Appellate Jurisdiction.(a)

Special Appeal No. 234 *of* 1874.

KOTAMARTI SITARAMMAYYA..... *Special Appellant.*
KOTAMARTI VARDHANAMMA.....*Special Respondent.*

The plaintiff was the son of a mother of the deceased husband of the first defendant. The 1st defendant adopted a son 35 years after the death of her husband, in pursuance, as she alleged, of an authority to adopt given by her husband. The suit was brought by the plaintiff to have the adoption declaimed invalid upon the ground that the adoption was made without the husband's authority. *Held*, a fit case for a declaratory decree.

1874. *May* 8. *S. A. No.* 254 *of* 1874.

THIS was a Special Appeal against the decision of J. Wilkins, the Judge of the Court of Small Causes at Masulipatam, (as Sub-Judge) in Regular Appeal No. 131 of 1873, reversing the Decree of the Court of the District Munsif of Masulipatam, in Original Suit No. 259 of 1872.

The plaintiff, who is the son of the elder brother of the 1st defendant's husband, brought this suit alleging that the 1st defendant adopted the 2nd defendant's minor son, that the adoption was invalid, inasmuch as the 1st defendant did not obtain permission from her husband to the above effect; and praying that the adoption should be set aside.

The 1st defendant stated that the adoption was made by her under the instructions given by her husband prior to his death, that the plaintiff did not object to the same though he was aware of it.

The principal question tried was whether there was permission of the 1st defendant's husband for the adoption. The District Munsif found that there was not and he made a decree "in favor of the plaintiff." An appeal was preferred to the Subordinate Judge by the defendant upon the ground that the evidence established the permission alleged.

The following is taken from the judgment of the Subordinate Judge:— "At the time of arguing this case in appeal, the 1st defendant, for the first time, took exception to the suit, and contended that the plaintiff was not entitled to a declaratory decree, as he had suffered no injury by the act

(a) Present Morgan, C. J. and Innes, J.

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of the 1st defendant. This has naturally led me to defer to decide upon the fact on the foregoing consideration.

There is no doubt that by the adoption by the widow, the 1st defendant, of the minor son of the 2nd defendant, the plaintiff sustains no immediate injury in his reversionary right to the property of his late uncle Naganna, as the 1st defendant, the widow, as the guardian of her adopted son, continues to hold the legal custody of the property of her deceased husband; it is only in the case of her death, should her adopted son survive her, that the plaintiff's reversionary right may be actually assailed by the adopted son himself, or by his guardian if he should continue to be then a minor, or if the adopted son should on attaining his majority and management of the estate alienate or waste the said property; it is therefore a matter of enquiry whether, under the circumstances of the case, the plaintiff could legally ask the Court for a declaration of his reversionary right by setting aside the adoption made by 1st defendant, and hence whether the suit is legally admissible or not.

It is manifest that Section 15, Civil Procedure Code, gives the Court a discretionary power to make, or decline to make the desired declaration. The Privy Council in *Nagendu Chundu Mittro* v. *Srimatty Krishna Sundari*, XIX, Sutherland's W. R., p. 139, has laid down this doctrine, "It is not a matter of absolute right to obtain a declaratory decree; it is discretionary with the Court to grant it or not; and in every case the Court must exercise a sound judgment as to whether it is reasonable or not under all the circumstances of the case to grant the relief prayed for." So again in *Puree Janakhatom and others* v. *Bykunt Chundu Chuckerbutty*, 9, W. R., p. 380; *Baboo Malee Lall and others* v. *Ranee*, 8, W. R., p. 64, it has also been ruled, "a declaratory decree ought only to be passed where some injury appears to be so probable as to lead to the conclusion that, unless stayed by the declaratory decree, the incohate, or threatened injury is inevitable." *Pareejan Khatoon and others* v. *Bykunt Chunder Chuckerbutty and others*, 7, W. R., 96.

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What then is the immediate or prospective injury to which the present plaintiff is liable by the said adoption, which has compelled him to seek a declaratory decree from the Court. It is alleged that the widow, the 1st defendant, has applied to the Collector to enter the name of the adopted minor as the Inamdar in lieu of her late husband, and that that Officer is prepared to do so unless the plaintiff should obtain an injunction from the Court setting aside the adoption. It is also alleged that, under the new Limitation Act, a suit to set aside an adoption must be instituted within twelve years of such an adoption, and that if he was to wait till the death of the widow, his suit hereafter may be barred as it may happen after many years, and that meanwhile the adopted son may alienate the property, and his long possession and enjoyment as an adopted son will strengthen his right as heir at law to the estate.

I see no immediate risk or inevitable injury in prospect to the reversionary right of the plaintiff by an illegal adoption of the minor, as, notwithstanding the substitution of the minor's name as the Inamdar, the Inam will still remain in possession and under the management of the widow, the 1st defendant, as the guardian of the minor; and in case of future alienation or waste by the widow, the plaintiff will then have a cause of action. And then as to the bar of limitation, the plaintiff will be in possession to sue whenever he is entitled to a reversion, and that will be on the death of the widow the 1st defendant, should he survive her, and the cause of action will then commence. *Srenath Gangapadhaya* v. *Mahesh Chundari Ray*, 4, B. L. R. F. B., 3; 12, W. R. F. B, 14. Indian Digest, page 683. On the other hand, there are other contingencies which may render the present action unnecessary and premature, either the plaintiff may never survive the widow, the 1st defendant, or the minor himself not live to pass his minority, and any decision like that passed by the Lower Court may not be binding on the adopted son after the death of the widow. The plaintiff's inability to sue will not support the minor's title, whilst the protese he has already made to the Collector

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will show that he had lost no time in disputing the validity of the adoption.

There appears, therefore, no sufficient grounds for a declaratory decree, for, as ruled in *Baboo Joodoo Nundun Peshadsing* v. *Mussamut Nundo Koer*, 1, W. R., 219. "A suit for a declaratory decree under Section 15, Act VIII of 1859, is premature on the part of a reversioner during the life-time of the widow, his right being contingent on her death," and the reasons of the Privy Council in the case already quoted equally oppose such a declaration of right. It is also strongly expressed by the High Court at Calcutta in a similar case like the present of *Ranee Brohmo Moobee* v. *Raya Ananda Cull Roy*, XIX, Sutherland W. R., page 419. "That the plaintiff cannot maintain this suit so far as he seeks to have what he calls his reversionary right declared is clear. If he means by that to have it declared that he is the person who would take at this moment if both Opendraw Chandra (adopted son) and the widow were out of the way nobody disputes it. If what he means is to have it declared that he is the person who will ultimately take the property after the death of the widow, no such declaration can be made, for that cannot yet be known." Again, I do not think it is likely that the question whether this suit can be maintained can be settled without determining another question referred to in that same case, namely, whether a decision in it would be binding on the next taker after the death of the widow, whoever that next taker might be.

Under all the circumstances of the case, I believe that the plaintiff's action for a declaratory decree is premature and unnecessary, and would therefore dismiss the suit, and reverse the Lower Court's decision, but considering the nature of the evidence I would adjudge each party to bear his own costs.

The plaintiff preferred a Special Appeal to the High Court against the decree of the Subordinate Judge for the following reason:—

That the said decree is contrary to law in that,

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The plaintiff is entitled to bring the suit to set aside the adoption made by the defendant.

Iyasawmy Iyer, for *V. Subramanian Sastry*, for the special appellant, the plaintiff.

The Court delivered the following

JUDGMENT:—In this suit the plaintiff is the son of a deceased brother of 1st defendant's late husband. 1st defendant has adopted a son 35 years after her husband's death under (as she alleges) express instructions given by him to her to do so.

The plaintiff seeks to set aside the adoption, which, he contends is invalid as not having been authorized by 1st defendant's husband.

The District Munsif gave judgment for plaintiff by declaring the adoption invalid. In appeal the objection was taken that this was not a case for a declaratory decree, and the Subordinate Judge dismissed the suit upon that ground.

The question of the propriety of this dismissal of the suit is what is before us in this Special Appeal. The case quoted by the Subordinate Judge from the full bench rulings of the High Court of Calcutta reported at page 14 of the 12th Vol., F. B. was a case in which the parties were relatively in the same position as in this case; but the plaintiff had deferred bringing his suit till the death of the widow, and that case is only an authority for the position that the cause of action in the suit for the purposes of limitation did not accrue till the death of the widow. But Peacock, C. J. took occasion to observe in that very case, " I do not mean to say that a reversionary heir might not have a cause of action during the widow's life to set aside an invalid adoption, but that would be in the nature of a declaratory suit." The object of the Law in allowing declaratory decrees is to enable persons interested to at once challenge acts which, if passed by unchallenged, would be likely eventually to affect their interests prejudicially. It may be that the interest is so remote or contingent that the Court will say ' wait till the event arises, your suit is premature.' One

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case is seldom so completely on all fours with another that it can be an absolute authority either way for granting or refusing a declaratory decree. The discretion of the Court must in each case be exercised with reference to the particular aspect of the facts in the case before it. Here, it appears to us that, although plaintiff would not be entitled to any decree declaratory of his reversionary right to the property on the widow's death, he may be entitled to what he asks for; that is a decree to declare as between him and the adopted son the invalidity of the adoption.

The determination of the question of the validity of the adoption depends upon the credit attaching to the evidence as to the authority having been given by the husband, and if plaintiff lay by; appearing to acquiesce in the adoption until the widow's death, such conduct of plaintiff would naturally affect the weight to be given to the arguments impugning the credibility of the evidence, and tend to prejudice plaintiff. He is therefore entitled to have this question tried and determined in this suit, and we shall reverse the decree and remand the suit for trial *de-novo*.

Suit remanded.

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Civil Miscellaneous Special Appeal No. 335 *of* 1873.

MUTHUSAMI PILLAI..... *Appellant.*

MUTHU CHIDAMBARA CHETTI ..... *Respondent.*

According to Section 13 of Act III of 1873 (the Madras Civil Court Act) it is the money value of the Original Suit that fixes the Jurisdiction throughout the subsequent litigation in its several stages.

Held, therefore, where the amount of the Original Suit was more than Rupees 5,000, and an appeal was preferred to the District Court, but the amount in dispute in the appeal did not exceed Rupees 5,000, that the District Court had no jurisdiction to hear the appeal.

1874. *May* 12. *C. M. S. A. No.* 335 *of* 1873.

THIS was an appeal against the order of F. M. Kindersley, the District Judge of South Tanjore, dated the 29th September 1873 passed on Civil Petition No. 711 of 1873, reversing the order of the Sub-Court of South Tanjore dated 2nd August 1873.

(*a*) Present: Morgan, C. J., Innes and Kindersley, JJ.