Krishnamurthy Aiyar Vs. Krishnamurthy Aiyar and ors.

Krishnamurthy Aiyar Vs. Krishnamurthy Aiyar and ors.

SooperKanoon Citation : sooperkanoon.com/819025

Court : Chennai

Decided On : Feb-08-1924

Reported in : AIR1925Mad932

Appellant : Krishnamurthy Aiyar

Respondent : Krishnamurthy Aiyar and ors.

Judgement :

Spencer Offg.C.J.

1. The plaintiffs are legatees under the will of one Ramakrishna Aiyar who died on 2nd April,, 1911. The suit is brought to recover possession of properties bequeathed to the plaintiffs under the said will. The deceased owned about 135 acres of land, of which he bequeathed 17 acres 90 cents to be taken by the plaintiffs who were his wife's relations, immediately on his death. They were also to get 19 acres 30 cents upon the death of his widow. Sivagami Ammal to whom the will allotted 45 acres 65 cents. On the same date (23rd March, 1910) that the will waa executed, Ramakrishna Aiyar adopted the 3rd defendant and under the will he bequeathed 26 acres 3rd cents to the adopted son. He also gave 12 acres and odd to charity, and 9 acres 33 cents to his two nieces, 6 acres 34 cents to his nephew and grand-nephew and 37 acres to a gnati named Sami Aiyar. Out of the 45 acres given to his wife, the adopted son was to get 26 acres 35 cents upon the widow's death. After the bequest in favour of the plaintiffs had become vested in them upon Ramakrishna Aiyar's death, their father sold the properties bequeathed

to them under the will, to the 1st defendant, who, in turn, sold them to the 2nd defendant, who is alleged to be the benamidar of the adopted son, the 3rd defendant. The plaintiffs obtained a decree in the lower Court for possession of the property sued for with mesne profits and costs. The adopted son (the 3rd defendant) now appeals. The 2nd defendant has also appealed against the order directing payment of costs by him.

2. The will (Exhibit A) was presented for registration on the 25th March, 1910. At the same time a document (Exhibit B) was executed by the natural father of the 3rd defendant agreeing to the alienations by will being made by the adoptive father. This document was not registered till the 9th April and the defence to the suit is that it was ante dated. The lower Court has decided against the theory of the agreement being ante-dated. The learned Subordinate Judge states that he is certainly of opinion that the will was carefully thought out before the adoption and was executed before the adoption actually took place, that Natesa Aiyar, the father of the adopted son, was fully informed of the intentions of the testator and had given his free and voluntary consent to such dispositions and that the consent document was executed and completed before the adoption actually took place. The law on the subject of an adoptive father making a will disposing of his property has been clearly established in Lakshmi v. Subramania (1889) 12 Mad. 490. Shephard, J., observes that if an adoption and a disposition of his property by the adoptive father form part of one transaction, the adopted son never acquires any Interest in the property disposed of and no question can arise as to his guardian's competency to deal with it. In that case it appeared that the defendant's natural father, when he gave his son in adoption, tacitly submitted to the arrangement contained in a will settling certain property on the testator's wife. This decision has been followed and approved by the Full Bench in Vinayakrav Ammal v. Sivaramien (1904) 27 Mad. 577 a case of an adoption by a widow in pursuance of her husband's authority, the natural father agreeing prior to the adoption to a disposition of half the property for the widow to enjoy during her life. It is clear that from the moment that an adoption takes place, the natural father of the adopted boy loses his authority on behalf of the boy to give his consent to any disposition of property and at the same moment the adopted son becomes a co-parcener in the family of his adoptive father and thereupon the latter has no power to dispose

of ancestral property at his own sweet will and pleasure, but can only make alienations for necessary purposes. In Visalakshi Ammal v. Sivaramien (1904) 27 Mad. 577 it is assumed that the natural father would not have agreed to an adoption coupled with a disposition of property unless it was for the benefit of his son and it is further assumed that the adoptive father would not have taken the son in adoption except on the condition agreed to. In such circumstances, Benson, J. observed, the adoption cannot be set aside and the condition with which the adoption was coupled could not be set aside except on strong grounds of legal necessity or public policy. The references in this judgment of Benson, J., to the test of fairness and reasonableness of the dispositions were not really necessary for the disposal of that case. They were based on the remarks in favour of Farren, J. in Ravji Vinayakrav Jaganath v. Lakshmi Bai (1887) 11 Bom. 381 who was considering in the light of Mayne's Hindu Law the powers of a guardian to bind his wards by giving his consent to acts done on his behalf during his minority. There is a point of difference between that case and the present, which is that the adoption there was made by a widow in pursuance of an authority from her deceased husband but here the adoption is made by a full owner. The test of reasonableness has been imported into the case dealt with in Balkrishna Motiram v. Shri Uttar Narayan Dev (1918) 43 Bom. 542 although in that case a document was executed by the natural father of the adopted boy agreeing to a grant in favour of certain charities and the adoptive father was alive at the time of adoption. The learned Judges were of opinion that the authority of Lakshmi v. Subramania (1889) 12 Mad. 490 had been weakened by the subsequent decisions in Jagannadha v. Papamrna (1892) 16 Mad. 400 and Bhaiya Babidat Singh v. Indar Kunwar (1888) 16 Cal. 556 which were cases of adoption by widows whose power of alienation was inferior to that of their deceased husbands. With due respect, I consider that if the father of the boy consented to the adoptive father endowing certain charities and gave his consent at or before the time of adoption to such dispositions, a presumption would arise that the grant was valid.

3. The 3rd defendant in the present suit having set up the case that the consent was given after the adoption, the onus lay on him to prove that Exhibit B was antedated. See Mina Kurnari Bibi v. Bijoy Singh Dhudhuria A.I.R. 1916 P.C. 238. The circumstances that the two documents, the will and the consent agreement,

were not registered at the same time is explainable by the fact that the Registrar came to the village to register Ramakrishna Aiyar's will because the was ill. The adoption agreement could not be registered in the village under Section 31 of the Registration Act as it was a executed by Natesa Aiyar who was capable of attending at the Registration Office. The Easter holidays intervened from the 24th to 28th March and the document was therefore registered later, but the stamp was bought on the same date as the will was dated as is proved by the stamp-vendor's endorsement. I see no reason to differ from the lower Court which has found that the execution of the will and the adoption deed were parts of the same in transaction and that the documents were amore or less simultaneous.

4. His Lordship then discussed the evidence of the several witnesses and found a that the lower Court's finding on the third issue must be confirmed, the appeal dismissed and the decree amended by of allowing mesne profits only from 15th January, 1912, according to the prayer in le the plaint and not from April, 1911.

5. The 2nd defendant's appeal in the matter of costs will be dismissed on the ground that his conduct in the lower Court and previous to the suit was not straightforward. He gave up some of his contentions at the trial. He assisted the 3rd defendant in the conduct of his a defence and he got a medical certificate e for him and he set up a title in himself which has failed. There is no reason why he should not be made responsible for the plaintiff's costs. Appeal No. 461 of 1922 is therefore dismissed with costs.

Kumaraswami Sastry, J.

6. The 3rd defendant is the appellant. This appeal, arises out of a suit for possession of the immovable properties specified in the, plaint and mesne profits filed by the plaintiffs who claim as legatees under a will dated the 23rd of March, 1910, executed by the adoptive father of the appellant who died on the 2nd April, 1911. His widow died on the 11th of June, 1911.

7. The case for the plaintiffs is that, prior to the adoption there was an arrangement between the adoptive father and the natural father of the appellant-whereby the adoption was made on condition that the adoptive father was to have

liberty of making the dispositions which he made by his will which, according to the plaintiffs' case was executed before the adoption. It is also alleged by the plaintiffs that before the adoption another document filed as Exhibit B-1 in the case was executed by Natesa Aiyar, the natural father of the appellant, in favour of Ramakrishna Aiyar, the adoptive father, wherein it is stated that the adoption was subject to the condition that the boy to be adopted should only take such of the properties as were given to him by the will of the testator. The case for the plaintiffs is that the adoption was conditional, that the ante-adoption agreement between the natural father and the adoptive father is valid and binding on the adopted son and that plaintiffs are entitled to the properties claimed. It is alleged by the plaintiffs that their father conveyed the properties, which fell to them under the will to the 1st defendant under Exhibit 1, dated the 3rd of January, 1922, that the 1st defendant in turn sold the s properties under Exhibit 1(b) on the 15th January, 1912, to the 2nd defendant and that these sales are not binding on the plaintiffs.

8. The case for the appellant is that there was no agreement before the adoption and that the will (Exhibit A) executed by the adoptive father and the agreement (Exhibit B-1) executed by the natural father in favour of the adoptive father were as a matter of fact executed after the adoption ceremony was over. His case also is that the arrangement, even if made before the adoption, would not bind him.

9. The Subordinate Judge held that the ante-adoption agreement is true and valid and binding on all the parties and the sale by the plaintiff's father to the first defendant is not binding on the plaintiffs as it was made without necessity and for a grossly inadequate consideration. Although one would have expected that the 1st and 2nd defendants would support the ante-adoption arrangement, they have not chosen to do so and there can be little doubt that they are siding the 3rd defendant. The suggestion is that the 2nd defendant is only a benamidar for the 3rd defendant.

10. The only question, therefore, for consideration is whether there was an arrangement as set out in the plaint. It is admitted that the properties left by the testator under his will Exhibit A are ancestral properties and that unless the

arrangement between the natural father and the adoptive father of the appellant was entered into before the adoption and the arrangement is otherwise binding in law on the appellant the will would not operate on the properties devised. The Subordinate Judge in a careful and exhaustive judgment held that the arrangement was entered into before the adoption was made and that it was beneficial to the appellant and is binding on him. I have no hesitation in agreeing with the Subordinate Judge.

11. The natural father, Natesa Aiyar was a man of very little means. He had a large family and it was conceded before us in argument that, but for the adoption, the appellant would be a poor man. At the date of the adoption Ramakrishna Aiyar, the adoptive father, was a rich man who owned extensive landed properties. He was childless and the evidence shows that he had great affection for his sister's children and for the plaintiffs who are related to him distantly and to his wife more proximately. He had executed a Will on the 30th of May, 1903, marked as Exhibit D in the case, making various bequests to his wife and other relations, giving his sister's sons 12 acres of land and directing the 2nd plaintiff who was then two years old to he adopted by his wife. It is unnecessary to go further into the details of this Will. I refer to it only as showing that the plaintiffs were the objects of his bounty and were provided for in the Will Exhibit D executed before the adoption. The deceased fell ill some days before the adoption and he got worse. The evidence is that a few days before the adoption he asked the natural father of the appellant to give the appellant in adoption to him and, as one would expect, the natural father readily consented to give his son, who was in poor circumstances, to a person who was rich.

12. We find that the Will is dated the 23rd of March, 1910, the ante-adoption agreement executed by the natural father is also dated the 23rd of March, 1910, and the adoption also was on that date. So far as the ante-adoption agreement (Exhibit B-1) is concerned the stamp vendor's endorsement shows that the stamp paper was purchased on the 23rd of March, 1910, in the name of natural father of the appellant; so that it is clear that on the 23rd a stamp paper was purchased with the object of executing the document in connection with the adoption. No other purpose is suggested. We also find that the document was executed and was duly

registered. We also find that Ramakrishna Aiyar lived for nearly a year afterwards and died on the 2nd of April, 1911 and that there was no objection taken by anybody either to the ante-adoption arrangement (Exhibit B-1) or to the dispositions contained in the Will, during the testator's lifetime. It is not disputed that the natural father of the boy was aware of the terms of the Will. He did not question the validity of the arrangement during the testator's lifetime though he DOW wants to make out that the agreement executed by him was made after the adoption and ante-dated and is therefore, invalid because the adoption conferred on the boy the status of an undivided son and the adoptive father could not dispose of by Will property which was ancestral.

13. The evidence let in by the appellant is to the effect that there was no talk of any disposal of property before the adoption, that the Will was executed after the adoption and that the arrangement (Exhibit B-1) was executed after the adoption and ante-dated by the natural father. I do not think that the appellant has made out this case. The probabilities and the evidence for the plaintiffs which the Subordinate Judge has believed, are all against it. In the first place there was no motive for the natural father, after the adoption was completed and after the son had obtained full right, to execute the document Exhibit B-1 and ante-date it especially where such conduct would have deprived the natural son of a large portion of the property which but for this arrangement would go to him. The onus of showing that a document, duly executed and registered and dated the 23rd of March, 1910, was antedated is on the appellant. I need only refer to the decision of their Lordships of the Privy Council in Mina Kumari Bibi v. Bijoy Singh Dudhuria A.I.R. 1916 P.C. 338.

14. His Lordship then discussed the evidence and came to the conclusion that the Subordinate Judge was right in holding that there was an arrangement between the natural father and the adoptive father that the adopted son was to take only the properties that were given to him by the Will and that the adoption was made conditional upon such an arrangement and would never have been made if the arrangement had not been come to before the adoption.

15. The next question is whether the agreement is binding on the appellant. According to the will, Exhibit A, the total extent of the land belonging to the testator is 135 acres. The testator gives 12 acres 38 cents for the performance of charities which he had been already performing for several years. He gives his sister's daughter Subbammal 2 acres 3 cents and to another sister's daughter Savithri 7 acres 30 cents.

16. He gives the sons of another sister's daughter 6 acres 34 cents and to a distant relation 37 cents. He gives the adopted son 43 acres 36 cents to take effect immediately on his death. He gives his wife 45 acres 65 cents, to be enjoyed by her till her death and on her death 19 acres 30 cents were to be given to the plaintiffs, her cousin's sons, and 26 acres 35 cents were to revert to the adopted son. He gives the plaintiffs 17 acres 90 cents. The outstandings and other properties which he had he leaves to the adopted son. So, under the will, the adopted son gets 43 acres 36 cents immediately and 26 acres 35 cents on the death of the testator's wife. The testator's wife died on the 11th of June, 1911, about two months after the testator. Before the adoption the share of the appellant in his natural father's property would have been insignificant. There can be little doubt that the adoption gave the appellant considerable properties to which but for the adoption he would have absolutely no claim. He was a very distant relation of his adoptive father and it cannot be said that there was any expectation that he would succeed to his properties at any time. That the arrangement entered into between the natural father and the adoptive father as evidenced by Exhibit B-1 was beneficial to the appellant there can be absolutely no doubt.

17. As regards the binding nature of ante-adoption agreements it is now settled law that an agreement between natural and adoptive fathers is binding on the adopted son if it is for his benefit.

18. In Chitko Raghunath v. Janaki (1874) 11 B.H.C.R. 199 it was held that an agreement between a widow who inherited her husband's property and the natural father of the boy whom she was going to adopt that she should be entitled to enjoy the property during her life time subject to the boy's education and maintenance was binding on the adopted son who would not have been adopted but for the

agreement. In dealing with the power of the father to give his son in adoption it was pointed out that it was a fallacy to suppose that for the purpose of giving the son in adoption the powers of the father are only co-extensive with the powers of a guardian and that if a millionaire gave his son in adoption even though all his property was ancestral, to a family possessing no property, the adoption would be valid although the son may be deprived of all his interest in the ancestral property. The decision was followed in Ravji Vinayakrav Jagannath Shankarsett v. Lakshmi Bai (1887) 11 Bom. 381. In Basava v. Lingangauda (1894) 19 Bom. 428 it was held that a gift of property by a Hindu father to his daughters is valid if at the time of the adoption the adopted son's natural father agreed to such a disposition. Venkappa v. Fakir Gowda (1906) 8 Bom. L.R. 346 was relied on but this decision does not throw much light on the question as it proceeded more on the facts of that particular case. Sir Lawrence Jenkins, C.J., was of opinion that the agreement in that case was not binding on the adopted son. He accepted the test suggested by Sir Charles Farren in Ravji Vinayakrav Jagannath Shankarsett v. Lakshmi Bai (1887) 11 Bom. 381 and held that on that test the stipulations in the agreement were unreasonable. In Vyasacharya v. Venku Bai (1912) 37 Bom. 251 it was held on the facts of that case that the arrangement between the natural father and the widow making the adoption whereby certain properties were to be given to the daughter of the adopting widow was not enforceable against the adopted son. As Sir Basil Scott, C.J., in his judgment states that the reference to the Pull Bench was limited with reference to the facts of that case and as the decision in Ravji Vinayakrav v. Lakshmi Bai (1887) 11 Bom. 381 was not dissented from, this decision does not throw much light on the question in dispute. In Purushottam v. Rakhmabai (1913) 16 bom. L.R. 57 it was assumed that a fair and reasonable arrangement will be valid and the finding was that the arrangement in question was not binding.

19. In Balkrishna Motiram v. Shri Uttar Narayan Dev (1918) 43 Bom. 542 a Hindu possessed of ancestral property while making an adoption executed a document with the consent of the natural father of the adopted boy directing payment of an annual sum for the purpose of lighting lamps in a temple. It was held by Heaton and Hayward, JJ., that the grant in favour of the temple was invalid. I find it difficult to reconcile this decision with the other decisions of the Bombay High Gourd which

I have referred to. With all respect to the learned Judges I am unable to agree with them that before making the adoption the person who is absolutely entitled to the property would have no power to make it making the adopted son's rights subject to the performance of certain charities. In Bepin Behari Bundopadhya v. Brojo Nath Mookhapadhya (1882) 8 Cal. 357 it was held following the decision in Mussumat Bhegbutti Daee v. Chowdry Bhola Nath Thakoor (1875) 1 Cal. 104 that a Hindu had power when giving his wife authority to adopt, to direct that so long as she was alive she should remain in possession of all his property. In Panchanon v. Binoy Krishna (1916) 27 C.L.J. 274 it was held that ante-adoption agreements between the widow making an adoption and the natural father of the adopted son will be valid if they are fair and reasonable, and the difference was pointed out between such cases and cases where the widow purported to deal with more than her interest as a Hindu widow and which would not bind the reversioners.

20. In Harendra Nathavasti v. Shibo Sundari Debi Chowdurani (1909) 3 I.C. 378 Chitty and Richardson, JJ., held that a Hindu testator has the power to curtail the rights of his prospective adopted son and that an agreement between the widow making the adoption in pursuance of the will of her husband and the father of the adopted boy that she should remain in possession over property for her life is valid and binding on the adopted son.

21. In Shanti Parshad v. Dhan Devi (1919) 42 P.W.R. 1919 it was held by Scott-Smith, J., that an agreement between the adoptive father and the natural father postponing the rights of the adopted son to the widow is valid. In this case as the agreement was between the natural and adoptive fathers the question as to the effect if the party was the widow of the last male holder did not arise.

22. So far as the authorities in Madras go there is a long current of authority for, upholding agreements which are not unreasonable. In Lakshmi v. Subramania (1889) 12 Mad. 490 it was held that an adopted son was bound by an arrangement which his natural father had agreed to before the adoption whereby the adoptive father's wife was to be entitled to certain lands for her life. Muthuswami Aiyar, J., called for a finding whether, when the respondent was given in adoption the person who gave him in adoption was aware of the existence

of the settlement (marked as Exhibit A in the case) and whether, but for the consent to it, the adoptive father would not have adopted the respondent. The learned Judge referred to with approval the decision in Vinayah Narayan v. Govindarav Chintaman (1869) 6 B.H.C.A.C. 224 and observed : In that case it was held that when the adopted son and the person who gave him in adoption were fully cognizant of the disposition of property made by the testator, and with the knowledge of such disposition the natural father consented to the adoption taking place and when the disposition and the adoption might under the circumstances be regarded as one transaction, the disposition though contained in a will could not be repudiated by the adopted son. The principle underlying the decision is that the disposition was one which it was competent to the testator to make prior to the adoption and that its acceptance being presumably a condition subject to which the adoption was made, it made no difference that the disposition was testamentary. Shephard, J., observed : 'In the present case the adoption was made not by a widow as in the case of Lakshmana Rau v. Lakshmi Ammal (1881) 4 Mad. 160 but by the plaintiff's husband who before adoption took place, was unquestionably at liberty to alienate his property as he pleased subject only to the plaintiff's right of maintenance. If being thus full owner he might before the adoption have disposed of his property in part or in whole in favour of the plaintiff, I fail to see why he should not, when making the adoption, stipulate with the other party to the adoption that a certain part of his property should be set apart for the maintenance of his wife and to that extent taken out of the category of property in which his intended son should have the full right of a co-parcener * * * The adoption and the disposition of his property by the father being part of one transaction, the son never acquired any interest in the property disposed of, and therefore no-question can arise as to his guardian's, competency to deal with it.

23. These considerations, if well founded, also dispose of the defendant's contention that, in view of the right of survivorship Ramayyan's will must as against him be inoperative. The will was only a means by which the supposed contract was carried into effect. It was a term of that contract that certain property should be withdrawn from Ramayyan's estate and applied to a particular purpose which should take effect after his death. To that extent the defendant never acquired co-parcenary right in his father's property and consequently there was no right of

survivorship. The circumstance that the disposition was made by will makes no difference because the will must not be regarded by itself' but as part of the contract, and before the' adoption took place it was competent to Ramayyan to bind himself by contract to make the will which ha did make. For these reasons I am of opinion that if it can; be shown that the adoption was made on an understanding between the parties that the defendant should take his place in the family subject to the arrangement made by his adoptive father in favour of the plaintiff, the plaintiff ought to succeed in this suit.' This decision of two eminent Judges of this Court shows that the' fact that the disposition is by will make no difference and disposes of the argument, of the appellant's vakil to that effect.

24. In Jagannadha v. Papamma (1892) 16 Mad. 400 a distinction is drawn between the power of a widow making an adoption and that of her husband who was full owner making it and it was pointed out that Lakshmi v. Subramania (1889) 12 Mad. 490 was a case of a full-owner of property while in the case under consideration the widow who had power of adoption from her husband had no power of disposition over the property and that m the absence of power given by her husband she could not impose any condition as to enjoyment of the property by the adopted son. In Ganjapathi Ayyan v. Savithri (1897) 21 Mad. 10 Shephard and Subramania Aiyar, JJ., were of opinion that where a husband gave certain directions to his widows as regards some charities and also directed them to take a child in adoption, the adoption would be conditional on the properties being set apart for the performance of the charities which would be binding on the adopted son. Shephard, J., observed If the condition had been originated by the widows, it might not have been binding on the adopted son, but seeing that the husband's authority was qualified by a condition which he was at liberty to impose, and that the condition was insisted on when the authority was exercised, I think the adopted son is in no other position than he would be if Gopalkrishna Aiyar himself had taken him in adoption, at the same time declaring that he did so only on the condition of certain property being set apart for charity. As there would have been no adoption if the requisition of the widows had not been obeyed and as the widows were entitled and indeed bound to make that requisition, I do not think it is open to the adopted son, now to repudiate the condition. In this view of the facts, the decision in Lakshmi v. Subramania (1889) 12 Mad. 490 applies.' Subramania

Aiyar, J., was of the same opinion and observed that the circumstances in which the adoption took place rendered it conditional on the alienation not being challenged by the adopted son, and the case was clearly governed by the decisions in Lakshmi v. Subramania (1889) 12 Mad. 490, Narayanaswami v. Ramaswami (1890) 14 Mad. 172 and Basava v. Lingangauda (1894) 19 Bom. 428. The Full Bench decision in Visalakshi Ammal v. Sivaramien (1904) 27 Mad. 577 settled the question so far as agreements by the natural father at the time of adoption are concerned. In that case a Hindu widow made an adoption in pursuance of authority given to her by her husband. An agreement was entered into between the widow and the natural father whereby it was declared that in the event of disagreement between the widow and the adopted son, certain properties which were about one-half of the properties left by the husband should be enjoyed by the widow during her lifetime and by the adopted son after her death. But for such consent of the natural father no adoption would have been made. After the adoption, owing to disagreement between the parties, a suit was filed by the natural father as next friend of the plaintiff to recover all the properties of the deceased. It was held that the provisions of the agreement were binding on the plaintiff. The Referring Judges, Sir Subramania Aiyar, Officiating Chief Justice and Benson, J., felt some doubt also the right of the natural father to bind the adopted son, having regard to certain observations of the Privy Council in Bhaiya Rabidat Singh v. Maharani Indar Kunwar (1888) 16 Cal. 556 : Benson, J., who delivered the judgment of the Full Bench observed as follows:

If the agreement is such as to be inconsistent with the fundamental idea underlying adoption and the purpose for which it is sanctioned by Hindu Law as for instance, if it deprived the adopted son of all right to the property of the adoptive father and so left him without any means of performing the necessary religious offices towards the means of his adoptive father and his ancestors, it may well be that the Courts would regard the condition as essentially repugnant to-Hindu Law and would refuse to uphold it. But it would seem that a fair and reasonable disposition of the property is not essentially repugnant to Hindu Law, or the purpose for which adoption is allowed, and is nowhere forbidden by that, law. Such dispositions are commonly made and are upheld by the authority of the case and the consciousness of the people. In these circumstances, I think that the

Courts ought not to refuse to recognise them as binding on the minor, for whose benefit the adoption, coupled with the agreement as to the disposition of the property was really made. It may be assumed that the natural father would not have agreed to the adoption, coupled with the disposition of the property unless it was for the benefit of his son to do so; nor would the adoptive father have taken the son in adoption except on the condition agreed to. The adoption, of course, cannot be set aside and to set aside the condition which was coupled with adoption while maintaining the adoption would require the justification of strong-grounds of legal necessity or public policy. In the present case the condition as to the property is a reasonable one and such as the Courts should uphold.

25. In Ramasami Aiuan v. Venkata Ramaiyan (1879) 2 Mad. 91 a suit was filed by the adopted son to set aside certain alienations made by the widow who adopted him. The defence was that the adoption was made on the faith of a written agreement with his natural father and that none of the transactions were to be disputed as the agreement was ratified by the plaintiff after he came of age. The High Court held that the agreement was not binding on the adopted son as the ratification was made without knowledge of all the circumstances. Their Lordships of the Privy Council held that the natural father consented to give his son in adoption on the understanding that his son would inherit only about one-third of the adoptive father's property and that the adopted son validly ratified the agreement after became of age. As regards the validity of the agreement itself apart from ratification their Lordships express ad no decided opinion but observed, 'How far the natural father can, by agreement before the adoption, renounce all or part of his son's rights so as to bind that son when he becomes of age, is also a question not altogether unattended with difficulty, although the case of Chitko Raghunath Rajadiksh v. Janaki (1874) 11 B.H.C.R. 199 certainly decides that an agreement on the part of the father that his son's interest shall be postponed to the life-interest of the widow is valid and binding. In this case their Lordships think it enough to decide that the agreement of the natural father which has been set out was not void but was at the least capable of ratification when his son became of age.' It will be seen from the cases cited that the agreements sought to be enforced against a minor adopted son fall under heads (1) where the agreement is between the natural and adoptive fathers imposing terms and conditions, (2)

where it is with a widow making an adoption in pursuance of a will or deed of adoption which provides for the curtailment of the rights of the boy to be adopted either by interposing a life-estate of the widow or giving portions of the property to strangers, (3) where it is with a widow acting under an authority to adopt which does not restrict the rights of the boy to be adopted but simply authorises an adoption, and reserves rights of enjoyment in herself during her lifetime or creates rights in third parties. So far as cases 1 and 2 are concerned the authorities show that the adopted son would be bound by any valid restrictions She adopting father or testator may impose and as regards the third case some cases decide that she cannot create an estate beyond her powers as Hindu widow and that even in cases of her own widow's estate she cannot keep it and postpone the rights of the adopted son.

26. I am of opinion that where an adoption is made by a Hindu, who at the time of adoption had absolute power of disposal; over the property, an agreement between the natural father and the adoptive father as regards alienations which the adoptive father wants to make either by a document inter vivos or by will binds the adopted son in all cases where such an agreement would be for his benefit and that the only question which Courts ought to consider is whether the transaction is for the benefit of the boy to be adopted. There is no reason why the rights of the boy to be adopted should be tested with reference to what his position in the family would be after the adoption and to see whether the adopted father could, after the adoption, have made the alienations which are disputed. As I have already pointed out, the right of a Hindu father to give his son in adoption is not governed by any questions of benefit to the adopted boy. For, it is perfectly competent to the natural father to give his boy in adoption to a pauper and thus deprive his son of any interest in the natural father's property. If the adopting father would not make the adoption but for the conditions agreed to by the natural father and if in spite of those conditions the adopted son would be benefitted, there is no reason why the transaction should not be tested like any other agreement entered into by the natural father as guardian of his own son. In the present case the agreement is dearly for the benefit of the appellant as he gets properties of large value which he would not have got but for the adoption and there can be little doubt that he would have remained a poor man if the natural father had not agreed

to the adopting father making the will and the adoption being conditional on the said disposition.

27. There is a slight error in the decree and judgment. Plaintiffs will be entitled to mesne profits only from 15th January, 1912.

28. The decree will be amended accordingly.

29. The appeal, otherwise, fails and is dismissed with costs of respondents 1 and 2.

30. As regards Appeal No. 461 of 1922, it is by the 2nd defendant against the decree of the Subordinate Judge directing him to pay the costs of the plaintiffs. Having regard to the facts of the case as set out in my judgment and the conduct of the 2nd defendant, I see no reason to differ from the Subordinate Judge as to costs. This Appeal also is dismissed with costs.