

Privy Council Appeal No. 16 of 1932.

Srinivasan - - - - - *Appellant*

v.

Krishna Ayyar, since deceased, 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 16TH JANUARY, 1936.

Present at the Hearing :

LORD MACMILLAN.

SIR JOHN WALLIS.

SIR GEORGE LOWNDES.

[*Delivered by LORD MACMILLAN*]

In this appeal their Lordships have to consider the question of the genuineness of a deed which purports to have been executed by the late Sethu Ayyar on 9th November, 1915, authorising his wife Nagammal to adopt a son.

Sethu Ayyar died on 28th November, 1915, and the deed was presented by his widow for registration on 13th December, 1915. Registration was opposed by the deceased's brothers on the ground that the deed was a forgery, but the sub-registrar on 22nd December, 1916, found that the deed had been executed by the deceased and that his widow was entitled to have it registered. The widow thereafter adopted the appellant who was then six years of age.

In February, 1917, the surviving brothers of Sethu Ayyar and other members of the family instituted the present suit against the widow Nagammal and the adopted son Srinivasan, the present appellant, claiming a declaration that the deed of authority to adopt was not genuine. The Additional Subordinate Judge of Tanjore on 31st January, 1928, decided that the impugned deed was genuine and dismissed the suit. On 3rd September, 1929, the High Court of Judicature at Madras (Ramesam and Jackson, JJ.) on appeal reversed this decision and declared that the deed was not genuine.

The judgments below are largely occupied with the discussion of questions of credibility and probability to which the evidence gives rise but their Lordships find it unnecessary to enter upon those topics for in their opinion it is possible to dispose satisfactorily of the case on a single and separate point, which they now proceed to state.

The original deed has been produced to their Lordships. As already mentioned it purports to have been executed by Sethu Ayyar on 9th November, 1915. It is written on paper bearing a ten rupee stamp and is endorsed in the handwriting of the stamp vendor—" No. 2,434. Ten Rupees. Nagammal, Mannargudi 5 November 1915. T. Raghava, Nayudu, B. S. V. Mannargudi." Immediately to the right of this endorsement there appears on the document the seal of the Deputy Collector, Tanjore, resembling a postmark in size and appearance. The impression is imperfect but the date " Nov. 1915 " is clearly legible. The day of November is not imprinted owing to defective stamping but there is an indication of the figure 7 and the date was probably " 17 Nov. 1915." It is enough for the present purpose that the stamped paper on which the impugned deed is written indubitably bears to have been sealed in the Deputy Collector's office at Tanjore in November, 1915.

The stamp vendor stated that he got his supplies of stamped paper from the sub-treasury at Mannargudi. The Huzur Treasurer in the Tanjore District Treasury explained that in ordinary course he received monthly indents from the Tahsildars of the Mannargudi and other sub-treasuries for the supplies which they required and these were obtained by him in turn by indents on the Superintendent of Stamps at Madras. The indents for stamps submitted by the Tahsildar of Mannargudi to the Tanjore Treasury Office in October and November, 1915, are both in evidence. The former is dated 9th October, 1915, and shows that *inter alia* 10 ten rupee stamps were on that date indented for by the Mannargudi taluk and were subsequently dispatched from Tanjore on 20th October, and acknowledged by the Mannargudi tahsildar on 25th October; the latter is dated 9th November, 1915, and shows that *inter alia* 20 ten rupee stamps were on that date indented for by the Mannargudi taluk and were subsequently dispatched from Tanjore on 20th November, and acknowledged by the Mannargudi tahsildar on 24th November. No other indents were made by Mannargudi on Tanjore in these two months. It follows that no ten rupee stamp sealed in the Tanjore office in November can have been in the hands of the stamp vendor at Mannargudi on 5th November or can have been used for a deed executed on 9th November.

Further, the stamp vendor produced his daily account book of stamps received and sold by him. He stated specifically, on reference to his entries, that the last occasion in October, 1915, on which he received stamps from the Mannargudi sub-treasury was on the 25th of that month and that thereafter he did not receive any further supply until the 11th of November. It is thus impossible that he could have sold on 5th November a stamp which was sealed in the Tanjore office in November, 1915, for no stamps were issued from Tanjore to Mannargudi in November until the 20th of that month.

How can this discrepancy be explained consistently with the genuineness of the deed? In one of two ways only. The first possible explanation is that the stamped paper in question when issued by the Tanjore office to the Mannargudi sub-treasury and by the latter to the stamp vendor bore no date-seal of the Tanjore office and that the date-seal was somehow subsequently impressed on the stamped paper after it had been sold by the stamp vendor to Nagammal and used for the deed. It appears that among the large number of stamps issued from the Tanjore office an occasional one may be issued without any date-seal. The practice in such a case is to return the unsealed stamp and obtain a sealed one in exchange. The documents relating to an instance of such an omission are in evidence. But the stamp in question, if it be assumed that it bore no date-seal when issued, was not sent back to Tanjore. The stamp vendor stated that if he had noticed that there was no date-seal on the stamp when he sold it he would have sent it back, but he says that he did not examine the stamp paper to see if it bore a date-seal; if it was absent he could hardly have failed to notice the fact. If the hypothesis be accepted that the stamped paper when sold and used bore no Tanjore date-seal, how does it come now to bear a date-seal? Of this no explanation is offered and none is possible which does not involve what the Subordinate Judge characterises as a "huge fraud" requiring the co-operation of more than one responsible Government servant. The Subordinate Judge rejects the theory that the stamped paper when sold and used bore no Tanjore date-seal and their Lordships think that he was right in doing so.

The only other possible theory consistent with innocence is that by a mistake in the Tanjore office the stamped paper was sealed with a November date-seal although issued in October or earlier. The Subordinate Judge accepts this explanation as being "more probable". The process of sealing stamped paper in the office at Tanjore, is described in evidence by the Huzur Treasurer. The seal used is so constructed that moveable types indicating the day, month and year can be inserted in the die and altered as required. After every four or five thousand impressions the types are cleaned and reset. The Subordinate Judge comes to the conclusion that "the treasury seal giving November must be a mistake due to carelessness or ignorance on the part of the menial entrusted with the task of setting the types for the seals."

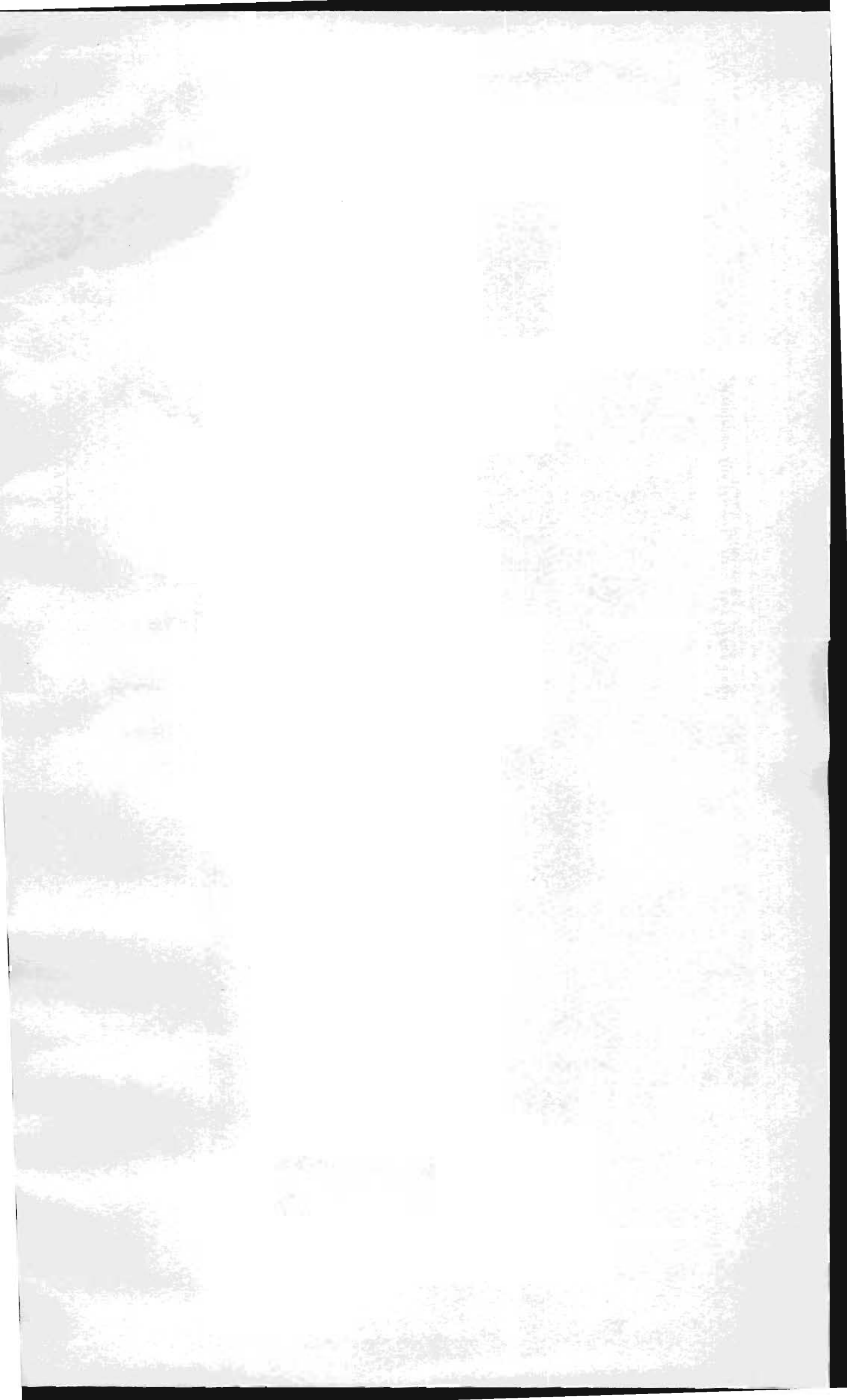
Their Lordships agree with the learned Judges of the High Court that this explanation cannot be accepted. The Subordinate Judge does not do justice to the precautions taken in the Tanjore office. These are described in detail by the Huzur Treasurer. While it is true that the moveable date-types are inserted in the die by peons, this is done in the presence of the Treasurer and a sample impression is

taken to see that the date is correct. If by a mistake the peon inserted "Nov." in the die when he should have inserted "Oct." or some earlier month then, if the error was not at the time detected, a large number of stamped papers with this wrong date must presumably have been issued and the mistake must almost inevitably have been subsequently discovered and brought to the notice of the office. But there is no evidence of any other wrongly dated stamp having been found or reported. On the other hand, if the error had been detected at the time of sealing, the wrongly dated stamps would not have been issued.

Their Lordships are of opinion that the appellant has offered no explanation which they can accept of the discrepancy between the alleged date of sale of the stamped paper and the alleged date of execution of the deed on the one hand and the date of the Tanjore office seal on the other hand. Their Lordships accept the accuracy of the date seal and, that being so, the document cannot be genuine.

It is not necessary to embark on conjectures as to how the fabrication was effected. The stamp vendor no doubt swears that he sold the stamp in question to Nagammal on 5th November, 1915, His day book shows the sale of a ten rupee stamp on the 5th of November, 1915, and the serial number "2434" endorsed on the stamp in question apparently corresponds with such a sale. He states that the chitta which he kept, a sample page of which is exhibited, would also record the sale of the stamp and its serial number and that it was sold to Nagammal, but the chitta for 1915 is not available, having been sent in to the taluk office where it would in ordinary course be destroyed. This evidence convinced the Subordinate Judge, but in their Lordships' opinion it does not countervail the inevitable inference to be drawn from the date of the Tanjore office seal which the stamp vendor was quite unable to displace. If the parties intended to commit a fraud, their ingenuity would be equal to the task of overcoming the difficulties presented by the stamp vendor's records.

Their Lordships will humbly advise His Majesty that the appeal be dismissed and the decree of the High Court of 3rd September, 1929, be affirmed. The respondents will have their costs of the present appeal.



In the Privy Council

SRINIVASAN

2.

KRISHNA AYYAR, SINCE DECEASED,
AND OTHERS

DELIVERED BY LORD MACMILLAN

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