

Privy Council Appeal No. 44 of 1930.

Sri Rajah Ravu Sri Krishnayya Rao *alias* Sri Rajah Ravu
Venkata Kumara Mahipathi Krishna Surya Rao
Bahadur Garu and Another - - - - - *Appellants*

v.

Rajah Saheb Meherban-I-Dostan Sri Rajah Ravu Venkata
Kumara Mahipathi Surya Rao Bahadur Garu, Rajah
of Pittapur - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH JUNE, 1935.

Present at the Hearing:

LORD MERRIVALE.
LORD ALNESS.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.
SIR SHADI LAL.

[*Delivered by* SIR GEORGE LOWNDES.]

This appeal was before the Board in June, 1933, when a preliminary point was considered as to the admissibility of certain evidence which had been rejected by the Indian Courts. As the result of that hearing an order of His Majesty in Council was promulgated by which the evidence in question was declared to be admissible, and the case was remanded to the High Court for fresh findings upon certain of the issues to which the evidence related. It now comes back to the Board, with the findings of the High Court, for final disposal of the appeal.

The relevant facts are set out at length in the judgment delivered by Lord Russell of Killowen on the 30th June, 1933 (60 I.A.336), and it is only necessary now to summarise them very briefly.

The suit out of which the appeal arises was brought by the respondent praying for a declaration that the adoption of the first appellant by the first defendant, since deceased, and now represented by the second appellant was invalid. The adoption involved the right of succession to the Gollaprolu estate which had formed part of the Pittapur Raj,

an important zemindary of the Madras Presidency. This estate had been granted in 1869 by the then Raja of Pittapur, Gangadhara Rama Rao (hereinafter, as in the former judgment, referred to as the late Raja) to his brother Venkata Rao, who died childless some two years later, and at the time of the disputed adoption was in the possession of his surviving widow the first defendant. She adopted the first appellant on the 15th of February, 1914.

The respondent has been, since the late Raja's death in 1890, the owner of the Pittapur Raj, and claims to be the *aurasa* son of the late Raja. His legitimacy has been in dispute for over 40 years, and though the question has been formally raised by litigation in the family it has never heretofore been finally decided. Before the respondent's birth the late Raja, having then no son, duly adopted one Ramakrishna, who in 1891 claimed the estate as adopted son, denying the legitimacy of the respondent. The result of his suit, which eventually came up to the Board (26 I.A.83) was that the respondent was held entitled to the estate under the will of the late Raja, the question of his legitimacy, upon which a large body of evidence had been given at the trial, being left undecided. It was this evidence which formed the subject of the previous judgment of the Board. Relying upon it the appellants contended that the respondent was not the *aurasa* son of the late Raja, that he accordingly had no reversionary interest in Gollaprolu, and that his suit was therefore incompetent.

The case was heard upon the remand by a bench of three Judges of the Madras High Court, who after considering the further evidence at great length came to the unanimous conclusion that the respondent's legitimacy was established. The correctness of this conclusion is strenuously denied by the appellants and is the first question which their Lordships have now to decide, as upon it admittedly depends the respondent's right to sue.

The evidence is voluminous and unpleasant. Their Lordships have listened to its recital by counsel and the review of it by the High Court for the greater part of six days. They think it unnecessary to say more than that they are not prepared to disagree with the findings of the High Court upon it. They only wish to add on this part of the case that having regard to the terms of s. 112 of the Indian Evidence Act, it was suggested in the course of argument that it may be doubted whether on such an issue evidence of impotence is not admissible. They have not thought it requisite to hear counsel for the respondent on the legitimacy question, and they therefore make no pronouncement upon the section. Assuming but not affirming the evidence to be admissible they think it is not sufficient to establish that the respondent cannot be the *aurasa* son of the late Raja, as contended by the appellants' counsel.

The result so far is merely that the respondent was entitled to bring his suit, and his claim that the adoption

was invalid must now be considered—a question on which there has been considerable difference of opinion expressed in the judgments below.

The trial judge held in the respondent's favour. On appeal to the High Court the two learned Judges before whom it came differed, and the judgment of the trial court stood. A Letters Patent appeal followed, which was heard by a bench of three Judges, the majority holding that the adoption was invalid, and granting the respondent the relief he prayed. No further discussion of this part of the case took place on the remand.

There is really very little dispute as to the law, but much as to its application to the facts. The first defendant did not claim in the present proceedings that she had the authority of her husband to adopt, but that she had a sufficient consent of his sapindas to validate her act, it being the well established law of the Madras Presidency that such consent is the equivalent of the husband's authority. It is unnecessary to examine the case law on this question in detail, as the doctrine is not disputed. It was laid down by the Board in the *Ramnad* case (*Collector of Madura v. Moottoo Ramalinga* 12 Moo. I.A. 397) and has been elaborated in many later judgments of this Committee. Nor is there any difficulty in the present case, as to who were the sapindas whose consent was necessary. It is agreed that they were the respondent and his brother by adoption, Ramakrishna. They were both formally asked by the first defendant for their consent: the respondent refused: Ramakrishna, apparently after some hesitation, consented, the first appellant whom it was proposed to adopt being one of his sons. The respondent's refusal was ignored and the adoption was made: the factum is not disputed. The question for their Lordships' determination is whether under these circumstances the adoption was valid.

The respondent contends (1) that the application by the first defendant to him for his consent was not a genuine application: (2) that his consent was rightly withheld, and without it no adoption could be made: (3) that Ramakrishna's consent was in effect fraudulent: and (4) that the motive of the first defendant in making the adoption was corrupt. The appellants join issue on all points. They say that the first defendant's application to the respondent was perfectly genuine and satisfied the requirements of the law: that the respondent's refusal of his consent was capricious and based on purely personal considerations, and was rightly disregarded: that Ramakrishna's consent was bona fide, and under the circumstances sufficient to validate the adoption: and that if the first defendant's motive was relevant, which they did not admit, it was proper and not corrupt.

Before dealing with these contentions their Lordships think it necessary to set out in some detail the circumstances under which the adoption was made.

The first defendant was an elderly lady in bad health. She had made a previous attempt to adopt a boy from her own family, alleging authority from her husband. This adoption was set aside by the courts. It is, their Lordships think, sufficiently established that she had again been considering the question of adopting for some little time before the end of 1913. That she should do so, when the natural span of her life was drawing to a close, was, they think, not unnatural. She had been living during widowhood with her brothers, and much of her ample income had undoubtedly been spent on them. She had apparently been on friendly terms with the respondent, though the doubt as to his legitimacy, which was evidently widespread in the family and neighbourhood, may have made their relations somewhat difficult.

The first appellant, whom she proposed to adopt, was a son of Ramakrishna, who was, owing to his adoption by the late Raja, her husband's nephew, and therefore in every sense a proper person for her to select. He was no doubt a major at the time, but this, the parties being Sudras, was no objection. Having regard to her age, and the estate of which she was possessed, she may have thought it desirable to bring into her husband's family someone who could relieve her of the burdens of estate management, rather than an infant whom she might never see in manhood.

In order to obtain the consent of Ramakrishna to the giving of his son, she sought the services of one Krishna-swami Chetty, who is described by one of the learned Judges of the High Court as having been "a great figure in legal circles at Madras". He was the standing Vakil of the Maharaja of Venkatagiri, the natural brother of Ramakrishna, and it was through his intervention, and on the advice of the Maharaja, that Ramakrishna on the 30th January, 1914, agreed to give his son. It was also on Krishnaswami's advice that the first defendant wrote to the respondent asking his formal consent to the adoption, and it was he who suggested the form in which the application should be made. Her letter was dated the 2nd February, 1914, and was in the following terms:—

I am very anxious to adopt a son for securing a good end to my late husband, performing his ceremonies, etc., and perpetuating the progeny (line). Further, in adopting, I intend adopting Sri Krishnamma, the fourth son of Sri Rajah Roa Venkata Surya Mahipathi Ramakrishna Rao Bahadur, the adopted son of the late Rajah of Pittapuram. But under the decree in O.S. No. 30 of 1886 on the file of the Sub-Court, Cocanada, and under the decree in the appeal against it in the High Court, it has been found that I have no authority from my husband to adopt. I therefore write this letter to you earnestly requesting your permission for me to adopt the said boy. Please to consider and reply soon.

It may be that owing to her friendly relations with the respondent she expected a favourable reply, or, as counsel for the respondent suggested, that she had made up her mind to carry out the adoption in any case. She came down from her residence to Madras where Ramakrishna was living, a sick man at the time, and preparations for the ceremony were put in hand. On the 7th February, no reply having been received from the respondent, she wrote again giving her Madras address, and asking that the reply should be sent there. On the 11th, the respondent replied refusing his consent. The terms of his letter are important and their Lordships set them out in full :—

The letter written by you on 2nd February, 1914, reached me on 4th February, 1914.

I have come to know that you are not adopting with an honest purpose either for the spiritual salvation of your deceased husband or for the perpetuation of his line, but bearing spite against me for my not rendering pecuniary help to your brothers as requested by them and you, and with a view to put me to loss and for the selfish gain of all of you, you have intrigued with Rajah Rao Venkata Surya Mahipathi Ramakrishna Rao Bahadur Garu who has been my long-standing enemy and arranged to adopt his son.

(2) That you have resolved upon making the adoption with the motive mentioned in paragraph 1 *supra* and have not applied for my consent with an honest mind will be evident from the very fact that, instead of asking for permission to adopt a suitable boy, you wrote to me to say that you wanted to take in adoption the fourth son of Sri Rajah Rao Venkata Surya Mahipathi Ramakrishna Rao Bahadur Garu and were very desirous of having my consent for the same.

(3) Had you come to me and told me the necessity that has arisen for you to make an adoption and the reasons for adopting that boy, I would have been in a position to discuss with you about it in person and express my opinion to you.

(4) You, your brothers and Sri Rajah Rao Venkata Surya Mahipathi Ramakrishna Rao Bahadur Garu having joined hands in the manner set forth above in order to put me to loss, you and your brothers having made some arrangements for yourselves, as consideration for your agreeing to adopt his son, and you having given him some consideration for his according consent to you to make an adoption, and having thus decided upon the arrangements, you and your brothers went to Madras and being bent upon adopting that boy, you wrote to me the letter merely for the sake of formality and not with an honest desire to obtain my consent.

(5) In pursuance of the arrangement that was made by your late husband and my father, the late Sri Rajah Rao Venkata Mahipathi Gangadhara Rama Rao Bahadur Garu, you were precluded by your husband from making an adoption.

(6) The consent given by Sri Rajah Rao Venkata Surya Mahipathi Ramakrishna Rao Bahadur Garu, for his own gain, to your adopting his son is not valid.

(7) Further, I being the *aurasa* son, Sri Rajah Rao Venkata Surya Mahipathi Ramakrishna Rao Bahadur Garu, who is an adopted son, has no authority to give the consent. It is therefore not possible to give you consent as desired in your letter. Please to consider.

The respondent's refusal of consent was, as already stated, disregarded, and the adoption took place a week later.

In the meantime, however, negotiations had taken place between the first defendant and the first appellant which create the principal difficulty of the case. The first defendant had incurred debts amounting, it was said, to about 2 lakhs of rupees, which would not have been binding on the estate in the hands of the adopted son. They were no doubt to a large extent incurred in the interests of her brothers, but their Lordships are satisfied that there were debts for a considerable sum for which the lady was, or at all events considered herself to be, liable, and she was not unnaturally anxious about their payment. She accordingly sent an intermediary to Ramakrishna to arrange for this. He replied that his son was of age and it was for him to decide. When the matter was put before the first appellant he was evidently unwilling to undertake what might well prove to be an indefinite liability, and said that it would be better that she should take half the estate and discharge the debts herself. This was agreed to, and their Lordships have no doubt that the adoption was made on this understanding. The agreement was duly carried out by a deed executed by the first appellant the day after the ceremony, and by another contemporaneous deed he bound himself to pay maintenance to his adoptive mother at the rate of Rs.500 *per mensem*. The maintenance deed is not attacked, but the conveyance of half the estate to the lady is claimed by the respondent to be clear evidence of a corrupt bargain on her part, and Ramakrishna is charged with being a party to the "conspiracy".

Their Lordships are now in a position to deal *seriatim* with the contentions of the respondent enumerated above.

The first contention, that the first defendant never really sought the consent of the respondent at all, is, in their Lordships' opinion, without foundation. The lady was in a difficult position, as there were obviously very real doubts in the family as to the legitimacy of the respondent, and it was only if he was the *aurasa* son of the late Raja that his consent was necessary. She consulted a well-known Vakil, and he evidently advised that her only safe course was to make a formal application to the respondent for his consent, and her letter (quoted above) was drafted on his advice. Their Lordships have no hesitation in holding that it is a sufficient compliance with the requirements of the Madras law.

The second contention urged by the respondent, that his consent was rightly withheld, must also, their Lordships think, fail. The *sapindas* are to be regarded as a family council (*Velanki v. Venkata Rama*, 4 I.A. 1), the natural guardians of the widow, and the protectors of her interests (*Adusumilli Kristnayya v. Adusumilli Lakshmipathi*, 47 I.A. 99). In giving or withholding their consent it is their duty,

in this capacity, to form an honest and intelligent judgment on the advisability or otherwise of the proposed adoption in, and with reference to the widow's branch of the family. In their Lordships' opinion the reply of the respondent shows that he did not carry out this duty. Most of the reasons stated in the letter for his refusal are admittedly untenable, and have been abandoned. He now pins his faith to the suggestion that the real object of the widow was to secure a substantial portion of the estate for herself and her brothers, and it is said that this is sufficiently stated in paragraph (4) of his letter. Their Lordships do not so read the paragraph. The respondent knew nothing of the proposal for liquidation of the lady's debts, and made no enquiry from her about it. The whole letter is instinct with the idea of personal loss to himself, and his personal enmity to Ramakrishna, who is in effect charged with corruption. There is nothing in the paragraph referred to which suggests that the respondent considered that the terms attached to the adoption would be detrimental to the estate: it in effect only alleges that the first defendant was conspiring with her brothers and with Ramakrishna to bring in the son of his lifelong enemy and to deprive him of his right of succession to the estate. Their Lordships have no hesitation in holding that where a *sapinda* whose consent to an adoption is sought is actuated by motives such as these, his dissent may be disregarded, and they think it follows that if the only other *sapinda* in the same degree accords a *bona fide* consent, the adoption will be valid: see in this connection *Paraswara v. Rangaraja* I.L.R. 2. Madr. 202, and the remarks of Viscount Cave in the *Adusumilli* case cited above, at p. 102.

The third contention of the respondent is that Ramakrishna's consent was invalid. He was at first charged with having been bribed by the first defendant, but this allegation is now dropped. Then in the respondent's plaint he was said to have been in such a state of body and mind that he was incapable of consenting. This was clearly disproved at the trial, and has also been dropped. The next suggestion was that Ramakrishna being only an adopted son was not entitled to give assent. This again has been dropped. Then it was argued that the fact that he was giving his son disqualified him from assenting, but no authority could be found for this contention, and it also now disappears. Before the Board it is said that he was a party to the corrupt bargain by which half the estate was to go to the lady's family for the benefit of her designing brothers. Counsel for the respondent calls it a "conspiracy"—the suggestion being that Ramakrishna in order to get one-half of the estate for his son was a party to the agreement by which the other half should go to the lady. Their Lordships do not think that the evidence bears out this suggestion. The arrangement about debts was not before him when he gave his assent, and when asked about the debts, he merely

referred the matter to his son and left it to his decision. In their Lordships' opinion Ramakrishna's consent was given by him *bonâ fide* and was sufficient under the circumstances to validate the adoption.

The last objection urged by the respondent is based on the motives of the first defendant. She is said not to have made the adoption for the benefit of her husband or upon religious grounds, but merely in order to get hold of a substantial part of the property. Their Lordships doubt if, where the consent of the *sapindas* has been obtained, the motive of the adopting widow is relevant. They do not, however, consider it necessary to decide this question in the present case, as assuming it to be so, they think that there is no ground for imputing a corrupt motive to the lady. They have already stated that she was indebted in a considerable sum, and it was, they think, only natural that she should be anxious to have its payment secured. It is said that though in the case of a man unpaid debts are a burden in the after-life, the doctrine had no application to women. Whether this may be so or not on a strict reading of the ancient texts, their Lordships have little doubt that the ordinarily pious Hindu widow would not look upon the matter from this point of view. Indeed Kumaraswami Sastri J., who is well qualified to speak on such a matter, says that according to Hindu notions unpaid debts are regarded as sins as much in the case of a woman as in that of a man. It is, their Lordships think, clear on the evidence that the first defendant would have been satisfied if the first appellant had merely undertaken the responsibility of her debts, and that it was his choice to give her a half of the estate instead. Their Lordships agree with the learned Judge to whom they have just referred when he says "I do not think that a widow who makes an adoption and stipulates that the adopted son should pay her debts is doing anything corrupt or immoral."

It was also rather faintly suggested that the adoption of the enemy's son was planned to spite the respondent because he had refused a loan to the lady's brothers in which she had interested herself. Their Lordships do not consider it necessary to go into this suggestion at length. They think it sufficient to say that in their opinion it is not borne out by the evidence.

It only remains to deal briefly with the six judgments in which the validity of the adoption has been discussed. They disclose a remarkable divergence of opinion on almost every question involved.

The trial judge held that the application by the first defendant for the respondent's consent was not *bonâ fide*, and was prepared to disallow the adoption on this ground alone. In this he does not appear to be supported by any of the judgments in the High Court. He further thought

that the respondent's refusal was proper both on the ground that the adoption would introduce a "stranger" into the family, and that he was entitled to object to the first appellant as the son of a man who had consistently denied his legitimacy. Their Lordships are unable to understand how a son of Ramakrishna, the respondent's brother by Hindu law, could be regarded as a stranger to the family, nor can they agree that the fact that the first appellant refused to recognize the legitimacy of the respondent, was a valid reason for refusing to allow his adoption into the Gollaprolu branch.

Dealing with the question of Ramakrishna's consent, he was of opinion that there was no ground for impugning its *bonâ fides*: it was only insufficient by reason of the respondent's refusal. If this could be disregarded he had no doubt that the consent of Ramakrishna alone would be sufficient.

On the first appeal to the High Court, Krishnan J. and Venkata Subba Rao J. differed only as to the validity of the respondent's refusal. The former learned Judge thought that though the first defendant might well be credited with an intention to benefit her deceased husband's soul, as that is always a consideration for an adoption, her main object was undoubtedly to get her husband's property or as much of it as she could get, into her own hands absolutely. He was not prepared to hold that this of itself would entitle the Court to declare the adoption invalid, but he thought that it was a proper matter for the *sapindas* to consider, and that the respondent's refusal of assent was justified on this ground. He agreed with the trial judge that if the respondent's dissent was shown to be "unreasonable" it could be ignored, and that in that case Ramakrishna's consent would be sufficient.

Venkata Subba Rao J. held that the first defendant was not actuated by any corrupt motive. He thought that the arrangement by which she got half the estate for the payment of her debts played no part at all as an inducing factor in bringing about the adoption. He continued:—

I find it difficult to arrive at any other conclusion on the evidence on the record, which, as I have said, is practically all one way. But the contention of the Plaintiff's learned Vakil amounts to asking us to base our finding on speculative reasoning, rejecting the whole body of positive and direct testimony. He asks us to say that it is more probable that the widow's act was selfish and she was actuated by fraudulent motives. I fail to see why we should refuse to act upon the evidence in the case, and in the absence of compelling circumstances, assume without warrant, that the widow was actuated by improper motives.

On the question of the respondent's refusal of his consent the learned Judge came to the conclusion that he had "approached the question with a biassed mind and rendered himself incapable to be a proper judge of the transaction".

that " he was influenced by improper and selfish motives in refusing consent, and that the reasons on which he seeks to justify his refusal are utterly unsound ".

When the case came before the High Court again on the Letters Patent appeal, Kumaraswami Sastri J. agreed with Venkatta Subba Rao J. : and held the adoption to be valid. He came to the conclusion that there was no corrupt motive in the mind of the widow. He emphasised the sacramental view of adoption among Hindus, as to which he was well qualified to speak, and expressed the opinion that even if it was shown that the first defendant wanted to get a personal benefit for herself, the adoption could not be set aside on that ground. He said:—

Secular motives do come into play and influence persons in making adoption. Where an adoption is made by a widow both in fulfilment of her religious duties and also for the purpose of getting a gain for herself, it seems to me the proper thing is to hold that the adoption would be valid while any arrangement for her personal benefit, if not within the limits actually allowed by law, would be void. No case has been cited where in such cases the adoption has been set aside ; but the Court always confined itself to declaring the arrangement limiting the adopted son's rights voidable at his instance.

Their Lordships do not find it necessary to decide this important question in the present case, but they think that this dictum of the learned Judge may require serious consideration on some future occasion.

He also held that the respondent's refusal to consent to the adoption was " influenced by purely personal motives ", and was not justified.

His learned colleagues, Odgers J. and Jackson J. took the opposite view. Neither of them seem to have taken much account of the religious aspect of adoption in the eyes of a Hindu widow, and they both held that the *sole* motive of the first defendant was a mercenary one. Odgers J. thought that this was sufficient in itself to invalidate the adoption, but he went on to consider the grounds of the respondent's refusal and held that it was justified. He was " unable to say on the best consideration he could give to the terms of the respondent's letter that he had refused his consent from dishonest or improper motives or without a fair exercise of discretion ". Jackson J. came to the same conclusion as to the respondent's letter of refusal and thought that it was justified by the bargain between the first defendant and the first appellant. He also found that Ramakrishna colluded with the first defendant and one of her brothers, who had been a witness in the case, " in order to alienate half the estate in the [respondent's] despite," but the reason he gives for this finding is not, their Lordships think, very convincing.

In the result their Lordships are of opinion that the appeal should be allowed; and that the respondent's suit should be dismissed. On the question of costs they think

that the defence based on the legitimacy issues, though these have failed, was not under the circumstances unreasonable, and the appellants were entitled to the decision of the Court upon them. They do not think, however, that an appeal to His Majesty in Council was justified on this part of the case, and that this must be recognized in dealing with the costs.

Their Lordships will therefore humbly advise His Majesty that the appeal should be allowed, and the respondent's suit dismissed with half the costs incurred in the Indian Courts, and that the appellants should have half their costs before this Board.

In the Privy Council.

SRI RAJAH RAVU SRI KRISHNAYYA
RAO *alias* SRI RAJAH RAVU VENKATA
KUMARA MAHIPATHI KRISHNA SURYA
RAO BAHADUR GARU AND ANOTHER

v.

RAJAH SAHEB MEHERBAN-I-DOSTAN
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MAHIPATHI SURYA RAO BAHADUR
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DELIVERED BY SIR GEORGE LOWENDES.

Printed by His Majesty's Stationery Office Press,
Pocock Street, S.E.1.

1935