

Narayanasami Vs. Ramasami and ors.

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Court : Chennai

Decided On : Nov-27-1890

Reported in : (1891)ILR14Mad172

Judge : Shephard and ;Best, JJ.

Appellant : Narayanasami

Respondent : Ramasami and ors.

Judgement :

1. The findings of the Subordinate Judge on both the issues sent for trial are in the affirmative. To these findings objections have been taken on behalf of the appellant on the ground that they are not supported by any evidence.

2. It is true that no witness has expressly stated either that plaintiff's natural father was aware, at the time of his giving his son in adoption, of the dispositions made under the will by the late Muttusami Ayyar, or that, but for the natural father's consent to those dispositions, Muttusami Ayyar would not have adopted the plaintiff. But the circumstances, under which the will was executed and the adoption took place, afford evidence which supports the conclusions arrived at by the Subordinate Judge on both the issues.

3. It is proved that the plaintiff's father was sent for, while the will was being written, and arrived on the following morning at about 10 o'clock. The will was registered in the afternoon of this latter day, and, on the same afternoon, the

adoption of plaintiff took place. The witnesses differ in their statements as to whether the registration of the will was effected before or after the adoption took place. But this does not seem to be of much consequence. The two events are so closely connected that there is no room for supposing that, in making the adoption, Muttusami Ayyar had any intention of superseding the will; and, as there can be no doubt that the plaintiff's father knew of the will, his giving his son in adoption without any objection to the will must be taken to amount to consent on his part to the dispositions made thereby and this view is further supported by his subsequently carrying out those dispositions as deposed to by plaintiff's seventh witness, Vanji Ayyan.

4. The intention of Muttusami Ayyar being apparent from his conduct in executing the will simultaneously with the making of the adoption, it may fairly be inferred, in the absence of any evidence to the contrary, that he only made the adoption subject to the dispositions contained in the will. It cannot be said that there is no evidence in support of the Subordinate Judge's findings on the issues, and there is no reason for thinking that these findings are incorrect.

5. This second appeal fails, therefore, and is dismissed with costs.

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