

Gammanna Shivappa Kori and others - - - *Appellants*
v.

**Parappa Girimallappa Kori, minor, by his guardian,
Satawa Kom Girimallappa Kori** - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 19TH MARCH, 1945

Present at the Hearing:

LORD THANKERTON

SIR MADHAVAN NAIR

SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree dated 24th June, 1940, of the High Court of Judicature at Bombay which reversed a judgment and decree of the First Class Subordinate Judge of Belgaum dated the 15th August, 1938.

The parties are Lingayats, and the plaintiff sued for partition of the immovable joint family property, relying upon his adoption by his great grandmother, Satawa. The learned Subordinate Judge disbelieved the evidence as to the alleged adoption ceremony and held that the adoption was what he called "a paper adoption," by which he presumably meant an adoption evidenced by an adoption deed, but in which the necessary ceremony had not taken place. The High Court (N.J. Wadia J. and Sen J.) in appeal reversed this decision. In the defendant's written statement it was contended that if the adoption was proved it was, on various grounds, invalid, and certain issues upon these points were raised, including issue 2, which was whether defendant proved that there is a local custom amongst the Lingayats not to adopt in a joint Hindu family without the consent of the co-parceners. As the learned Trial Judge held that no adoption was proved, it was unnecessary for him to deal with these issues, but he answered them in case it should be held in appeal that his decision as to the fact of adoption was wrong, and, in answer to issue 2, he found that there was no evidence of the local custom set up. In the High Court no question was raised as to the validity of the adoption if proved, the only question discussed and dealt with in the judgment being as to the fact of adoption. Before their Lordships' Board Counsel for the appellants desired to argue that, if the adoption was proved, it was invalid in law since the adopting widow had neither the authority of her husband nor the consent of the co-parceners to the adoption. The contention sought to be raised was that the parties, being Lingayats resident in a Kanarese district of the Province of Bombay, part of the Karnatik, are governed by the Dravida School of Law, and not by the Mayuka School, and that the decision of this Board in *Bhimabai's* case 60 I.A. 25 that a widow can adopt without the authority of her husband or the consent of the co-parceners has no application. In view of the fact that there is no evidence as to any special custom affecting the Lingayats, and that the question as to the school of law by which the parties are bound was not discussed in the High Court, and no authorities on the matter were referred to, their Lordships were not prepared to allow the matter to be raised before the Board. Moreover, their Lordships observe that the litigation in *Bhimabai's* case originated in the District of Dharwar, which is as much a part of the Karnatik as is the

adjoining District of Belgaum from which the parties in the present suit come, and there is nothing on record to show that the parties in *Bhimabai's* case were not Lingayats, as their names suggest that they were. This consideration may explain why the suggestion that *Bhimabai's* case does not apply to the Lingayat community in the Province of Bombay was not advanced in the High Court. It is unnecessary to decide any such question and their Lordships will confine their decision to the fact of adoption.

Satawa who is alleged to have adopted the plaintiff, Parappa, was the junior widow of Girimallappa, who died in the year 1895. They had one daughter, who also had one daughter, and the plaintiff is the son of that daughter. Girimallappa, at the time of his death, was joint with his brother Shivappa and with Shivappa's sons, defendants 1 and 5. Shivappa died in 1904, but his sons remained joint with their sons, defendants 2 to 6. The adoption is alleged to have taken place on the 30th January, 1933, and on the same day an adoption deed was executed, which was registered on the 29th May, 1933.

In rejecting the evidence as to the fact of adoption the learned Subordinate Judge was impressed with certain aspects of the case of a negative character, as well as by discrepancies in the evidence produced on behalf of the plaintiff. He thought, in the first place, that the delay of 38 years between the death of Satawa's husband and the adoption was difficult to explain. But it is to be noticed that until the decision of this Board in *Bhimabai's* case, which was given on the 4th November, 1932, it was the generally accepted view in the Bombay Presidency that a widow could not adopt unless she had the authority of her husband or the consent of the co-parceners. Satawa alleged in the present case that she had the authority of her husband to adopt, but she was unable to call any evidence to support her statement to that effect, and, as she was the junior widow, it is unlikely that any such authority was given. She must therefore have realised that until the decision in *Bhimabai's* case showed that the consent of the co-parceners was unnecessary her chances of establishing a valid adoption were of the slightest. This consideration, in their Lordships' view, accounts for the delay.

The learned Judge was also impressed with the age of the plaintiff who was only about six months' old at the date of adoption, which the learned Judge thought an unusual age for adoption. But it is to be noticed that the plaintiff is the only male descendant of Satawa and her husband, and this may account for her desire to adopt him in preference to anyone else. As she was 70 years of age, obviously delay might have been dangerous. The learned Judge also pointed out that no village officers or persons of position were present at the adoption ceremony; no invitation cards, which were alleged to have been sent out, were produced, and the priest who officiated at the adoption was not called. There is also no photograph of the adoption group such as is very commonly obtained. The learned Judge thought all these matters gave rise to suspicion, but none of them is at all conclusive.

He disbelieved the evidence called on behalf of the plaintiff to establish the adoption ceremony on the ground that it was discrepant in many particulars. These discrepancies were carefully analysed in the judgment of the High Court, and it is not necessary to discuss them in detail. They were mainly discrepancies as to the respective positions occupied by the parties and witnesses during the ceremony in the house where it took place; but all the witnesses agreed as to the vital facts necessary to establish an adoption.

If the High Court had differed from the Subordinate Judge, who had seen the witnesses, on a pure question of appreciation of evidence it would have been difficult to justify their action, but in their Lordships' view, the Judges of the High Court were right in thinking that the Subordinate Judge failed to attach sufficient significance to the execution of the adoption deed. There is no doubt that such a deed was registered on the 29th May, 1933. It is exhibit No. 10 and shows on its face that the parties appreciated

the necessity for, and the requisites of, an adoption ceremony. If circumstances had changed between January and May, 1933, and if at the latter date adoption of the plaintiff had become impossible, for instance, by the death of his parents, so that there was no one to give him in adoption then there would have been some ground for suspecting that the parties were setting up a false adoption as made at a time when adoption was possible and, in such circumstances, a close scrutiny of the evidence would have been called for, and the defects in the evidence and the delay in registering the deed, would have assumed a sinister aspect. But this was not the position. If the plaintiff had not been adopted at the time alleged, there was nothing to prevent his being taken in adoption on the day when the deed was registered. It seems to their Lordships impossible to suppose that the parties, realising the necessity for an adoption ceremony, nevertheless omitted to hold one when they were competent to do so. Their Lordships agree with the learned Judges of the High Court in thinking that in the circumstances there was not sufficient ground for rejecting the evidence in support of the adoption ceremony, and that the discrepancies in such evidence can be explained by the length of time which had elapsed between the ceremony and the date when the witnesses were called upon to give evidence.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed with costs

In the Privy Council

TAMMANNA SHIVAPPA KORI AND
OTHERS

vs.

PARAPPA GIRIMALLAPPA KORI, MINOR,
BY HIS GUARDIAN, SATAWA KOM
GIRIMALLAPPA KORI

DELIVERED BY SIR JOHN BEAUMONT

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