

Appellate Jurisdiction. (a)*Special Appeal No. 377 of 1875.*

ANNAMMAH and another.....	} <i>Special Appellants,</i> <i>(2nd & 3rd Defendants.)</i>
MABBU BALI REDDY, the natural father and guardian of the minor Munisawmy.....	
	} <i>Special Respondent,</i> <i>(Plaintiff.)</i>

An inheritance having once vested cannot be defeated and divested by an adoption.

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of 1875.

THIS was a Special Appeal against the decision of Mr. Henry Sewell, the Acting District Judge of North Arcot in Regular Appeal No. 19 of 1875, confirming the decree of the Court of the District Munsif of Tripaty in Original Suit No. 112 of 1874.

This suit was brought to recover real and personal property worth Rupees 1,362-8-0 and costs.

The plaintiff alleged that Narainappa died 15 years ago leaving a widow 1st defendant, and a son named Sithappah by another wife. Sithappah died in 1870 unmarried, and shortly after his death the plaintiff was adopted by the 1st defendant. Plaintiff alleged that the 1st defendant was the heir at law of Sithappah. The suit is brought as the defendants "are colluding" and are trying to defraud the plaintiff of the family property."

The 1st defendant pleaded that she was forced to execute the deed of adoption of which she knew nothing, and alleged that she accepted from Sithappah Rupees 140 in cash and jewels for her maintenance. The property was enjoyed by Sithappah and after his death by his widow.

The 2nd and 3rd defendants, (the widow and widowed daughter-in-law of Narainappa's brother Venkatesamy) set up a division between the brothers Narainappa and Ven-

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katesamy, and that 1st defendant was not entitled to inherit the property of her step-son Sithappah, and therefore no right to such property accrued to plaintiff in consequence of the alleged adoption. 1875.
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The District Munsif of Tripaty held that the 1st defendant, as step-mother of Sithappah, was entitled, on his death, to inherit his property in default of parties superior to her in the line of heirs; that the 2nd and 3rd defendants did not come within the line of heirs; that 1st defendant had permission from legally competent persons to adopt, and did adopt the plaintiff who is entitled to succeed to the property of Sithappah derived from his father, in preference to the 2nd and 3rd defendants. From this decision the 2nd and 3rd defendants appealed on the ground that the 1st defendant, the step-mother of Sithappah, was not his heir according to the Hindu law, and that the adoption by her of the plaintiff was invalid.

The Acting District Judge of North Arcot held that the plaintiff had been adopted; that the adoption was valid, and that plaintiff was entitled to the property of Narainappa inherited by Sithappah. In delivering judgment he observed:—

“I think the necessity for an adoption from spiritual and other reasons is obvious. Narainappa when he died left a son by his second wife, Chinnah Sithappah, but on the death of the latter unmarried there were no male members of the family left who could perform funeral ceremonies, &c. The 2nd widow being dead also, there was no one who could possibly adopt for Narrainappa's benefit except his 1st widow the 1st defendant, and nothing has been adduced to show that she was unfit to adopt.

“Then comes the question whether the adoption was valid.

“The 1st defendant admits that she executed the deed of adoption, but says she was compelled to do so against her will. This allegation is unsupported. It is stated by some of the witnesses that Chinnah Sithappah before his death authorised the 1st defendant to adopt a son. The Munsif

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disbelieved this portion of the evidence, but I am inclined to think on insufficient grounds. Any how it is clear that some of the relations of Narainappa and Chinnah Sithappah authorised the adoption and the judgment of the High Court, in the Chinnah Kimmedy case,⁽¹⁾ clearly lays down that the sanction of one Sapinda however remote is sufficient for adoption.

“The minor plaintiff also is shown to be a relation of Narainappa and Chinnah Sithappah and was, therefore, a fit person to be adopted. It was argued by appellant’s vakil that at the time of adoption 1st defendant was in a state of pollution as it took place within 16 days from Chinnah Sithappah’s death. This point was not raised in the Lower Court, and I, therefore, decline to consider it.

“Again, it was argued that 1st defendant being only step-mother could not inherit property from her step-son. Whether this is so or not does not affect the question. Plaintiff states, the adoption being held valid, was that of a son to Narainappa and half brother to Chinnah Sithappah. He would, therefore, certainly inherit Narainappa’s share of the property before 2nd and 3rd defendants who are widow and daughter-in-law respectively to Narainappa’s nephew. They inherit the share of the property which belonged to Venketasamy, the brother of Narainappa, and the Lower Court has awarded this to them.

“The judgment of the Lower Court is therefore confirmed and the appeal dismissed with costs.”

From this decision the 2nd and 3rd defendants appealed on the ground that a step-mother is not the heir at law to her step-son; and that the Lower Appellate Court was wrong in having thought that the determination of this point of law was unnecessary for the right decision of the case.

T. Rama Row, for the special appellants, 2nd and 3rd defendants.

(1) *Shri Brozo Kishoro Pato Devu v. Shri Vira Shri Viradhi Virapratapa Shri Raghunatha Ananga Bhima Devu*, 7 Madras H. C. Rep., p. 301.

Anandacharlu and *Kamesam*, for the special respondent, plaintiff.

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The Court delivered the following

JUDGMENT:—Narrainappa, whose son by adoption the minor plaintiff claims to be, died 15 years ago, leaving a descendant Chinna Sithappah, his son by birth, fully competent to perform all requisite religious services.

Chinna Sithappah died unmarried in 1870, and shortly after his death the alleged adoption is supposed to have taken place.

It is not certain upon what precise ground the Lower Appellate Court maintained this adoption, but even if it be considered that, in some recognized mode, Narrainappa's widow Lakshmakka possessed or acquired in 1870 power to adopt a son to her husband, it has to be determined whether, according to Hindu Law, any adoption could then be lawfully made by her.

The principle of the decision of the Privy Council in the case reported in 10 Moore's Indian Appeals 279,(1) appears to us to govern this case and to show that it could not.

Chinna Sithappah had inherited his father's property ; "he had full power of disposition over it ; he might have alienated it ; he might have adopted a son to succeed to it, if he had no male issue of his body. He could have defeated every intention which his father entertained with respect to the property." (2).

On the death of Chinna Sithappah, the next heir, it is here admitted, was Bali Reddy, who is the natural father of the minor plaintiff and who has also other sons. The inheritance, having passed in 1870 to Bali Reddy, still remains in him and we must hold, upon the authority cited, that the estate of the heir of the deceased son, thus vested in possession, cannot be defeated and divested.

(1) *Mussumat Bhoobun Moyee Debia v. Ram Kishore Acharj Chowdhry.*

(2) X Moore's I. A., at page 310.

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It is said that he is assenting to the adoption, but this fact does not validate it or enable the widow to substitute a new line of heirs in the place of those who have already inherited.

The decisions of the Lower Courts must be reversed and the suit dismissed with costs.

Appeal allowed.

Appellate Jurisdiction.(a)

Case Referred by the Board of Revenue No. 2 of 1875.

Certificates of sale issued under Sections 35 and 40 of Madras Act VIII of 1865 are not conveyances subject to stamp duty.

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Case referred
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Rev. No. 2 of
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THIS was a case referred for the opinion of the High Court under Section 41, Act XVIII of 1869 by the Board of Revenue in their Proceedings dated 14th May 1875, No. 1284.

The Proceedings of the Board of Revenue in which they stated the case were as follows:—

“The question for determination is whether certificates of sale issued under Sections 35 and 40 of Act VIII of 1865 (*b*) are to be written on stamped paper.

“The Collector of Madura having been instructed to pass an order in a case of the kind and submit it to the Board with a view to an authoritative ruling being obtained, has decided that such sale certificates should be stamped as conveyances under Article 15, Schedule I of Act XVIII of 1869, the stamp duty being borne, by the purchaser under Clause 4, Section 6 of the Act.

“The Board have held (Proceedings, 27th August 1874) that certificates under Section 38, Act II of 1864, are not liable to stamp duty on the ground that they are not conveyances as shown by the form prescribed for such documents; but no form is laid down for certificates under Act VIII of 1865, nor does it appear from the Act what the effect of the certificate is, or how the purchaser is to enforce the right evidence thereby.

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“The High Court have ruled (Proceedings, 13th November 1871) that sale certificates issued by Civil Courts under Section 259, Civil Procedure Code, are instruments declaring an interest in property, and must, therefore, if the value exceeds Rs. 100, be registered, and the Inspector-General of Registration has instructed his subordinates to treat them as deeds of sale executed by the Courts granting them.

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“The Board are of opinion that certificates issued under Act VIII of 1865 are just as much deeds of sale and should be treated as conveyances, the stamp duty being borne by the grantee. They concur, therefore, in the view expressed by the Collector.”

The Court delivered the following

JUDGMENT :—Certificates of sale issued under Sections 35 and 40 of Act VIII of 1865,(a) cannot, we think, be regarded as conveyances subject to the stamp duty.

The certificate under Section 259 of the Code of Civil Procedure has, by virtue of the express provisions of that section, the effect of an instrument of transfer or conveyance. In the absence of any such provisions, a certificate under the Act of 1865 of the fact of sale and other matters therein mentioned, cannot be converted into a conveyance.

(a) Madras Act VIII of 1865 was passed “to consolidate and improve the Laws which define the process to be taken for the recovery of Rent.” Section 33 provides for the sale of the property distrained under Section 14 of rents due to landholders under Ryotwar Settlements, and Section 35, after providing for the payment in ready money of the amount for which the property sold, and for re-sale in default, provides that “When the purchase money has been paid in full, the officer holding the sale shall give the purchaser a certificate, describing the property purchased by him, the date of the sale, and the sum paid.” Section 40 provides that when any arrears are due to any of the landholders specified in Section 3, and property is sold under Section 38, the sale “shall be conducted under the rules laid down for the sale of movable property distrained for arrears of rent.”