

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramasawmi Aiyar and others, v. Venkataramaiyan, alias Chidambaraiyan, from Madras; delivered 14th June 1879.*

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Present :

SIR JAMES W. COLVILLE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

THE facts of this case material to its decision are as follows :—

Rhangasawmi Aiyar was the youngest of three brothers of a joint Hindoo family. The eldest brother died in the year 1858, leaving a widow named Thyammul. On his death the two remaining brothers made a partition of the property to which they were entitled. The second brother died in 1860, leaving a widow named Lakshmi Ammal. Rangasawmi had a wife, the daughter of Ramasawmi, who was his cousin, and was the brother of Thyammul. Rangasawmi, having no children, on the 19th of January 1861 executed the following document :—

“ Agreement executed on the 19th January 1861 by me, Rangasamiayan, son of Subbaiyan, residing at Minakshipuram, in the Trichinopoly taluq, while in the possession of sound mind, in favour of Ramasamiayan, son of Anantakrishnaiyan, residing at Kulumani in the said taluq, to wit :—

“ In the villages of Minakshipuram aforesaid, Gouripuram, Tiruppulatturai, Analai, Rangach-

chipuram, Elumanur, Antamallur, Ammangudi, Kulumani, Mulangudi, Tachchagudi, and Kottattai, I hold some property. Besides, in respect of the moveable and immoveable property standing in the names of Lakshmi Ammal, the widow of Visvanadhaiyan, my elder brother, and others, I brought a suit in No. 5 of 1860 on the file of the Civil Court, which is now pending in appeal before the Sadar Court in No. of 1860. My present state of health is, however, too bad to permit me to manage and take care of the said (last-mentioned) property, as well as the said (first-mentioned) house ground, houses, cattle, &c. Besides, I have no issue, and have consequently adopted your son Krishnasami this day according to law. You shall, therefore, yourself manage the affairs of all the moveable, and immoveable property, &c., except three cheis of land constituting two shares in the village of Kulumani, which I have given away to my elder sister Tangammal, as manjakani (land granted for expenses), pay the Government revenue, &c., assessed thereon, render the necessary assistance in the interests of the said suit, and maintain my adopted son aforesaid. Besides, you should deliver up to the two persons aforesaid so soon as my said adopted son attained his age, all the said moveable and immoveable property, and all the other property save such as might have been legitimately expended till then. Furthermore, you should administer the charity of distributing boiled rice, &c., at my house in the village of Minakshipuram, and by applying therefor the incomes derivable from the wet and dry lands of that village left after paying the expenses, Government revenue, &c., keep an account of the receipts and disbursements in that matter, and you should get Krishnasawmi, my adopted son aforesaid, after he attained his age, and Lokambal my wife, these two to

administer these charities in perpetuity, and in a manner allowing no scope for any shortcomings.

“ You should also, while thus acting, and until my son attained his age, look after the duties of the office of manager, which I hold in my name with respect to the Tiruppulatturai pagoda.

“ To this effect, I, Rangasawmi Aiyar, execute the agreement in favour of Ramasawmi Aiyar.”

In pursuance of this instrument the child therein mentioned was adopted, and Ramasawmi undertook the management of the estate.

On the 9th of February 1861 Rangasawmi executed the following document, which is termed in the record a muktiarnama.

“ Muktiarnama (general power of attorney) executed on the 9th February 1861 by Rangasawmi Aiyar, son of Subbaiyan, residing at Minakshipuram, in the Trichinopoly taluq, in favour of Ramasawmi Aiyar, son of Anantakrishnaiyan, residing in the village of Kulumani, in the said taluq, to wit:—At present the state of my health is not satisfactory, and I have no issue. Besides, for the management of my own immovable property which I am in the enjoyment of, for the conduct of the suit which I brought in No. 5 of 1860 on the file of the Civil Court against Lakshmi Ammal, the widow of Visvanadhaiyan, my elder brother, touching certain property, and which I have now brought on appeal in No. 25 of the same year, on the file of the Sadr Court, and for the looking after of my adopted son, Krishnasawmi, minor, my wife and myself, I have no friend to look up to but yourself. You should therefore look after us as mentioned above, and hold all my property according to your pleasure and manage the same. If the said Sadr Appeal No. 25 should also terminate against me, you should take upon yourself and manage the dry and wet land forming

the 11 pangus (shares) in the village of Minakshipuram, the 4 pangus (shares) in Analai, 1 pangu (share) in Tiruppilatturai, and 1 pangu (share) in Tachchangudi, 1 house-ground in Kulumani, out of the property in my possession, and, without concern in the profit or loss therefrom arising, make the same over to my adopted son after he attained his majority. Besides, as I have consented to Tayammal, the widow of my elder brother, Venkataramaiyan, making an adoption, which she is attempting to do in accordance with the authority given by my elder brother aforesaid, you should get my wife to give up out of our property to the said ammal (lady) the one third share of my elder brother aforesaid, a dwelling-house, 1 Machchupatti house-ground, cattle, ploughs, &c., all in a group, with liberty to alienate the same by sale and to appropriate the same according to her own pleasure. The remaining lands you should get my wife to dispose of by sale, &c., in satisfaction of the debts contracted by me for the family expenses and for the costs of the said suit, and clear off my debts in full. You are at liberty yourself to demand and recover the sundry debts due to me. All prior documents of any kind whatsoever referring to the above subject shall become null. I have thus with my full consent executed to you this muktiarnama (general power of attorney)."

The High Court of Madras, of whose judgment some notes, obviously very imperfect, are to be found in the record, appear to have treated this document, which was not registered, as open to much suspicion. It may be, but inasmuch as it has been found to be genuine by the Lower Court, before which some of the attesting witnesses were called, while no evidence directly impeaching it was produced, their Lordships find no sufficient grounds for dis-

believing its execution, or setting it aside as invalid.

Rhangasawmi died in 1861, not long after the execution of this document, but the precise date of his death does not appear.

On the 10th of June 1862 the widow of Rangasawmi, Lokambal, assuming to act under the directions of the muktiarnama, executed a release to Thyammal of what may be described in general terms as one third of the family property.

On the 23rd of June 1862 Lokambal, assuming to act under the same authority, executed three deeds of sale, to one Vamanaiyan, of what may be described in general terms as another one third of the property for advances alleged to have been made to her for the payment of her husband's debts.

It appears that the property conveyed to Thyammal found its way, after some interval, into the hands of her brother, Ramasawmi, and that by the last three deeds Lokambal in effect conveyed the property to which they refer to Ramasawmi, her father, who admits the sale to the nominal purchaser to have been benamee for him, alleging that he paid the consideration money, and that it was appropriated to the payment of the debts of Rangasawmi. Almost immediately after the execution of these deeds the adopted son died.

Thereupon the widow proceeded to make a new adoption under authority from her husband (as is now conceded), and with this object entered into the following agreement with one Mutturamaian for the adoption of his son, who is the Plaintiff in this suit.

“ Agreement executed on the 23rd Ani of Dundhubhi, corresponding to the 5th July 1862, by Mutturamaiyau, son of Venkaiyan, residing at Dikshasamudram, otherwise known as Mullakudi in the Trivadi taluq, in the

Combaconum district, in favour of Lokambal Ammal, the widow of Rangasawmi Aiyar, residing at Minakshiammalpuram, in the Trichinopoly taluq, in the Trichinopoly district, and Ramasawmi Aiyar, the authorized agent of the said Rangasawmi Aiyar, to wit :—

“ After entering into a partition, the said Rangasawmi Aiyar adopted Krishnasawmi, a minor, and died some time afterwards ; and, some time after this, Krishnasawmi also died. Thereupon, with a view to the fulfilment of the said Rangasawmi Aiyar’s wish to make an adoption, I gave my son, Chidambaram *alias* Venkataraman, in adoption to the said Lokambalammal according to law with my full consent. Excluding the sales of property made to third parties in satisfaction of the debts contracted by the said Rangasawmi Aiyar, and the absolute disposition of property made in favour of Thyammal, the widow of Venkataramaiyan, his elder brother, for her share, all of which took place so far back as during the lifetime of the said minor, Krishnasawmi, the said Lokambalammal is now possessed and in the enjoyment of 11 pungus (shares) of wet land and the wet and dry samudayams appertaining thereto in Minakshiammalpuram aforesaid, setting aside the house-ground of Muttulinga Medeliar and the patti manai lying to the west of it, of one pungu (share) of wet lands and the samudayams thereto appertaining in Tirupilattorai, setting aside the house-ground of Pannai Seturaiyar, of one of the house-grounds which fell to his share in the agraharam of the village of Kulumani, of one pungu (share) in the village of Tachchangudi, and of four pungus (shares) in the village of Analai, with the samudayams thereto appertaining. Beyond this property which is in her possession, the said ammal (lady) has no property. Agreeing, therefore, to my begotten son, Chidambaram *alias* Venkataraman, who is

the minor adopted son above mentioned, being put in possession of the said property, which now remains, after he attained his majority, I have, with my full consent, given my said son in adoption. I have therefore executed to you this agreement to show that you alone, who are henceforth entitled to all sorts of rights until the adopted son aforesaid should attain his age, and competent to solemnize his wedding, and other auspicious ceremonies, should look after the said adopted son and the said property; that, whether or not there is more property, neither I nor my begotten son, who is the adopted son above mentioned, have any sort of claim or title to the same, or to their enjoyment.

“(Signed) MUTTURAMAIYAN.”

It is in evidence that Mutturamaiyan was informed that two thirds of the property had been alienated, and was shown the muktearnama and the four deeds which have been referred to. Thus, if not distinctly informed of the true nature of the transactions, he was at the least put upon inquiry respecting them; it is not alleged, much less proved, that any fraud was practised upon him, and on his being called as a witness by both parties no question was put to him suggesting that he had been induced to make this agreement by any misrepresentation or concealment. Their Lordships, therefore, feel themselves bound to assume that the father consented to give his son in adoption on the understanding that he would inherit only about one third of the late Rhangasawmi's property, being aware or not caring to inquire how the remaining two thirds had been disposed of. The legal effect of this proceeding will be dealt with hereafter. The Plaintiff, shortly after he became of age, which time is found by both Courts to have been in 1869, executed a lease (dated 4th October 1869) to Naga-

nadien, a son of Ramasawmi, of all or almost all the lands to which he was entitled, for 13 years, at a "swaunbogam" rent of Rs. 150 per annum; the lessee further undertaking to maintain the Plaintiff and his adoptive mother.

This lease, which put him entirely in the power of Ramasawmi's son, or, in other words, of Ramasawmi himself, and which he certainly ought not to have been induced or even allowed to execute, he some time afterwards very naturally desired to set aside, and, his adoptive family insisting on maintaining it, he left his adoptive mother's house, married, and went to live at the house of his wife's father. Although he returned once or more to his adoptive mother's house, it was when he was living in the house of his wife's father and surrounded by her relations that he executed, on the 19th August 1871, the agreement, on the validity of which the case chiefly depends.

This agreement is as follows:—

"Agreement executed on the 19th August 1871, corresponding to the 5th Avani of Prajotpatti, to Lokambal Ammal, the widow of Rangasawmi Aiyar, cultivator, residing in the village of Minakshipuram, in the Trichinopoly taluq, by Chidambaram, *alias* Venkataramaiyan, the adopted son of the said lady, cultivator, residing at the said place, to wit:—

"Out of the wet and dry lands, topes, house-grounds, purchases, and other landed property which came to the share of your said husband on partition as his own property in the village of Minakshipuram, Gouripuram, Analai, Rangachipuram, Tiruppilatturai, Andanallur, Amman-gudi, Kulamani, Mulangudi, Tachchangudi, and Kottattai, the following being excluded, *i.e.*, the landed property which, by virtue of a muktiar-namah granted by your said husband in the name



of your father, Ramasawmi Aiyar, on the 4th February 1861, before ever I was adopted by you, and of an agreement granted in conformity therewith to you and your father, Ramasawmi Aiyar, by my natural father, Ramuvaiyan, on the 5th July 1862, you gave away on the 10th and 23rd June 1862, in obedience to the orders of your said husband, Rangasawmi Aiyar, deceased, partly under an agreement to Thayammal, the widow of his elder brother, Venkataramaiyan, with power to sell, and partly under deeds of absolute sale, in favour of Kulamani Vamanaiyan in satisfaction of the debts contracted by your husband, Rangasawmi Aiyar, and which your father Ramasawmi Aiyar had cleared with his own funds; there still remain 8 pangus in the village of Minakshipuram, after deducting the 3 pangus lost owing to the railway out of the 11 pangus had there, 4 pangus in Analai, 1 pangu in Tiruppilatturai, 1 pangu in Tachchangudi, and 30 feet of a house-ground to the east of Chelamaiyan's house-ground in the northern row in the Suryavastu Agraharam of Kulamani, which you have continued to hold in full right. These I, having attained my majority, got from you, and took charge of the said property just as they were in accordance with the above said arrangements; and in 1869 I leased the said lands to Naganadhaiyan for a swamibhogam ready money rent, and got the registry transferred accordingly. Of these lands I gave your father, Ramasawmi Aiyar, 6 pangus in the village of Minakshipuram, measuring acres 10 and dec. 8, and 1 pangu in the village of Tachchangudi, measuring acres 3 and dec. 35; in all, measuring acres 13 and dec. 43 of land, together with the dry and wet lands and all other samudayams thereto appertaining, and a house-ground in the village of Kulamani, as per the descriptive statement of lands contained in the additional paper

hereto annexed, and got in exchange acres 14 and dec. 30 of land, comprised in the  $5\frac{3}{8}$  pangus purchased by the said Ramasawmi Aiyan from the said Thayammal and Vamanaiyan under a deed and an agreement, *i.e.*,  $2\frac{1}{8}$  pangus in the village of Analai, and  $2\frac{3}{8}$  pangus in the village of Rangachchipuram, including Pudutiruttukattalai, together with the wet and dry lands and all other samudayams appertaining thereto, as also 32 feet of a house-ground where Pannai Setuvaiyan resides, and which belongs to the said Ramasawmi Aiyan, in the Suryavasaka Agraharam of the village of Tiruppalatturai, and 24 feet of a house-ground purchased under a deed by the said Ramasawmi Aiyan from Manamettu Chetti in the western row of the Agraharam, running north to south, in the Garudavasakam of the said village, as per the descriptive statement of lands contained in the additional paper hereto annexed. Notwithstanding all this, I have given you for your maintenance for life, in consideration of your feeling it disagreeable to live with me, the  $2\frac{3}{8}$  pangus which I got in exchange as aforesaid in the said village of Rangachchipuram, and 2 of the pangus in the village of Minakshipuram, making in all  $4\frac{3}{8}$  pangus, together with the wet and dry lands and all other samudayams thereto appertaining. You shall therefore enjoy the said lands for your life, paying the Government revenue assessed thereon, and defraying the expenses of your maintenance, vows and other ceremonies, with the aid of the incomes thereof. The said lands should revert to me upon your death. You should not subject the said lands, which have been allowed to you, to hypothecation, mortgage, or sale, or otherwise encumber or alienate them. For myself, I agree that, inasmuch as the lands which I enjoy were derived from you, I shall not without your written consent subject them to hypothecation or sale, or

otherwise encumber or alienate them. As regards any property other than what has come to you and me under this document, and the landed property passed by you under sale and agreement in obedience to the orders of your husband, I have no claim, interest, or title. As regards the 2 pangus I am entitled to enjoy by reversion on your death in the village of Minakshipuram, I shall take the share of Mettupadugai dry land appertaining thereto, out of the tract lying to the west of the Mattupadai (cattle pass). Thus I have executed this agreement.

“The lands, &c., of the village of Elumanur are included in the deed of sale you executed in favour of the said Vamanaiyan.

“(Signed) CHIDAMBARAM, *alias*  
Venkataramaiyan.”

A schedule is appended, specifying in detail the properties to which the mother and son are respectively entitled.

In the year 1873 the Plaintiff instituted a suit against the present Defendants, which was by a lamentable miscarriage of justice dismissed on the ground that he declared himself to be 17 years old, and ought until he was 18 to have sued by his guardian.

Whereupon he instituted the present suit by his guardian, at first in *formá pauperis*, but was not allowed to retain that character in his appeal to the High Court.

The suit is against Lokambal Ramasawmi Naganadha (the son of Ramasawmi, and the lessee under the deed of October 1869), Thyammal and Manaiyan *alias* Vailialingaian, who was made a Defendant at his own request.

The plaint, which is informal and obscure, in substance seeks to set aside all the alienations of the adoptive father's property which have been described, and claims all the property; from the

whole of which, even so much as the Defendants admit the Plaintiff to have been entitled to, he declares himself to have been ousted. The Defendants maintain the genuineness and validity of the transactions which have been described, insist on the deed of 19th August 1871 being binding on the Plaintiff as a family settlement, and deny his dispossession of so much as he was entitled to under it.

The Subordinate Judge dismissed the suit, on the ground that the agreement of August 1871, which he treats as a final adjustment of the family disputes, was executed by the Plaintiff two years after he became of age, was not obtained by fraud or coercion, and was consequently binding on him.

This judgment was reversed by the High Court, on grounds which do not very distinctly appear. That Court appears to have considered the agreement of the Plaintiff's natural father at his adoption to have been void in law in as far as it relinquished on behalf of the Plaintiff his right to any part of the property which had been his adoptive father's, that he was entitled to set aside the alienations made before his adoption as having been fraudulent and void against him, and that the agreement of August 1871 was not binding on him, having been executed by him without a full explanation having been given to him of his rights. They appear also to have treated his allegation, of which he himself gave some evidence, of his dispossession from the whole of the property as established, and decree to him all the property claimed in the schedule to his plaint, that is, all his adoptive father's property, together with (as is asserted by the Appellants) more property which he claimed by a supplemental schedule which he was allowed to file. The present appeal is from this judgment.

Some of the circumstances of this case are peculiar. The first adopted son became his father's heir; on the death of that son after that of his father, the widow became the heir, not of her late husband but of the adopted son. Whether by the act of adopting another son she in point of law divested herself of that estate in favour of the second son may be a question of some nicety, on which their Lordships give no opinion. How far the natural father can by agreement before the adoption renounce all or part of his son's rights, so as to bind that son when he becomes of age, is also a question not altogether unattended with difficulty; although the case of *Chitko Raghunath Rajadiksh and others v. Janaki*, in the 11th volume of the *Bombay High Court Reports*, p. 199, certainly decides that an agreement on the part of the father that his son's interest shall be postponed to the life interest of the widow is valid and binding. In this case their Lordships think it enough to decide that the agreement of the natural father which has been set out was not void, but was, at the least, capable of ratification when his son became of age. The main question in the cause is therefore reduced to this, whether the son did or did not validly ratify it. Unquestionably the manner in which Ramasawmi contrived to get into his hands two thirds of the property of Rhangasawmi, partly through his daughter and partly through his sister, raises a very strong suspicion, to say the least, of unfair dealing against him; and if it had been shown that the instrument of 1871 had been executed by the Plaintiff under his influence (as probably the lease of October 1869 was), it would be properly set aside. It must be borne in mind, however, that the Plaintiff when he executed it had been of age two years, that he was sufficiently alive to his rights to be aware that the lease of 1869 was injurious to him, and

to desire to set it aside, that he was residing with his wife's family, strangers it would appear to that of his adoptive mother, and that before executing the instrument he consulted members of his wife's family, upon whose advice he acted. It may be further observed that in a subsequent suit the Plaintiff, about 12 months after, stated that he enjoyed the property of his adoptive father under this agreement.

Such being the evidence, and the Subordinate Judge, who had the advantage of hearing the witnesses, having found in favour of the validity of this document, their Lordships have come to the conclusion that there are no sufficient grounds for setting it aside.

The main question being thus disposed of, two subsidiary questions remain to be noticed.

It was the Plaintiff's case, supported by some evidence, that he had never been allowed to take possession of any part of his adoptive father's property, while there was evidence on the other side that he had taken and kept possession of so much of it as he was entitled to under the deed of 19th August 1871. There is no issue and no express finding on this question in the Court below, but it may be assumed that the Judge adopted the contention of the Defendants. The judgment of the High Court, however, assumes the Plaintiff to have been wholly dispossessed, and that by all the Defendants. Under these circumstances, it seems to their Lordships that the case cannot be satisfactorily disposed of without a re-trial of this question, if, indeed, it has been tried at all, and that an express finding should be come to whether the Plaintiff has been dispossessed, or kept out of possession, of all or any of the property to which he was entitled by the last-mentioned deed, and, if so, by which of the Defendants.

It further appears that compensation money

was paid to Lokambal by the Railway Department for lands taken from the one third portion of the lands of Rangasawmi to which, under the deed of adoption of 5th July 1862, the Plaintiff was entitled; the sum is stated by the Plaintiff to be Rs. 2,500, by the Defendant to be Rs. 1,700.

Their Lordships do not consider that, by the deed of 19th August 1871, the main object of which seems to have been to ratify the disposition which had been made of the specified properties mentioned in it as "having been excluded," and to assign to the widow a specific portion of the remaining land in lieu of maintenance, the Plaintiff can be taken to have relinquished his claim to this money. An issue in this question was framed in the Court below, but it is not alluded to in the judgment. Their Lordships are of opinion that the question should be tried to how much of this sum the Plaintiff is entitled; it will, of course, be open to the Defendants to prove that the money received has been properly expended on the land, as they have alleged it to have been in their answer. On the legal effect of the Plaintiff's covenant against alienation their Lordships do not think it necessary to give an opinion.

In accordance with the views which they have expressed, their Lordships will humbly advise Her Majesty that the judgments and decrees of both the Lower Courts be reversed, and that it be declared that the parties are bound by the deed of the 19th of August 1871. That the High Court be directed to remand the case to the District Court of Trichinopoly for the trial of the following issues, viz. :—

1. Whether the Plaintiff has been ousted or kept out of possession of all or any of the lands to which he was entitled under the said deed; if so, by which of the Defendants.

2. To how much, if any, of the said compensation money paid by the Railway Department he is entitled.

That the said District Court do return the findings on those issues to the High Court in accordance with the direction of the Code of Civil Procedure, and that the High Court do thereupon finally determine the case.

That each party do bear his own costs of this appeal, and that all the costs of the parties in the Lower Courts do abide the event of the final decision of the suit.