

Abbu Vs. Kuppammal

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Court : Chennai

Decided On : Dec-21-1892

Reported in : (1893)ILR16Mad355

Judge : Arthur J.H. Collins, Kt., C.J. and ;Handley, J.

Appellant : Abbu

Respondent : Kuppammal

Judgement :

1. In our opinion the learned Judge in the Court below was right in holding that on the true construction of the will of K. Naraina Chetty the gift of his estate to plaintiff on the death of testator's widow was contingent on his being adopted by the widow, and that not having been so adopted, he cannot maintain this suit. The question in such cases is, as pointed out by the Judicial Committee in *Fanindra Deb Raikal v. Rajeswar Das* I.L.R. 11 Cal. 463 one of intention, and reading the whole will we have no doubt that the gift to plaintiff was made in contemplation of his adoption, and with the intention that he should take as the adopted son, and was, therefore, conditional on his being adopted. The arrangement made by the will is that after the return of plaintiff's natural father the widow shall take the boy in adoption, then that the widow shall enjoy the estate during her life and after her death the same shall be taken possession of by the aforesaid adopted son.' The adoption is an integral part of the arrangement, and, failing the adoption, the arrangement, so far as regards the designated adopted son, falls through. The

case of *Nidhoomoni Debya v. Saroda Pershad Mookerjee* L.R.3 IndAp 253 is distinguishable from the present case. There the testator declared that he had adopted the object of the gift, and it was held that the omission by the widows to perform certain ceremonies which might be essential to complete the validity of the adoption could not operate to invalidate the gift. Here there is a direction to adopt and a gift to the boy to be adopted, and it appears to us that the testator had no intention to give the estate to the boy irrespective of the adoption to be made by the widow in accordance with the direction. It is argued for appellant that the widow is put to her election and cannot take the estate for her life unless she adopts plaintiff. That question is not in issue in this suit. The only question here is whether plaintiff can sue as reversioner under the will on the death of the widow. Even if the argument as to election were well founded, it would not follow that because the widow could not take under the will, therefore plaintiff is entitled to maintain this suit. Whatever are the consequences of the widow's not complying with the direction in the will to adopt plaintiff, it is clear to our minds that plaintiff has no right under the will unless and until he is adopted. It is stated by respondent's vakil that one reason why plaintiff was not adopted was that his natural father would not give his consent. Of this there is no evidence before us, and we conceive that we are not concerned in this appeal with the reasons why the adoption has not been made. The fact remains that it has not been made, and that is a sufficient answer to plaintiff's claim to the estate under the will. Appellant's vakil states that plaintiff as sister's son of testator is his nearest heir. This is denied on the other side, and it is asserted that he is only the son of a distant female relative of testator. However this may be, and no evidence upon the point has been taken, the question is irrelevant in this suit. Plaintiff sues for a declaration of his title under the will, and, for the reasons given above, we hold he has no title.

2. Lastly it is argued for appellant that at least he is entitled under the will to maintenance, as the direction to maintain him does not refer to him as the adopted son. We think the arrangement made by the will as to plaintiff must be taken as a whole, and that the part relating to plaintiff's maintenance, equally with the other arrangements for his benefit, has reference to the adoption, and was intended by the testator to come into effect only in the event of the adoption being made. Not having been adopted, plaintiff has no more right to be maintained in the family

during the widow's lifetime than he has to succeed to the estate after her death.

3. We confirm the decree of the lower Court and dismiss this appeal with costs

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