

A

VOLETI VENKATARAMA RAO

v.

KESAPRAGADA BHASKARA RAO & ORS.

April 15, 1969

B

[S. M. SIKRI, R. S. BACHAWAT AND V. RAMASWAMI, JJ.]

Hindu law—Adoption—Challenge to adoption after a long lapse of years—Presumption as to validity.

C

One B, a Brahmin Karnam, executed a will in 1903 authorising his widow to adopt. After his death, the widow adopted R in 1904. The first respondent was R's adopted son. R died in 1950, and his adoptive mother died in 1952. During his lifetime, R was recognised by every member of the family as the adopted son of B, and he was registered as the Karnam and he acted as the Karnam till his death. In 1953, the appellant, claiming to be the nearest heir of B filed a suit for recovery of possession of B's property contending that R's adoption was invalid, because, the adoptive mother had not attained the age of discretion at the time of the adoption and was therefore not competent to make the adoption. The suit was dismissed.

D

In appeal to this Court,

HELD : Where there is a lapse of several years between the adoption and its being questioned, the burden rests heavily upon him who challenges it, and every allowance for the absence of evidence to prove it must be favourably entertained. [303 D-E]

E

In the present case, having regard to the long lapse of time, the recognition of R as the adopted son of B, and the fact that those who could have given evidence in favour of the adoption had passed away, a strong presumption in favour of the validity of adoption should be drawn. The appellant made no attempt to produce the certified copy of the register of births which would have shown the exact age of the mother and thus failed to rebut the presumption. [303 C-D; F]

F

Venkataseetarama Chandra Row v. Kanchu Marthi Raju A.I.R. 1925 P.C. 201 applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 757 of 1963.

Appeal by special leave from the judgment and decree dated November 29, 1960 of the Andhra Pradesh High Court in Appeal No. 261 of 1956.

G

M. C. Chagla, R. Thiagarajan and T. Satyanarayana, for the appellant.

Suryanarayanamurthy and K. Jayaram, for respondents Nos. 1, 4 to 6, 9 to 11, 13, 17, 25, 26, 29, 39, 42, 45, 47, 55 to 57, 59, 63 and 64.

H

The Judgment of the Court was delivered by

Bachawat, J. This dispute relates to the succession to the immoveable properties of late Bhaskara Rao, a Brahmin karnam,

who died on November 29, 1903 without issue, but leaving a widow. The suit was instituted on April 15, 1953 by the appellant claiming to be the nearest heir of Bhaskara Rao for recovery of possession of the properties. The case of the contesting defendants is that Bhaskara Rao executed a will on November 29, 1903 authorising his widow Seshamma to adopt a son, that pursuant to such authority she adopted Rajeswararao in or about May 1904 that Rajeswararao died in 1950 and that the first defendant is his adopted son. The courts below concurrently found in favour of the defendants on all the points. They held that (1) Bhaskara Rao duly executed the will dated November 29, 1903; (2) his widow Seshamma in fact adopted Rajeswararao in or about May 1904 and the requisite ceremonies of adoption were performed. These findings of fact are no longer challenged.

The trial court held that at the time of adoption Seshamma was about 14 years of age. The High Court held that having regard to the lapse of time there was a strong presumption that Seshamma had attained the usual age of discretion at the time of the adoption, that the presumption had not been rebutted and that the adoption was valid.

Mr. M. C. Chagla argued that in May 1904 Seshamma had not attained the age of discretion and was not competent to make the adoption. He relied on the following passage in *Mulla's Principles of Hindu Law*, 13th ed. art. 465, page 491 :—

"A minor widow may adopt in the same circumstances as an adult widow, provided she has attained the age of discretion and is able to form an independent judgment in selecting the boy to be adopted. According to Bengal writers the age of discretion is reached at the beginning of the sixteenth year; according to Benaras writers, at the end of the sixteenth year. The former view was taken in a recent Madras case."

Now there is no clear evidence on the question of Seshamma's age in May 1904. The plaint said that she was then 10 years of age. One of the written statements said that she was about 15 years old. Exhibit A-2 an extract from the register of deaths suggests that she was then aged about 14 years. In Ex. A-7 dated March 25, 1907, Ex. B-5 dated May 2, 1907, Ex. B-110 dated April 25, 1909, Ex. B-7, dated November 1, 1911, Ex. B-22 dated November 15, 1911, Exs. A-11 and A-12 dated November 17, 1911, she was described as a minor. But Ex. B-138 dated August 9, 1910 described her as a major. The evidence of DW 2 suggests that she was about 15 years old at the time of adoption. The evidence of DW 3 fixes her age at about 17 years in or about 1903. Evidence was adduced to show that she married in 1898

- A when she was 11 or 12 years old. The appellant made no attempt to produce the certified copy of the register of births which would have shown her exact age. The adoption was made in May 1904. It was challenged in 1953 after a lapse of about 50 years. The long delay in filing the suit is not satisfactorily explained. A declaratory suit challenging the adoption could have been filed soon after the adoption. Rajeswara Rao died in 1950, Seshamma died on October 2, 1952. During his life time Rajeswararao was recognised by every member of the family as the adopted son of Bhaskara Rao. He was registered as karnam and acted as such till his death. Under Ex. B-12 dated November 19, 1937 the plaintiff's mother Kamappa purchased a property from Rajeswara Rao wherein he was described as the adopted son of Bhaskara Rao. Having regard to the long lapse of time and the recognition of Rajeswararao as the adopted son of Bhaskara Rao, the strongest presumption arises in favour of the validity of the adoption. The law on this point is correctly stated in Mulla's Hindu Law, 13th ed., art. 512, page 519:—
- D “But when there is a lapse of 55 years between the adoption and its being questioned, every allowance for the absence of evidence to prove such fact must be favourably entertained. It stands to reason that after a very long term of years, and a variety of transactions of open life and conduct upon the footing that the adoption was a valid act, the burden must rest heavily upon him who challenges its validity,” See also *Venkataseetarama Chandra Row v. Kanchu Marthi Raju*⁽¹⁾.
- E

- The presumption in this case is very heavy considering that all the parties to the adoption and all those who could have given evidence in favour of its validity have passed away. The appellant has not rebutted this presumption and has not shown that Sashamma did not attain the age of discretion in May 1904 and was not competent to make the adoption. The courts below rightly found in favour of the factum and validity of the adoption. There is no merit in this appeal.
- F

The appeal is dismissed with costs.

V.P.S.

Appeal dismissed.

(1) A.I.R. 1925 P.C. 201, 202.