

*Judgement of the Lords of the Judicial Committee on the Appeal of Thayammal and Kuttisami Aiyar v. Venkatarama Aiyar from the High Court of Judicature, at Madras ; delivered 26th February 1887.*

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Present :

LORD WATSON.

LORD FITZGERALD.

LORD HOBHOUSE.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

This is an appeal from a judgement of the High Court at Madras in a suit instituted by the Respondent to have it declared that an alleged adoption of the second Defendant by the first Defendant was invalid. It appears that Dorasami, who was entitled to certain property, died many years ago, leaving Thayammal the first Defendant, his widow, and also an only son, Kuttisami, his heir-at-law, surviving him.

Kuttisami, the son, married Thangammal, and subsequently died without issue, leaving Thangammal, his widow, who, upon the death of her husband, succeeded as heir to the property.

It is alleged that, after the death of Kuttisami the son, and during the life of Thangammal his widow, Thayammal, with permission of Sapindas, adopted the second Defendant as a son of her deceased husband. Several objections have been taken to that adoption, and, among others, that the son's widow having lawfully adopted a son

to him, the father's widow had no power to adopt. The adoption by the son's widow was disputed, but it was objected on behalf of the Respondent that it was immaterial whether she had adopted or not, for that even in the absence of such adoption, the survival of the son's widow and the vesting of the estate in her put an end to the right of Thayammal his mother to adopt a son to his father.

Their Lordships are of opinion that the objection is fatal to the adoption of the second Defendant. It is therefore unnecessary to express an opinion as to other objections to that adoption, or to consider whether there was or was not a valid adoption by the son's widow.

Their Lordships are of opinion that the High Court was correct in considering that the case is governed by the decision of this Committee in the case of *Padma Roomari Debu v. The Court of Wards*, 8 Law Reports, Ind. Appeals, 229, which was founded upon the case of *Mussumat Boobun Moger Debee v. Ram Kishore Acharji*, 10 Moore's Ind. Appeals, 279.

It was contended by the learned Counsel for the Appellant that all that was decided by the Judicial Committee in *Bhoobum Mayee's* case was that the son adopted by the mother could not recover the estate from the widow of the son. This appears to have been the view taken by the Lower Courts in *Pudma Coomari's* case. But this Committee, upon appeal, held that the case went much further. Nothing can be clearer or more explicit than the language used by the Committee in that case. They said, "The substitution of a new heir for the widow was, no doubt, the question to be decided, and such substitution might have been disallowed, the adoption being held valid for all other purposes, which is the view which the Lower Courts have taken of the judgement; but their Lordships do not

“ think that that was intended. They consider  
“ the decision to be that upon the vesting of the  
“ estate in the widow of Bhowani (*i.e.*, the son),  
“ the power of adoption was at an end and in-  
“ capable of execution, and if the question had  
“ come before them without any previous decision  
“ upon it, they would have been of that opinion.”  
Their Lordships entirely concur in that view, and  
they are of opinion that the adoption, with the  
permission of Sapindas in the present case, could  
have no greater effect as regards the right to  
property than the adoption under the deed of  
permission in the cases to which reference has  
been made.

For the above reasons they will humbly advise  
Her Majesty that the judgement of the High  
Court ought to be affirmed. The Respondent  
not having appeared, there will be no costs of the  
appeal.

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