

Doddawa Kom Bennepgowda - - - - - *Appellant*

v.

Bennepgowda Bin Yenkanowda and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 19TH MAY, 1925.

Present at the Hearing:

LORD BUCKMASTER.

LORD ATKINSON.

LORD SHAW.

[*Delivered by* LORD BUCKMASTER.]

Mr. Wallach has urged all that can be said on behalf of the appellant in this case, but he has not satisfied the Board that the judgment of the High Court of Judicature at Bombay, dated 10th March, 1921, against which he is appealing, is not correct.

The real question that arises upon the appeal is connected with the pedigree of a family, of which one Bennapagowda, who died in 1876, is, for the present purposes, one of the most prominent members. The real question for decision is whether one Baswangowda the ancestor of the Bennapagowda who died in 1876, was the only son of his father, or whether he had a brother whose name was Timmanagowda. The solution of the question is made immeasurably more difficult by the fact that the names of the people concerned do not remain constant for any length of time, and it is a very difficult matter, working through the pedigrees, to identify the persons to whom reference is made. It must always be a matter of great difficulty to prepare pedigrees in a country where there is no official register of births and deaths, where records of a family may be few, and where it is essential to depend

for information upon the uncertain testimony of family traditions ; men's lives are swiftly forgotten and the memories of survivors often fail. It is, therefore, not a matter of surprise to find that pedigrees, which may be accepted as honestly prepared, are, none the less, not in actual agreement in every detail. The pedigree upon which the appellant relies, and he is entitled to place great reliance upon it, is a pedigree which was put forward as far back as the 6th July, 1849, when a statement was prepared by the Bennapagowda, who died in 1876, relating to his Patilki Watan and Khasgat Inam in accordance with the forms of the Inam Committee. He only showed one line of descent from the person already referred to as Baswangowda but who is also described as Barsapa, and he excluded entirely from his pedigree the brother of Baswangowda, whose name was Timmanagowda, through whom the respondents claim. It is said that this means that no such person as Timmanagowda, the brother of Baswangowda ever existed ; but that is not necessarily the inference to be drawn. It was in truth all that was necessary for the purpose for which he, Bennapagowda, prepared his pedigree that he should have brought down the one line from Baswangowda. The appellant, however, in support of his contention that the pedigree of Bennapagowda was not only correct but complete, lays stress upon the fact that it contains the statement that "The genealogy is all that is known (to us) ; it is not traced from the original acquirer as that is not known." That was the statement made by Bennapagowda, who died in 1876. Upon his death proceedings were further taken with regard to the heirship consequent upon his death and, there again, the same pedigree was used. If the matter had rested there, the appellant would have been well justified in what he says but, in 1878, Ningawa, who was the widow of Bennapagowda proceeded to adopt Pampana as Bennapagowda's son. She was at liberty to adopt whomsoever she thought right, but it is agreed that it would have been more in accordance with the feelings of the family that she should have adopted some person who was, in fact, a member of the family ; she asserted in connection with the adoption that Pampana was such a person, and for that purpose she produced a pedigree, which went much further back than the pedigree originally produced by Bennapagowda and introduced this further line coming down through Timmanagowda, the alleged brother of Baswangowda and ending with Pampana, whom she proposed to adopt. If that pedigree be accepted, then the appellant fails. Now although it cannot be said that the question of the true family history was at the moment the subject of any litigation, the pedigree was none the less put forward for the purpose of establishing a very important family relationship, and it is this fact that led the learned Subordinate Judge to treat it as unreliable. But the matter does not rest there. A more important question arose in 1888, owing to Pampana, who had been adopted in 1878, having died without issue on the 5th October, 1887, namely, as to whose name

should be entered on the register of inland revenue, and for this purpose there was an investigation once more of the family history, and in the end the person who was accepted as being the person in whose name the entry ought to be made, was one Shirigirepa, one of the people who descended from the line of Timmanagowda. There can therefore be no doubt that at that time at any rate when an investigation was made as carefully as possible into the circumstances, the statement that Bennapagowda had a brother Timmanagowda, was accepted, and upon that, the registration was effected. That is a long time ago and nothing has happened since to throw doubt on what was then done. It is, however, urged that as these two pedigrees are in conflict, and as the first contains the statement that it was all the pedigree that was then known made by the person who it is rightly said, was the person most likely to have knowledge, that these later pedigrees ought not to be relied on, and to this argument is added the fact that witnesses who have come forward are witnesses who, in certain respects, have shown themselves to be untrustworthy, and in particular that one attempted to vouch the pedigree by reference to documents which he said were in his possession, and which he never produced. These are all unfortunate circumstances which are not as rare in the consideration of these cases as the Board would desire that they should be, but they only render it the more important to rely, as far as possible, upon the documents that have been subjected to investigation at an earlier stage, and have been relied upon by the authorities.

Their Lordships find themselves unable to accede to the appellant's request to treat the pedigree that originally came to light in connection with the adoption of Pampana as a completely concocted document; it has been supported by verbal evidence; it has been accepted by the competent authorities, and their Lordships do not think there is any adequate reason why it should now be disregarded by them.

For these reasons their Lordships think that this appeal should fail, and they will humbly advise His Majesty that it should be dismissed with costs.

In the Privy Council.

DODDAWA KOM BENNEPGOWDA

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BENNEPGOWDA BIN YENKANGOWDA AND
OTHERS.

DELIVERED BY LORD BUCKMASTER.

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