

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramalinga Pillai v. Sudasiva Pillai, from the Court of Sudder Dewanny Adawlut of Madras: delivered 4th February, 1864.*

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Present:

LORD CHELMSFORD.

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

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SIR LAWRENCE PEEL.

SIR JAMES W. COLVILE.

THIS is an Appeal from a Decree of the Sudder Court of Madras, affirming a Decree of the Civil Court of Cuddalore, by which the Respondent was declared to be entitled, as the adopted son of Shanmooga Pillai, to a moiety of certain family property both real and personal. The only question argued before us has been whether there was a valid adoption of the Respondent. The Counsel for the Appellant not only questioned the fact of the adoption, but also contended that no legal adoption could have taken place, as at the time it is alleged to have occurred, Shanmooga Pillai was under pollution in consequence of the recent death of a relative, Sinivassa Pillai. And they also alleged that the adoption was illegal, as the Respondent was the adopter's sister's son,—but upon this latter objection very little was said. Upon the fact of adoption it appears from the evidence that Shanmooga Pillai having been attacked with cholera at Neyvasal, where he had gone a few days previously, the parents of the Respondent, hearing of the illness, took the Respondent, then an infant of a year and a half old, to Neyvasal, where on the day previous to the death of Shanmooga Pillai, certain

ceremonies were proved to have taken place which were sufficient to constitute an actual adoption. Several witnesses, whose testimony is not directly impeached, deposed to these facts, but it was urged in argument that many other persons were present on the occasion who ought to have been produced on the part of the Respondent. Where, however, there is sufficient evidence of a fact, it is no objection to the proof of it that more evidence might have been adduced. There is not only no impeachment of the credit of the witnesses who speak to the fact of the adoption, but the circumstances under which they allege it to have taken place are highly probable. It appears that there had been some promise made by the parents of the Respondent that they would give their son to Shanmooga Pillai for adoption, and nothing is more natural than that hearing of the illness of Shanmooga Pillai, they should have taken the infant to him in order to secure the adoption which had been previously proposed. There can be no fair ground, therefore, for discrediting the witnesses who prove the actual adoption.

But the Appellant's Counsel contended that assuming the fact of an adoption of the Respondent, it could have no validity on account of his being the son of a sister of Shanmooga Pillai, and also because Shanmooga Pillai was under pollution in consequence of the death of his relative Sinivassa Pillai. It appears that the period of pollution, according to Hindu law and custom, is sixteen days, and proof was given that the death of Sinivassa Pillai took place a month before the act of adoption of the Respondent. The Appellant, on the other hand, proved by several witnesses that Sinivassa Pillai died only six or seven days before Shanmooga Pillai, and he produced to the same effect a copy of a leaf from a book kept by the Brahmans for recording the time of the deaths of persons for whom annual ceremonies were to be performed. There was thus a conflict of evidence as to the time of Sinivassa Pillai's death, and it was for the Courts below to determine upon which set of witnesses they could best rely. There are, however, certain documents produced in evidence, which, if genuine, would appear to leave little doubt upon which side the balance ought to incline.

These consisted of three depositions made by the Appellant's father upon the occasion of his becoming surety for persons appointed to the office of Sheristadar, in all of which, in answer to inquiries directed to ascertain the value and other particulars relating to the lands offered as security, he stated that "the Respondent was the adopted son of the deceased Shanmooga Pillai, and that there were no other coparceners." The Appellant's father, however, upon being called as a witness by the Plaintiff (the Respondent), and these documents being shown to him, swore that the signatures to them were not his, and upon looking into the depositions themselves, said as to each, that "as the deposition stated about adoption, it was not made by him." The learned Counsel for the Appellant disputed the genuineness of the documents on another ground. In the course of the proceedings in the Courts in India, alleged copies of these documents were put in evidence, which, though substantially agreeing with the supposed originals, yet varied in certain particulars as to the signatures and as to the names and number of the witnesses.

It should be observed that these discrepancies between the copies and the originals, which at present are inexplicable, were not pointed out to the Courts in India, where possibly a satisfactory explanation might have been given of them. It is difficult to understand, however, what bearing these variations in alleged copies can have upon the genuineness of the original documents, nor is it easy to discover when and how and by whom the alleged fraud upon the originals could have been committed. In the opinion of the Judge of the Civil Court the documents bear no traces of having been tampered with or fabricated, and the Appellant's father swears that they were not signed by him, therefore it must be supposed that the official persons who took the securities from the Appellant's father after he had signed the depositions substituted others for them, or that afterwards the Respondent, or some one on his behalf, induced the person who had the legal custody of them to give them up, and receive the fabricated ones in their stead. The Appellant's Counsel, also, contended that the documents are shown not to have been genuine, from the fact of the securities having been taken from the Appellant's father alone;

and they referred to a Circular Order containing instructions to the Collectors, as to the security to be given by public servants, in which they are required "to ascertain whether the property offered in security is free from mortgage, lien, &c., and whether the cousins (of the persons offering securities), if there be any, are willing to tender such securities and obtain from them 'kararnamahs' to the same effect, and urged that as the depositions produced show that there was an adopted son who was a coparcener with the Appellant's father, it was not likely that the Collectors would have so entirely disregarded their instructions as not to have obtained additional security from the Respondent. If, however, the Collectors were satisfied that the portion of the property belonging to the Appellant's father was an ample security, they might be a little remiss in this respect; but at all events if the choice as to the integrity of these documents lies between a slight dereliction of duty on the part of the Collectors, or a gross fraud committed by them, or by some other persons for the benefit of the Respondent, there is little difficulty as to the conclusion which ought to be adopted. If the genuineness of the depositions is established, of which their Lordships entertain no doubt, they are decisive of the case. In them the Appellant's father three times deliberately styles the Respondent an adopted son. Now, if there were no adoption at all, or if the actual adoption were for any reason legally invalid, the Respondent would of course not be entitled to that designation. They amount, therefore, to a complete admission of the whole title of the Respondent both in fact and in law, and show that the objections which have been urged to his claim, in the opinion of the Appellant's father, who probably was well acquainted with all the circumstances, and may be assumed to have known the Hindu laws and customs, had no foundation. Their Lordships therefore will recommend to Her Majesty to affirm the Decrees appealed from, and to dismiss the Appeal, with costs.

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