

Kodavali Subbamma and anr. Vs. Kodavali Papayya

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Court : Chennai

Decided On : Oct-21-1924

Reported in : 87Ind.Cas.187

Judge : Devadoss, J.

Appellant : Kodavali Subbamma and anr.;kodavali Ramanna, Minor by Guardian K. Subbamma

Respondent : Kodavali Papayya;pattapagalu Venkappa and Kalapala Venkayya and ors.

Judgement :

Devadoss, J.

1. In S.A. No. 1048 of 1922. The only question argued in this second-appeal is whether Ex. I is a Will. The Subordinate Judge has held that Ex. I is not a Will but an Anumathipatra an authority to adopt and, therefore, it required registration; and being unregistered it did not empower the 1st defendant to make a valid adoption. The finding is that the 2nd defendant has been adopted by the 1st defendant. The only question, therefore, is whether the 1st defendant had authority to adopt. If Ex. I is a Will then her authority to adopt would be unquestioned; if Ex.I is not a Will then the authority to adopt not having been given by an instrument in writing and registered would be of no use. Exhibit I is headed as ' Will execut-ed on 18th May 1918, by Kodivali Pedarama Krishnamma's son Bullayya,' and the closing lines of the document are ' I am at liberty to cancel this Will. This Will is executed on my free will relating to these things, while of a sound state of mind,'

2. The contention of Mr. Somasundaram on behalf of the respondent is that this document is not a Will and the Court should not attach importance to a few expressions here and there that the document is, a Will. He contends that there is no disposition in the Will and, therefore, it should not be construed as a Will. He relies upon two. cases one Santhana Sooramma v. Santhana Mangayya 18 Ind. Cas. 1006 : (1913) M.W.N. 199 and the other Tirugnanapal v. Ponnammai Nadathi 58 Ind. Cas. 228 : 12 L.W. 660 : (1920) M.W.N. 559 : 28 M.L.T. 190 : 25 C.W.N. 511 In the former case the executant addressed his wife in the second person and gave her certain directions; in the second case the executant addressed his adopted boy in the second person and gave him a number of directions. In the former case, a Bench of this Court held that the document was not a Will, in the second case their Lordships of the Privy Council held considering the general tenor of the document that it was not a Will notwithstanding 'the use of the word "Will' in the document. In both cases the construction turned upon the expressions used in the Will. As I have observed in another case, it is not proper to interpret one document in the light of the words used

in another document. Each document must be considered with reference to the words and expressions used in it, and if the document when read as a whole gives an impression that the executant intended to dispose of his property by it and that it should take effect after his life, then, whatever may be the words used in the document the general intention should not be overlooked in construing the terms of the document, 'In Ex. I, I think the intention of the executant to devise property to his wife is clear. The operative clause of the document is ' my whole property shall be divided into two equal, shares, one share being enjoyed by the adoptive mother and the other share by the adopted son. During her lifetime, the mother shall enjoy the said property to her own liking. After her death the whole property in respect of the said share shall pass to the adopted son.' I think these words clearly indicate that the executant did intend that his wife should get a benefit under the document. Under the Hindu Law, the moment, the adoption is made, the widow is divested of her estate and the adopted son gets the whole of the property. The adoptive mother will be entitled thereafter only to maintenance. In order to avoid trouble in future the executant of Ex. I provided that in case of disputes between his wife and the adopted boy, the adopted mother should have half of the property for her life. I think from the words of the document, the intention to devise property to the wife can be clearly gathered. As I said the main thing to be considered in a document of this kind is whether the executant had. an intention to devise his properties to any one, in other words, whether the Will contains clear words as to the testamentary intention on the part of the executant. Reading Ex. I as a whole I have no hesitation in holding that it is a Will. This finding necessarily involves the consequence that, the 2nd defendant's adoption is a valid one.

3. In the result the second appeal is allowed and Original Suit No. 105 of 1919 is dismissed with costs throughout. In S.A. Nos. 1049 and 1050 of 1922.
4. In consequence of the finding in the connected case, Second Appeal No. 1048 of 1922, that the adoption is a valid one, these appeals also are allowed but in the Circumstances it is unnecessary to allow costs to the appellant.
5. The memorandum of objections is not pressed and is dismissed.