Privy Council Appeal No. 62 *of* 1923.

Kondapalli Vijayaratnam and another - - - - *Appellants*

v.

Mandapaka Sudarsana Rao 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 JUNE, 1925.

Present at the Hearing:

LORD SUMNER.
SIR JOHN EDGE.
LORD SALVESEN.

[*Delivered by* LORD SALVESEN.]

The circumstances out of which this suit has arisen, so far as they are material to the judgment, may be very shortly stated.

One Mandapaka Appanna a Sudra in the Ganjam district, who was possessed of a considerable amount of property, died in 1906 leaving a widow and two daughters, the latter being the plaintiffs in the action. When on his death-bed and within an hour or two of his actual death he executed a document, which purported to be a disposition of his property and at the same time conferred a power of adoption on his widow. This document was registered as a will at the instance of a legatee. It was challenged by the plaintiffs (who are still in minority) on the ground among others (1) that it was not genuine and (2) assuming that the signature which it bore to be that of the deceased, that he was incapable at the time of understanding its contents owing to the illness from which he shortly afterwards died.

Both Courts have decided, although with much hesitation, that the will was genuine and on the question whether the deceased was in a fit condition to dispose of his property, the Subordinate

Judge held that he was, and the High Court of Judicature at Madras may be presumed to have endorsed his judgment, although they have not expressly dealt with this matter in their reasons. Whether it is competent in these circumstances for their Lordships' Board to entertain an appeal from what may be represented as concurrent judgments on questions of fact it is unnecessary to consider, for a point of law remains, the decision of which in their Lordships' view is sufficient for the disposal of the appeal.

At the time of his death Mandapaka Appanna was admittedly only 19 years of age and was under guardianship. Act No. 9 of 1875 provides, section 2, that nothing therein contained should affect the capacity of any person to act in the following matters, namely :—Marriage, Dower, Divorce, Adoption.

Section 3 provides as follows :—

> " Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any Court of Justice, and every minor under the jurisdiction of any Court of Wards, shall, notwithstanding anything contained in the Indian Succession Act (No. X of 1865) or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before :
>
> " Subject as aforesaid, every other person domiciled in British India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before."

It follows, therefore, and indeed is matter of admission, that the document which purported to be a will of Mandapaka Appanna could have no legal effect as such. On the other hand, as Mandapaka Appanna was over 18 years of age an authority to adopt, whether oral or in writing, was within his legal capacity.

A power to adopt may be embodied in a will and if the document now under consideration can be treated as such the judgment under appeal cannot be impugned. " Will " is defined by Act 10, 1865, as :—

> " The legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death,"

and by section 3 of Act 10 of 1897 :—

> " Will shall include a codicil and every writing making a voluntary posthumous disposition of property."

The learned Judges in the Court below have held that the document in question satisfied these definitions. If the form of the document only is considered no doubt that would be so, but, having regard to the fact that it was executed by a person who was a minor and incapable of making a will, their Lordships are unable to agree with the decision. The so-called will is not a " legal declaration of the intentions of the testator," for it had no legal effect and was not capable of disposing of any of the estates of the deceased. So far as it purported to deal with his property it was a nullity. That a document is called a will although it does not operate to any effect as such will not give it the effect of a will

for any other purposes. This was so held in the case of *Jagannatha Bheema Deo* v. *Kunja Behari Deo*, 48 I.A., p. 482, a case which was not before the learned Judges of the High Court as it was not decided till after their judgment had been pronounced.

It does not follow, however, as the learned Subordinate Judge held that "a person who is incapable of making a will is incapable of conferring an authority to adopt by a will though he may be capable of giving an authority to adopt to be exercised after his death." Their Lordships see no reason to doubt that a document which purported to be a will but was inoperative as such might nevertheless constitute a valid authority to adopt. Here, however, the respondents are met with a different objection. Act No. 3 of 1877 provides, Section 40 :—

> "the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any registrar or sub-registrar for registration."

and Section 41 provides that an authority to adopt shall be registered in the case of the death of the donor on the registry officer being satisfied

(*a*) that the authority was executed by the donor
(*b*) that the donor is dead, and
(*c*) that the person presenting the authority is, under Section 40 entitled to present the same.

In the present case it is not alleged that the donee, who, at the time of the registration of the document as a will was the only one who could present it for registration, either did so herself or gave authority for the registration. Act III of 1877, Part 3, Section 17, enacts that all authorities to adopt a son executed after the 1st January, 1872, shall be registered, and by Section 23, that no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. As the widow, who was the donee of the authority, failed to register it within this period of four months, the deed which was afterwards executed by her on 24th December, 1913, adopting defendant No. 1, cannot receive effect. This indeed was not contested by the respondent's counsel.

Their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed and that the plaintiffs are entitled to a declaration, that the will dated the 1st October, 1906, alleged to have been executed by the late Mandapaka Appanna is void, and also to a declaration in terms of the 2nd, 3rd, and 4th heads of their prayer with costs of the suit both in the Courts below and before this Board.

In the Privy Council.

KONDAPALLI VIJAYARATNAM AND ANOTHER

v.

MANDAPAKA SUDARSANA RAO AND OTHERS.

DELIVERED BY LORD SALVESEN.

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

1925.