

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Subbarayer and Others v. Subbammal and  
Others, from the High Court of Judicature  
at Madras; delivered 21st July 1900.*

Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

In this case their Lordships have only to consider the meaning and effect of the will of one Kuppier which is found by both Courts below to have been executed when the testator was of sound disposing mind. Mr. Mayne who appeared for the Appellants admitted that if the decision of the Court was against him on the construction of the will success on other points would be of no avail. The question is whether the minor Respondent Venkataramanier is entitled to inherit under the will assuming that he was not validly adopted by the testator.

The will is in the following terms :—

“Will left on the 26th February 1896, corresponding to  
“16th Masi of Manmatha year, by me Kuppier, son of  
“Venkatarayer, Brahman by caste, cultivator, residing at  
“Chinna Dharapuram, Karur Taluq. Whereas I possess the  
“undermentioned immoveable and moveable properties, money,  
“outstandings and debts, whereas I, having no issue, have  
“been keeping Venkataramanier, a minor, aged about 10, son  
“of Venkatasappaiya of Andan Kovil, Brahman, cultivator,  
“who is my brother-in-law, as adopted son and protecting him  
“for the last 3 years, whereas I am now seriously ill, whereas  
“my mother Venkalakshmi Ammal is in her dotage, and

“whereas my adopted son, the said Venkataramanier is a  
 “minor and consequently incapable of managing the said  
 “properties and of protecting us, my wife Subbammal shall  
 “until the said minor becomes a major, administer the said  
 “properties as guardian of the said minor, discharge the debts,  
 “maintain the undermentioned charities which I have been  
 “conducting, bring up the said minor, have his thread  
 “ceremony, marriage, &c., celebrated, maintain me and my  
 “mother Venkalakshmi Ammal till our lifetime, and after  
 “our demise have our funerals, &c., performed for us by  
 “the said minor. Afterwards the said minor on his attaining  
 “majority shall take charge of the said properties, debts, &c.,  
 “and until the lifetime of the said Subbammal he shall as per  
 “her orders look after the said properties and discharge the  
 “debts, also maintain the undermentioned charities and  
 “after the said Subbammal’s lifetime he shall perform her  
 “funerals, &c., and possess and enjoy with all rights the said  
 “properties, &c., from generation to generation so long as the  
 “sun and moon last, and maintain and conduct the said  
 “charities. Thus have I of my own accord and with my free  
 “will and consent executed this will.

“(Signed) KUPPIER.”

It appears to their Lordships that the gift to the minor is not conditional on adoption. The testator no doubt refers to the minor as his adopted son but he explains what is meant by that expression by stating that he had been keeping the minor “as adopted son” that is with a view to his adoption.

The case on which Mr. Mayne principally relied was the case of *Fanindra deb Raikat v. Rajeswar Dass* L. R. 12 I. A. 72. There this Board had to construe an angikar-patra which contained an allegation of the adoption of the person who claimed to inherit and then proceeded to make a statement which might be construed either as a disposition of property or as a declaration of the consequences flowing from adoption. Their Lordships held that the author of the angikar-patra had no power to adopt a son who would succeed to the estate; and on the language of the particular instrument before them they held it was not a disposition of property but only a statement of

what would have happened if there had been an adoption in fact and no angikar-patra had been executed.

The language of one instrument does not afford much assistance in the construction of another. Their Lordships however may observe that the language of the will in the present case is more like that of the will in the case of *Nidhoomoni Debya v. Saroda Pershad Mookerjee* L.R. 3 I. A. 253 to which Mr. Mayne also referred. There it was held that the gift of the testator's property to a person whom the testator declared he had adopted took effect although in consequence of the proper ceremonies not having been performed by the testator's widows the adoption might not be in all respects complete.

Their Lordships will therefore humbly advise Her Majesty that the Appeal ought to be dismissed. The Appellants will pay the costs of the Respondents appearing on that Appeal.

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