

Privy Council Appeal No. 25 of 1917.

Gannabhattula Venkamma - - - - - *Appellant*

v.

Gannabhattula Venkataratnamma and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 11TH FEBRUARY, 1919.

Present at the Hearing :

VISCOUNT HALDANE.

LORD PHILLIMORE.

MR. AMEER ALI.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the High Court of Judicature at Madras which reversed a judgment of the Additional Subordinate Judge of Masulipatam at Ellore. The question on which the appeal turns is whether one Venkataramayya, the deceased husband of the first respondent, was adopted, as she contends, by one Pedaswami, the husband of the appellant. If so, then Venkataramayya succeeded, on his adopted father's death in 1902, to his land and other property, and this will have now passed to the respondent. The appellant is in possession.

The case is one in which there is much conflict of testimony, and it will be convenient to begin by stating such facts as are not in dispute. Pedaswami and his wife, the appellant, had no issue for some years after their marriage. The wife had a sister who died before the time next referred to, leaving a son of about two years old—Venkataramayya, whose adoption is in

question. About 1888 Pedaswami and his wife, the appellant, invited the boy's father, Subbaya, to bring him to live with them in their house at the village of Bheemararam. This Subbaya did, and Pedaswami and his wife appear to have conceived much regard for the boy. Sometime about 1894 Pedaswami, who was then about thirty-five, and the appellant who was twenty-four or twenty-five, appear to have thought of adopting this boy. Pedaswami had a good deal of land under cultivation, in which Subbaya assisted him, and he also dealt in money. He established a small pial or out-of-doors school at his own residence, apparently to provide for the boy's education. On 26th March, 1894, Pedaswami presented a petition to the Collector, an extract from which appears in the petition register for that year, stating that, as he had no male issue, he was going to adopt Subbaya's son, Venkataramayya, and that in case he should beget sons in future they, as well as the adopted boy, should be equally entitled to his property. To this petition the answer was returned that he would have to execute documents, etc., in writing, in accordance with the Shastras. At a date subsequent to this petition the appellant bore a daughter to Pedaswami. Whether he was actually adopted or not Venkataramayya was brought up and educated at the expense of Pedaswami. The latter died, as already stated, in 1902, and Venkataramayya remained living in family with the appellant, who later on got him married to the first respondent at the expense of the estate.

Was Venkataramayya legally adopted? There are undoubtedly documents which have been put in evidence and in which the appellant widow Venkanma refers to him as the adopted son. Of these documents, some relate to the payment of rents, and there are petitions and other formal documents put forward in her name in which she recognises him as Pedaswami's son. As to these the appellant denies their authenticity, and says that they have been concocted. But both Courts held that they were really her acts, differing only about the reasons for which she committed herself to them. The High Court holds that she unquestionably shows by them that she treated Venkataramayya as an adopted son. The Subordinate Judge, on the other hand, took the view that the appellant really did mean to treat him as if he had been a legally adopted son, and not merely brought up by her late husband with the idea of ultimately adopting him. The Judge thought that the widow had probably remained in this mind until Venkataramayya's death, and that when he died leaving no son to inherit but only a young widow, she then changed her mind and declared, what was true, that in reality there had been no adoption, and to give plausibility to the fact had denied the authenticity of documents which had been prepared for her on the other footing.

There is another document which came into existence during Pedaswami's lifetime. It is an extract from the *Fort George Gazette* containing a list of candidates who had obtained certificates of qualification for the public service by reason of their having

passed the primary examination. In the list occurs the name of Venkataramayya, described as having the surname of Gannabhattula (that of Pedaswami's family), and as having Pedaswami as his father or guardian. The entry was prepared by a schoolmaster, who was cited as a witness for the respondent, and was actually in Court during the trial, but was not called. The Subordinate Judge comments on this circumstance, and infers that the first respondent's advisers were not sure of him as a witness, but feared that, even if he was prepared to say that he believed in the truth of the entry, he might add that his knowledge was based merely on the circumstances in which he observed the boy being brought up in Pedaswami's house. With this comment their Lordships agree, and they attach little weight to the document, even if it be admissible in evidence.

It does not appear that there were any documents executed by Pedaswami in accordance with the Shastras or otherwise, as advised by the Collector in 1894, and the question of adoption in reality turns almost entirely on the testimony of the witnesses called.

If the ceremony took place no record was kept of it, and no books showing an account of the expenses incurred have been produced. Having regard to the advice given by the Collector, it is probable that Pedaswami would have consulted a *purohit* or priest acquainted with the Shastras to perform, or at least to advise about, the ceremony. Now Pedaswami had such a *purohit*, who had as a partner a younger brother. The elder brother was a Shastri. The younger brother was not. The younger brother was called for the young widow, and the elder brother, the Shastri, for the appellant. The younger brother declared that Venkataramayya was adopted and that he himself officiated at the ceremony. He also said that the adopted boy performed the obsequies of Pedaswami. He was cross-examined, and the Subordinate Judge, who saw him in the box, disbelieved his evidence. On the other hand, he believed that given for the appellant by the elder brother. This witness declared that it was he, and not his younger brother, who would officiate as *purohit* in any adoption by Pedaswami, and that no such adoption ever took place, for he himself would have officiated and would have known of it. He stated that the obsequies of Pedaswami were performed by Chinaswami, Pedaswami's brother and reversionary heir in the event of his having left no son. Chinaswami had not been called, but he was in Court when this witness was giving his evidence. The learned Judge, seeing him there, asked him whether it was true as stated that he had performed the obsequies (which could only have been allowable if Venkataramayya was not the adopted son) and he answered that he did. No attempt was made by those appearing for the young widow to challenge his statement, or to have him ordered into the witness box for cross-examination, a circumstance to which the learned Judge legitimately drew attention. The *purohit* also stated that when Venkataramayya died his obsequies were per-

formed by his natural father, Subbaya. Upon these crucial facts their Lordships think that the preponderance of evidence is clear. The natural father of Venkataramayya belonged to the Kopparti family, and near blood relations were called from that family, who stated that the boy was never adopted out of it, and also that they observed pollution on his death. On the other hand a cousin of Pedaswami, who like him belonged to the Gannabhattula family, was called, who stated that he did not observe pollution on Venkataramayya's death, that the latter was not adopted, and that his obsequies were performed by Subbaya. The learned Judge cites his evidence, but says of it, taken by itself, that he would not look on it as very satisfactory. There was, however, yet another witness called for the appellant from the Kolli family, whose duty it was to present cloths to the members of Pedaswami's family on ceremonial occasions, and he states that Venkataramayya was never adopted, and that Chinaswami performed Pedeswami's obsequies. This evidence is confirmed by another member of the Gannabhattula family, and by other witnesses called for the appellant.

As against this, there appeared in the box for the young widow, nine witnesses, whose testimony the Trial Judge heard in the cases of all but the first four of them. He thought them unreliable. The sixth of these witnesses was the younger priest, the brother of the Shastri, but himself neither a Shastri nor a person of substance, or literate. The Trial Judge concluded unhesitatingly that the obsequies of Pedaswami were performed by Chinaswami, and not by Venkataramayya, and that those of the latter were performed by his natural father Subbaya. He further came to the conclusion that the testimony of the witnesses called for the young widow as to the adoption of Venkataramayya was untrue, and he arrived at this conclusion after a criticism of it in detail which their Lordships consider to have been in the main justifiable throughout.

The judgment of the High Court on appeal overruling the conclusion of the Trial Judge was based chiefly on the documents. As to these, although they are undoubtedly such as to throw on the appellant the burden of disproving the adoption they refer to, their Lordships think that they are by no means conclusive of the statements in them, and that they leave room for the explanation which the trial Judge gave of them after he had examined the whole of the evidence. So far as concerns the comments of the learned Judges of the High Court, on the evidence of the first and ninth witnesses for the young widow, their Lordships make the following observations. The village Munsif of Bheemavaram was called, and he stated that Venkataramayya performed Pedaswami's obsequies, and that the obsequies of the former were performed by Chinaswami. For reasons already indicated, their Lordships consider that it is established by a body of evidence which must be taken to be preponderant that these ceremonies were performed by Chinaswami in the case of Pedaswami, and by the natural father, Subbaya, in the case of

Venkataramayya. As to the ninth witness for the young widow, the vakil from Ellore, who said that Pedaswami told him in November or December 1898, that he had adopted a boy, this witness could not remember the exact words used, and admitted that the expression might have been one importing the mere fact of bringing up.

The only other point to which reference need be made is the date at which signs became apparent of the pregnancy of the appellant with the daughter, who was born to her subsequently to the period in 1904, fixed as that of the adoption. Subsequently to the decision of the High Court this daughter applied to be withdrawn from this appeal to the Privy Council. She put in an affidavit to the effect that she had become of age, and did not desire to join in the appeal. She stated the date of her majority as the 26th November, 1913, which would make that of her birth, 26th November, 1895. Their Lordships doubt much whether this affidavit is admissible at all for the purposes of the hearing of the present appeal, but even if admitted, the statement in it is of little weight, inasmuch as it has not been tested by any cross-examination. The advice given to Pedaswami on his petition to the Collector was dated as of 3rd April, 1894. He may have delayed acting on it, in order to see whether he might not still have a natural son. He was at that time only about thirty-five, and his wife was only about twenty-four. Even if he waited until signs of her pregnancy appeared, and did not definitely change his mind until then, he would only have to have waited for about a year. But the evidence as to the birth of the daughter having occurred so late is too unreliable to make the weighing of probabilities on this necessarily uncertain subject one which, under the circumstances, any Court of Justice can profitably undertake.

Their Lordships have for the reasons now indicated arrived at the conclusion that the High Court at Madras was wrong in reversing the judgment of the Subordinate Judge, and that the suit ought to stand dismissed. The appellant is entitled to her costs here and in the Courts below. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

GANNABHATTULA VENKAMMA

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GANNABHATTULA VENKATARATNAMMA
AND OTHERS.

DELIVERED BY VISCOUNT HALDANE.

Printed by Harrison & Sons, St. Martin's Lane, W.C.
1919.