Privy Council Appeal No. 21 of 1935

Rokkam Lakshmi Reddi and another - - - *Appellants*

v.

Rokkam Venkata Reddi 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 22ND APRIL, 1937.

Present at the Hearing:

LORD MAUGHAM.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

On this appeal the question for decision is whether the plaintiffs have shown that they are the nearest reversioners of one Rokkam Nagi Reddi, a Hindu governed by the Mitakshara. The year of his death is not precisely ascertained but that he died "about 1898" or "about 1900" is not in dispute. The succession to his estate opened on the death of his widow Chinnamma in 1925. The word "Rokkam" is a "house name" or "family name" but witnesses on both sides agree that there are in the same village several families using this "house name" who are not related to one another. The addition of the word "Reddi"—used in certain families, including the family now in question, as a name—does not make it distinctive of any single family. The caste of Rokkam Nagi Reddi was *kapu* (agriculturist).

The appellants (defendants 2 and 3) not only deny the alleged relationship between Nagi Reddi and the plaintiffs: they claim to be themselves his nearest reversioners. The Trial Judge accepted the defendants' case and dismissed the suit (22nd June, 1928). The High Court of Madras reversed this decision and gave the plaintiffs a decree for possession of the suit lands together with mesne profits and other relief (13th October, 1933).

The schedule to the plaint set forth as the properties which belonged to the estate of Nagi Reddi 14 items in three different villages—five (items 1-5) being in Londipalli, eight (items 6-13) in Nannur and one (item 14) in Bodduvanipalli. Item 5 (in Londipalli) is a share of a hay yard (vami doddi): this defendants 2 and 3 claimed as their own, denying that it had ever belonged to Nagi Reddi, but the High Court found against the defendants on the point and the matter is not now in contest. The other

13 items are fields, of which the area and other particulars are given. It is established by documentary evidence that Nagi Reddi's father obtained items 10, 11, and 12 in 1875 and 1877 by purchase. Item 13 is said by plaintiff No. 2, who gave evidence at the trial, to have been bought by Nagi Reddi himself: for this and for item 14 no document of purchase is in evidence, but it is not in dispute that they belonged to Nagi Reddi.

By deed dated 15th October, 1921, Chinnamma gave a lease for 10 years of the suit lands (or the bulk of them) together with certain other land of hers to the first defendant, Bachu Seshaya, at a rent of Rs.600 per year in addition to payment of the land revenue. On 14th April, 1922, Bachu Seshaya sub-let to plaintiff No. 1 for Rs.150 a year, two fields, of which one at least had belonged to Nagi Reddi. Chinnamma having died on 15th November, 1925, the appellants (defendants 2 and 3) at the end of the agricultural year (April, 1926) obtained possession from Bachu Seshaya of all the lands which had been let to him by her (including the fields sub-let by him to plaintiff No. 1). Bachu Seshaya claimed to be discharged of his obligation to pay Rs.600 as rent for 1925-26 by reason that Chinnamma a few days before her death had orally directed him to pay that sum to the managers of certain temples. This claim the appellants allowed, calling evidence in support of it at the trial; but the High Court rejected it and gave decree against the first defendant for the balance of rent due up to April, 1926. The first defendant has not appealed from the High Court's decree and the question is now of importance only as part of the circumstances in which the appellants (defendants 2 and 3) obtained possession of the suit lands, with the consequence that on 28th December, 1926, they were recorded by the tahsildar in the revenue records as the persons in possession. The plaintiffs being out of possession had to assume the burden of proving their title and brought their suit on 2nd December, 1926.

Neither of the rival parties has put forward evidence of the kind described in the 6th or 7th clauses of section 32 of the Indian Evidence Act—i.e., statements in wills, horoscopes, family pedigrees, &c., as to the existence of relationship between persons deceased. Section 50—"opinion expressed by conduct . . . of any person who . . . has special means of knowledge"—though not entirely inapplicable gives rise to no difficulty. The important evidence on both sides upon the question of relationship is oral evidence—admissible only under the 5th clause of section 32—that is to say, oral evidence of verbal statements made by persons who are dead and who had special means of knowledge. It may be explained that the Indian Evidence Act does not contain any express provision making evidence of general reputation admissible as proof of relationship.

Rokkam Nagi Reddi, the last full owner of the properties in suit, was admitted by both sides to be the son of one

Lakshmi, whose father was Pedda Venkatanna. The plaintiffs' case was that Pedda Venkatanna had a brother called Chinna Venkatanna, who was their great-grandfather —the father of Pedda and Chinna being called Appalana. The appellants did not deny that the plaintiffs' great-grandfather was called Venkatanna but denied that he was called Chinna Venkatanna and denied that he was Pedda Venkatanna's brother. The appellants' case was that the father of Pedda Venkatanna was one Veera, who had a brother called Govinda, and that Govinda's son was Yerra Venkata, grandfather (admittedly) of the appellants.

As Rokkam Nagi Reddi is said to have died about 1900 at the age of 30 or thereabouts, it is improbable that the birth of his grandfather Pedda Venkatanna was later than 1830 and he may well have been born much earlier. For information about his father and uncle, to say nothing of his grandfather, it is difficult to repose much confidence in oral evidence of hearsay unsupported by other evidence to give it probability. The learned Trial Judge added to the difficulty of estimating the evidence by permitting witnesses to give their testimony as to matters which could not be within their own knowledge without first stating the source of their information. Time, trouble and expense would have been saved had clause 5 of section 32 of the Evidence Act been properly applied and witnesses required to prove the statements relied upon with proper particularity and with due attention to the requirement that the person making the statement had special means of knowledge. In a number of cases witnesses were allowed simply to enunciate from the witness box the proposition which they desired to prove. Thus one witness aged 33 was allowed to say for the plaintiffs (P.W.7): "Appanna was the father of Chinna Venkatana." And another aged 45 for the defendants (D.W.3): "I did not see Lakshmi Reddi. Venkata Reddi is the father of Lakshmi Reddi. Veera Reddi is the father of Venkata Reddi." It cannot rightly be left to time or chance or cross-examination to disclose whether a statement has any basis which could give it value or admissibility. In his judgment the learned Trial Judge was at times duly scornful of such evidence but it would have been fairer and less troublesome to have taken the evidence in accordance with the Act.

Their Lordships are of opinion that the evidence adduced by the defendants is plainly insufficient to establish their relationship to Nagi Reddi. The first defendant Bachu Seshaya (D.W.1), the priest who says that Chinnamma wanted him to have Rs.100 (D.W.2), the temple manager who was to get Rs.500 (D.W.6), speak to statements by Chinnamma but are witnesses of little credit. The third defendant's evidence of pedigree is given as being what his father told him. The fourth and fifth witnesses for the defence vouch Chinnamma as their authority: the latter speaks to instructions to the first defendant to let the temples

have Rs.600: both are of dubious credibility. So far there is no reliable proof of the defendants' pedigree. It is most suspicious that the defendants should depend so largely on statements attributed to Chinnamma for proof of their pedigree. This is at once an easy and an odd method of proving the ancestry of their own grandfather. Indeed that because she married Nagi Reddi she had special means of knowledge on this point is at best a precarious assumption. However the witness who most impressed the Subordinate Judge was one Gokari (D.W.7). "His evidence was so natural that I feel inclined to believe it." He was of the madiga or shoe-maker caste and gave his age as 85. He spoke to having been as a boy in the service of Veera and Govinda as a sweeper when they were living jointly. Learned counsel for the appellants had, however, unfortunately to admit that on this witness's own evidence Veera must have died long before the witness was born. In these circumstances the fact that the appellants performed the funeral of Chinnamma, entered with the aid of Bachu Seshaya upon the lands and got recorded by the tahsildar—actions which prove them to have been astute and active claimants—are but poor evidence of pedigree or right. Their Lordships are not satisfied that the plaintiffs performed no ceremonies in connection with Chinnamma's death.

The crucial question is whether the plaintiffs' proof of their relationship to Nagi Reddi is sufficient. In support of their oral evidence they have first the fact that in the Survey and Settlement Register for 1864-65 the properties numbered 1-4 and 6-9 in the schedule to the plaint stood in the name of the plaintiffs' grandfather Kondanna, together with other properties, some of which are still in possession of the plaintiffs' family and others of which were alienated by their father and grandfather in 1877 and 1881. Of all the properties standing in 1864-65 in Kondanna's name about half has come to Nagi Reddi, Chinnamma's husband and about half has been enjoyed or disposed of by Kondanna himself or his descendants, who since 1877 have disposed of this half as if separately entitled thereto. The proportions are 45 acres, 16 cents to 43 acres, 73 cents. No transfer from Kondanna to Lakshmi or his son Nagi has been proved. There is, moreover, evidence that part of the plaintiffs' house was the family house of Nagi Reddi and his branch and that Chinnamma used the walled off portion for cattle. Documents exist to show that when in 1915-16 a piece of land was compulsorily acquired by Government, the compensation money Rs.338-1-7 was received by the second plaintiff on Chinnamma's behalf, and as the money would not have been paid to her had the plaintiffs objected, their evidence that she divided the money with them as her husband's reversioners is very likely to be true. The appellants do not appear to have taken any part in this transaction; yet it is difficult to think that any villager would fail to learn of the acquisition proceedings. In support of the plaintiffs' pedigree they called a witness (P.W.1) who

spoke to having seen and known Pedda and Chinna Venkatanna and to the partition made between Kondanna and Lakshmi. He stated that he used to hear of Appalana their father from his parents. He was probably nearer 80 years of age than 95, which was the age he claimed to have attained, but he was a man of the kapu caste and in a position to know what he professed to know. The learned Trial Judge discarded his evidence for a reason which to their Lordships, as to the High Court, appears to be mistaken. The plaintiffs also called Pedda Yellamma (P.W.2) a daughter of Yengamma who was Lakshmi's sister. She gave her age as 70 years. She does not claim to have seen Chinna Venkatanna or Appalana but says that she often saw her grandfather Pedda Venkatanna who died when she was 10 or 12 years old. If her mother Yengamma survived till 1914, as she states, this witness would be almost certain to have learnt the facts as to her mother's family. Had her evidence been more properly taken the learned Trial Judge might have better appreciated its importance. Their Lordships are constrained to agree with the High Court's criticism of the refusal of the learned Judge to allow the previous statements of the plaintiffs' fourth witness to be put to him. He had been karnam of the village at the time of the land acquisition proceedings in 1915-16 above-mentioned and had necessarily much knowledge of the history of the different fields of the village. He and the defendants' fifth witness are influential people in the village. With greater knowledge than their Lordships can have of village life and village factions the learned Judges of the High Court find it significant that both of these witnesses were prepared to give false evidence in support of the defendants' case.

Learned counsel for the appellants argued that it was incredible that Pedda Venkatanna should have a brother of the name Chinna Venkatanna, but this was not put to any witness nor remarked upon by anyone in the Courts in India. It was not put to Pedda Yellamma (P.W.2) though on the face of the pedigree put forward by the plaintiffs she had a sister called Chinna Yellamma. Their Lordships cannot attribute any force to this contention.

Observations of Sir Richard Couch in *Kedarnauth Doss* v. *Protab Chunder Doss* (1881) I.L.R. 6, Calcutta 626, at 629, were cited to the effect that " where the plaintiff claims as a collateral heir he is bound to allege and prove his title through the common ancestor in all its stages; and one most important stage is of course the common ancestor himself." The case was one of grave suspicion and, as the judgment of Pontifex J. shows, it was apprehended that the plaintiff had professed not to know her grandfather's name because it " might have given the defendants a clue ", and in such circumstances the rule above-mentioned should be observed with special strictness, but their Lordships are not prepared to hold that any standard of special strictness is applicable to the proof of collateral relationships in India and they are not of opinion that Sir Richard Couch intended to lay down such a rule. In fact however it is not apparent to them that

the evidence for the plaintiffs in this case comes short of a reasonable standard. While the case is not without difficulty, the main difficulty is to decide whether any and, if so, which of the witnesses is giving honest evidence of statements coming within clause 5 of section 32 of the Indian Evidence Act. That the evidence is less clear and full with regard to Appalana than it is about the next generation is only to be expected and creates no special difficulty upon the question whether the plaintiffs' great-grandfather was Pedda Venkatanna's brother.

Upon a review of the evidence, oral and documentary, which has satisfied the High Court of the truth of the plaintiffs' case and of the careful and penetrating analysis thereof in the judgment appealed from, their Lordships are of opinion that the decision of the High Court was right and should be affirmed.

They will humbly advise His Majesty that this appeal should be dismissed with costs.

(41900—3A) Wt. 8151—17 180 5/37 P. St. Gp. 338

In the Privy Council.

ROKKAM LAKSHMI REDDI
AND ANOTHER

v.

ROKKAM VENKATA REDDI
AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E.1.

1937