

Venkataraghava Vs. Rangamma

Venkataraghava Vs. Rangamma

SooperKanoon Citation : sooperkanoon.com/786714

Court : Chennai

Decided On : Mar-02-1892

Reported in : (1892)ILR15Mad498

Judge : Muttusami Ayyar and ;Parker, JJ.

Appellant : Venkataraghava

Respondent : Rangamma

Judgement :

1. This is an appeal from the order of remand made by the Subordinate Court of Ellore in Appeal Suit No. 208 of 1890. It is first urged that the Subordinate Judge erred in holding that respondent was at liberty to question the appellant's adoption, though it was upheld as between them in Original Suit No. 315 of 1882 on the file of the District Munsif of Ellore. We think that this objection must prevail.

2. In support of his opinion, the Subordinate Judge observes that, prior to the decision in Ganapati v. Chathu I.L.R. 12 Mad. 223, there was an erroneous notion, even among District Munsifs, that a declaratory suit might be instituted, whatever was the value of the property to which it related, in the Court of a District Munsif, and that the respondent's ignorance of law on the subject was excusable, and relies further on the decision of the Privy Council, referred to in Ganapati v. Ghathu I.L.R. 12 Mad. 223 and on Section 44 of the Indian Evidence Act.

3. But we are unable to agree with the Subordinate Judge that ignorance of law is a valid excuse. Nor do we consider that the decision of the Privy Council has application in a case in which both the prior and the present suits were instituted in the Court of the District Munsif. As for Section 44 of the Evidence Act, it does not exclude the operation of the doctrine of equitable estoppel. As plaintiff, the present respondent instituted Original Suit No. 315 of 1882 in the District Munsifs Court to set aside appellant's adoption and thereby put the Court into motion and the decision pronounced therein is conclusive as to the factum and validity of the adoption. The decision of the Subordinate Judge to the effect that respondent is at liberty to re-open the question in the present suit must be set aside.

4. Another objection taken in this appeal is that the Subordinate Judge was wrong in deciding that the present suit is not governed by the twelve years' rule. It was brought by the appellant to recover certain land from the respondent on the ground that, during his minority, his adoptive mother bestowed it in gift upon the latter, her daughter, without any necessity for so doing, and in view to benefit her at his expense. The right to sue having thus accrued during his minority, the statutory period is twelve years from the date of the gift, under Section 7 of the Act of Limitation, unless it expires within three years from the date on which he attained his majority. In this point also the decision of the Subordinate Judge must be set aside and that of the District Munsif restored.

5. The next question considered by the Subordinate Judge is as to the validity of the gift made to the respondent. If, as observed by him, the transaction was substantially not a mere voluntary act, but one concluded bona fide by the appellant's mother, as his guardian, in view to adjust the litigation then pending about his adoption, it might be valid. It was, therefore, open to the Subordinate Judge to have stated an issue and remitted it for trial. The issue, however, referred by him must be amended by inserting the words 'bona fide' after the words 'did so,' and the words 'the benefit of' between the words 'for' and 'the minor plaintiff.'

6. We set aside the order of remand and direct the Subordinate Judge to restore the appeal to his file and to remit for trial an issue amended as indicated above and to dispose of the appeal with reference to the result of the finding thereon and

on the eighth issue.

7. The respondent will pay the appellant the costs of this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com