

Revenue (1898) Department.

G.O., No. 1223

Confidential No. 1021

DATED 10th March 1898

[Despatch Abstract.]

Agreeing in the views of the Collector of
Godawan and the Board of Rev. that the
interference of the Comt of Ward in the
management of the Ueravanam and Kolaunda
estates is unnecessary

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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18 4,900-19-7-97.

Revenue (1898) Department.

CURRENT No. 1790

Compd no 19

From the Govt Solicitor
Madras

Order

Recy

No. 120

In view of the opinion given by the Advocate-General ^{it is submitted that} it does not seem desirable that the Court of wards should intervene in this case.

Dated 4th
Received 5th
Registered 5th
Enclosures 3
Spare copies. -

} March 1898

(S)
G. M. H. H. H.

Please see previous notes in P. of 1st March.

The Adv. Gen. while holding that a child taken in adoption cannot be bound by the assent of his natural father & terms imposed as a condition of the adoption, nevertheless points out distinctly that such condition ~~may be~~

SUBJECT.

Furnishing the opinion of the Advocate-General on the question of the validity of certain agreements executed by the adopted son of the proprietor of the Veeravaram and Kolanka estates, Godavari

6/2/98

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

We had accepted the opinion of the Ad. J. who said that the court should not interfere with the court of Wards but we have now to see.

9/3/98

9/3/98

Secy.

Please see draft G.O. on a separate sheet.

9/3/98

Confidential

No. 120

Madras 4th March 1898

From,

Ernest Barclay

Government Solicitor

M A D R A S.

To,

The Secretary to Government

Revenue Department

M a d r a s.

Sir,

With reference to the Order of Government Misc No. 1020 dated 1st instant, I forward herewith, in original, the opinion of the Advocate General on the matter referred to him and return the papers sent me with the Order.

I have the honor to be

Sir

Your Obedient Servant

Ernest Barclay

Government Solicitor.

Confidential

Re G.O. No. 1020. Revenue Dated 1st March 1898

Opinion

The adopted son
in this case
was not less
than 20 years
of age at the
time of adoption
(para of the
re collector's
letter) -

The husband of Chellayamma in conferring upon her by his Will authority to adopt, no doubt, thought that the boy to be adopted would be a minor, and he therefore provided by the Will that she should, after such adoption, continue to manage the estates during the minority of the adopted son, and hand over the same to him on his attaining the age of majority. Such provision amounts to no more than an expression in writing of the legal consequences of the adoption, namely, her status as guardian during the minority of the adopted son, and her obligation on his attaining the age of majority to transfer the possession and management of the estates to him. The authority conferred by the Will should not be regarded as a limited or qualified authority which she has exceeded by adopting a major, or by entering into an agreement with the adopted boy that she should practically have an estate for life in her husband's estate. If the authority were so construed, the adoption itself would be invalid,

an agreement (vide 11 Bombay High Court Reports p. 199 and I.L.R. 11 Bombay Series p. 381). In an appeal from Madras, Ramasami Aiyar versus Venkatarajamayan (I.L.R. 2 Madras Series p. 91) where the question was whether an agreement entered into between the adoptive mother and the natural father of the adopted boy by which his right of inheritance was restricted to one third of the estate of his adoptive father was binding upon the adopted son, the Judicial Committee of the Privy Council while reversing the decision of the High Court of Madras on the ground that the agreement had been ratified by the adopted son himself subsequent to his attaining the age of majority observed as follows: "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 (11 Bombay High Court Reports p. 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 is not void, but was, at the least, capable of ratification when his son became of age."

In a subsequent case before the High Court of Madras (I.L.R. 4 Madras Series p. 160) the question was again raised but not decided, the agreement having been upheld on other grounds. Their Lordships however indicated their opinion on the question as follows: "We are disposed to think that a child taken in adoption cannot be bound by the assent of his natural father to terms imposed as a condition of the adoption, and that, like other agreements made on behalf of minors for other than necessary purposes, it would lie with the minor when he came of age, to assent to or repudiate them."

them. This we understand to be the effect of the ruling of the Judicial Committee in Ramasami Aiyar v Vencataramaiyan, 14th June 1879, in which the Judgment of the learned Judges of the Bombay High Court in Bhitko Raghunath Rajadikesh v Janaki was noticed, but in the view we take that the agreement can be supported on other grounds it is unnecessary for us to decide the point.

When the question was again raised before the Judicial Committee in Bhasba Rabidat Singh v Indar Kunevar (I.L.R. 16 Calcutta Series p. 556 L.R. S.C. 16 Indian appeals p. 59) their Lordships while holding that there was in fact no condition annexed to the adoption observed as follows:-

"But it is difficult to understand how a declaration by Guman Singh or an agreement by him, if it was an agreement, could prejudice or affect the rights of his son which could only arise when his parental control and authority determined. The ceremonies of adoption are unimpeached."

"unimpeached. The deed of adoption is open to no objection. The second deed is admittedly inoperative. No conditions therefore were attached to the adoption. Had it been otherwise, the analogy, such as it is, presented by the doctrines of Courts of Equity in this country relating to the execution of powers of appointment to which Mr. Arathoon appealed, would rather suggest that even in that case, the adoption would have been valid and the condition void."

Apart from the decision of the Bombay High Court, the only authoritative ruling other than obiter dicta is that contained in the decision of the Privy Council in Ramasami Aiyar v Vencataramaiyan. In that case, their Lordships say that such an agreement was not void, but was at the least capable of ratification when the adopted son came of age. And in the more recent case of Bhasba Rabidat Singh v Indar Kunevar (I.L.R. 16 Calcutta Series p. 556) their

page 584
I.L.R. Cal-
Vol XVI

Lordsships only observe that it is difficult to see how the natural father could prejudice or affect the rights of his son, which rights could only arise when his parental control and authority determined by adoption. It is therefore evident that in the view of their Lordships of the Privy Council, an agreement which restricts the rights of inheritance of a son adopted by the widow is not void as being contrary to public policy or Hindu Law, but is one which, to say the least, can be affirmed or disaffirmed by the adopted son on his attaining the age of majority. In the present case the adopted son himself who was sui juris at the time of adoption, agreed by registered instruments both prior and subsequent to the adoption, that the adoptive mother should practically have a widow's estate during her life time subject to her forfeiting her life interest in the Kolanka estate on the happening of the contingency mentioned in the agreement. The adopted son

who lived for about two years after the adoption acted in pursuance to such agreement and affirmed the same by his conduct. If an agreement entered into by the natural father of an adopted son could, as held by the Privy Council, be validly ratified by the latter after attaining age, a fortiori he himself could enter into such agreement which would bind him and confirm the same by his subsequent conduct. If the Will alleged to have been executed by the adopted son on the 15th of December 1897 be genuine, it would not only operate as a confirmation of the agreement of the 5th of October 1895, but would also have independent operation as a devise of an estate for life in favour of his adoptive mother even if the agreement should be void.

3. As to the registry of the estate, I do not see what bearing the death of the adopted son has upon the change of the registry of the estate which stands in the name of

Chellappamma The widow of the adopted son
 would be entitled to be registered as proprietrix
 only if her husband, the adopted son himself
 had been entitled to have the registry changed
 in his name. Even if he were so entitled, the
 registry cannot, I think, be transferred in the
 name of his widow unless some one competent
 to act on her behalf applies for such transfer.

W Bhaskar Iyengar

Offg. Advocate General

Madras

4th March

1898.

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W Bhaskar Iyengar
 Offg. Advocate General

Madras
 4th March
 1898.

Read again G.O. No 1020d, 1-3-98
Read also opinion of the
Advocate General
(C. No. 1790/98)

G.O. No 1223 dt 10th March 1898
The Government
agrees with the collector
and the Board of Revenue
in considering that the
intervention of the Court
of Wards is unnecessary
in this case.

Sd/-
10/3/98

For orders

To the Board of Rev. (L.R.)
with encls etc.

(A)
9 Mar 98

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11/3/98

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