who were in possession of the properties left by the testator should deliver them up to the respondent. The judgment, of course, did not apply to properties which were made the subject of non-charitable legacies. The judgment was upheld on appeal by the Court of Appeal in Pondicherry and also by the Court of Cessation on second appeal. Therefore, so far as the French law is concerned, the respondent is the heir both of Calve Sadasiva Chetti and of his widow and the French Courts have given him a declaration of his status.

The suit out of which this appeal arises was filed on 5th November 1928 to recover the property which was allotted to Vasavambal Ammal under the compromise decree in Civil Suit No. 226 of 1920. The respondent claimed title to the property as the adopted son both of Calve Sadasiva Chetti and of Vasavambal Ammal. The suit was tried by WADSWORTH J. who held that it was no longer open to the respondent to set up his adoption to Calve Sadasiva Chetti, this claim having been abandoned in Civil Suit No. 226 of 1920 and Civil Suit No. 257 of 1930, but it was open to him to claim to be the adopted son of Vasavambal Ammal. The learned Judge held that the adoption by the widow had been proved and as she was governed by French law the adoption was valid. Accordingly he granted the respondent a decree for possession. In holding that the adoption of the respondent was valid the learned Judge relied on the documentary evidence (the deed of adoption and a deed of gift executed by Vasavambal Ammal in which reference is made to the adoption) and on the judicial recognition of the

respondent's status. The appellants have conceded in this Court that under French law a Hindu widow can adopt a son to herself and that, if she does, her adopted son succeeds to her estate, but they say that the documentary evidence does not prove that there was a giving and a taking and that the requisite ceremony was performed and therefore it is not sufficient to prove that there was a valid adoption. They contend that this Court cannot have regard to the declaration of status given to the respondent by the French Courts or to the decisions of KUMARASWAMI SASTRI J. and KRISHNAN PANDALAI J. For reasons which I shall state, I consider that this Court must accept the declaration of the French Courts that the respondent is the adopted son of Vasavambal Ammal and therefore it is not necessary to inquire further into the matter.

Before stating the reasons for holding that the Court must accept the declaration of status by the French Courts, I will deal with an argument advanced by the learned Advocate for the appellant that succession to the estate of Vasavambal Ammal is governed by the Indian Succession Act which does not recognize adoption. It is said that, in declaring in section 4 that Part II of the Act shall not apply if the deceased is a Hindu, Muhammadan, Buddhist, Sikh or Jaina and in section 29 that Part V shall not apply to an intestacy or to the property of any such person, the Legislature could have only in its contemplation Hindus, Muhammadans, Buddhists, Sikhs and Jainas who are domiciled in British India because a country can only legislate for its own citizens, and therefore when a Hindu domiciled abroad dies leaving property in British India the Act applies because the estate is not within the exception. The Courts of this country

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have always applied the personal law of a Hindu who has migrated from one part of India to another and in the case of *Khatubai* v. *Mahomed Haji Abu*(1) the Privy Council applied the personal law of a Halai Memon domiciled outside British India in the matter of succession to immovable property within British India. The deceased was domiciled in Porebunder in Kathiawar which is a Native State. He had carried on business for many years in Bombay and died leaving immovable property there. In matters of inheritance and succession the Halai Memons of Porebunder follow the Hindu and not the Muhammadan law and in that respect differ from the Halai Memons of Bombay who have adopted the Muhammadan law. The question was whether the deceased's son took the whole of his estate to the exclusion of his daughter as under Hindu law. The Judicial Committee held that the succession was governed by the personal law of the deceased which was the law of the Halai Memons of Porebunder and not by the personal law of the Halai Memons of Bombay. In *Balwant Rao* v. *Baji Rao*(2) the Privy Council stated that it was established that the law of succession was in any given case to be determined according to the personal law of the individual whose succession was in question. This case, however, related to a Maharashtra Brahmin domiciled in the Bombay Presidency leaving immovable property in the Central Provinces and is therefore not so much in point as *Khatubai* v. *Mahomed Haji Abu*(1). The latter case is directly in point and decides the question.

The argument of the learned Advocate for the appellant would appear to be based on observations by

(1) (1922) I.L.R. 47 Bom. 146 (P.C.). (2) (1920) I.L.R. 48 Cal. 30 (P.C.).

WALLIS C.J. in *Venkatappayya* v. *Venkata Ranga Row*(1) where he said that the limits of legislative authority are territorial, and the Indian Legislature in particular has authority to legislate only for British India and British subjects in Native States. *Prima facie*, therefore, its enactments are not to be construed to apply to acts done outside British India even by British subjects. In that case the Court held that the Indian Registration Act did not apply to authorities to adopt executed in Native States by domiciled subjects of those States and, such documents being valid and admissible in British India, a person adopted in pursuance of an authority executed in the Nizam's Dominions was entitled to inherit the separate properties of his adoptive mother's father situated in British India. The case was carried to the Privy Council; *Venkatappayya* v. *Venkata Ranga Row*(2). Their Lordships held that the document in question had been duly registered, and did not consider it necessary to discuss

> "the important but somewhat abstruse question, whether the respondent being at that time resident in and a subject of the State of the Nizam, could rely upon the unquestioned fact that his status as an adopted child was accepted by the Courts in the Nizam's Dominions, as a binding decision on the question of his status, precluding all dispute as to the fact and lawfulness of his adoption".

Consequently the Privy Council left open the specific question whether the declaration of a foreign Court on the question of adoption is binding on Courts in British India, but its decision in *Khatubai* v. *Mahomed Haji Abu*(3) negatives the argument that the Indian Succession Act must be deemed to apply to the estates of Hindus who are domiciled abroad.

(1) (1919) I.L.R. 43 Mad. 288. (2) (1928) I.L.R. 52 Mad. 175 (P.C.).
(3) (1922) I.L.R. 47 Bom. 146 (P.C.).

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Coming now to the main question it must be accepted that the judgments of the French Courts declaring that the respondent is the validly adopted son of Vasavambal Ammal cannot be regarded as judgments *in rem* within the meaning of section 41 of the Indian Evidence Act, but a declaration by a Court affecting the status of a person domiciled within its territory is treated by the comity of nations as being analogous to a judgment *in rem*, as was pointed out by the Bombay High Court in the recent case of *Messa* v. *Messa*(1) and governs succession to movable property. Immovable property stands on a different basis and international law does not recognize any power in a Court to adjudicate upon the title or the right to the possession of immovable property situate outside the country of the Court. Chattels can be taken away but land cannot. But in recognizing only the personal law of Hindus, Muhammadans, Buddhists, Sikhs and Jainas in matters of succession British India has added an exception to the general principle that the *lex situs* must be applied in questions relating to immovable property and this is pointed out in Mayne's Hindu Law and Usage, tenth edition, page 96. The *lex situs* is the Succession Act and the Indian Succession Act does not apply to a Hindu, Muhammadan, Buddhist, Sikh or Jaina even when he is domiciled outside British India. So far as such persons are concerned the governing factor is the personal law.

Inasmuch as the Courts of British India recognize the validity of a declaration of status by a foreign Court in a matter of succession to movable property in British India because the personal law applies, it

(1) I.L.R [1938] Bom. 529.

seems to me that they must do the same in a matter of succession to immovable property where the law requires the personal law to be followed. No reason exists for making any distinction. Treating the personal law as part of the *lex situs* the Courts of the country of domicile are best able to decide questions of status.

In *Ramakrishnayya* v. *Mahalakshamma Garu*(1) PHILLIPS and REILLY JJ. held that British Indian Courts had no jurisdiction to entertain a suit for a declaration that an adoption which was made in French territory was not valid according to French law, and the fact that there was in British India immovable property belonging to the estate would not invest the Court with jurisdiction to entertain the suit. It appeared from the evidence in the case that the French law as to adoption and as to a Hindu widow's rights in property was not on all fours with the law as administered in British India. The Court considered that the contesting defendants being French subjects were entitled to have the question of status determined according to the law prevailing in the country in which they were domiciled and for a foreign Court to usurp jurisdiction in such a matter was highly undesirable. The Court added that it might be necessary (it did not say that it would be necessary) in litigation with regard to property situated in British India to decide such questions, but it refused to entertain a mere declaratory suit. The decision is not in conflict with the opinion I have expressed but rather lends support.

For the reasons indicated I hold that this Court must accept the declaration of the French Courts that

(1) (1929) 30 L.W. 691

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the respondent was lawfully adopted by Vasavambal Ammal and that as the property in suit belongs to her estate the respondent is entitled to possession of it. My learned brother shares this view and the appeal will therefore be dismissed with costs. We certify for two Counsel.

G.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Madhavan Nair and Mr. Justice Stodart.*

1939, January 12.

RENTALA GANGA RAJU (FIRST APPELLANT—PETITIONER), PETITIONER,

*v.*

BIKKINA BULLI RAMAYYA AND TWO OTHERS (RESPONDENTS—RESPONDENTS), RESPONDENTS.*

*Madras Agriculturists Relief Act (IV of 1938), sec. 19—Mortgage decree passed by lower Court and confirmed by High Court on appeal—Scaling down of decree debt and amendment of decree in case of—Application for—Court to which it must be made.*

In a case in which a mortgage decree passed by the lower Court was confirmed by the High Court on appeal, an application under section 19 of the Madras Agriculturists Relief Act (IV of 1938) to scale down the decree debt and amend the decree was made to the lower Court.

*Held* that the application was properly made to the lower Court (the Court of first instance) and that that Court had jurisdiction to deal with the application.

Sections 19 and 20 of the Madras Agriculturists Relief Act should be read together and the explanation of the expression

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* Civil Miscellaneous Petition No. 5016 of 1938 and Civil Revision Petition No. 26 of 1939.