

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Thiruthipalli Raman Menon and Others v. Variangattil Palisseri Raman Menon, from the High Court of Judicature, Madras; delivered 7th July 1900.*

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Present at the Hearing :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD LINDLEY.

SIR RICHARD COUCH.

SIR HENRY DE VILLIERS.

[*Delivered by Lord Lindley.*]

The question raised by this Appeal is whether the elder of two brothers who were the two surviving members of their Taravad and the elder of whom was its Karnavan was entitled to adopt four persons so as to make them members of the Taravad without the consent of the younger brother. The younger brother after the death of the elder sued to set aside the adoption. The adoption was declared valid by the Court of First Instance, but this decision was reversed by the High Court of Madras. The persons adopted have appealed from this decision to Her Majesty in Council.

The younger brother has died since the action was commenced and has left a will and the real controversy between the parties is to whom the property of the Taravad belongs. This controversy however, is not now before their Lordships for adjudication. The only question before them is whether the High Court of Madras

was right in deciding the adoption to be invalid.

The litigation is between Nairs in South Malabar and has to be decided according to the laws and usages of those persons. Those laws and usages are very peculiar; some of them are so well established as to be judicially noticed without proof. But others of them are still in that stage in which proof of them is required before they can be judicially recognised and enforced. The Nairs are persons amongst whom polyandry is legally recognised; and descent of property through females is acknowledged law. A right (and perhaps duty) to adopt females into the family or Taravad when necessary to preserve it appears also to be in accordance with their law. Speaking generally it may be safe to say that this right is vested in the Karnavan or head of the family. This is so stated in Strange's Manual of Hindu Law, Section 403. So far their Lordships are prepared to assume the law peculiar to the Nairs to be established and not to require proof in any particular case. But beyond this they are not prepared to go. The passage in Strange's Manual does not really mean more than above stated. There is no sacred book or other writing having legal authority and there is no series of decisions which can be appealed to in order to determine the circumstances under which and the consents if any subject to which the Karnavan for the time being can adopt strangers into the family and thereby make them and their descendants heirs to its property. Their Lordships are clearly of opinion that under these circumstances the burden of proving the validity of the adoption made in this case is upon those who assert its validity; and that the only question which their Lordships have to consider is whether the Appellants have shown that the adoption in dispute

in these proceedings is in accordance with the law or custom of the Nairs.

Mr. Mayne in his very able argument drew attention to all the authorities bearing on the point and to some previous adoption deeds and to the verbal evidence adduced by the parties in this particular case. The authorities and adoption deeds do not really come nearly up to what is wanted; not one of them shows that a Karnavan ever adopted a stranger into the family without consulting the other members of it.

The witnesses called at the trial certainly do not prove any custom warranting such an adoption. The witnesses called by the Plaintiffs distinctly negative it. Those called by the Defendant say in chief that the custom goes this length: but not one of them can give an instance in which he knew it was done. The witnesses are the ninth, tenth, and eleventh. The ninth the Raja of Calicut however stated distinctly in re-examination that the Karnavan in such a case as that before the Court could not adopt without the consent of his brother unless he was an outcaste or insane. Upon such evidence it appears to their Lordships that the balance is against and not in favour of the validity of the adoption which they have to consider. Certainly its validity is far from being established.

Large as the powers of a Karnavan appear to be those powers are essentially powers of management. He cannot apparently alienate the family property without the consent of the other members of the family (Anandravans) although an unreasonable wrongheaded opposition may probably be overruled. His limited power of alienation renders it improbable that he should have the wide power of adoption contended for by the Appellants the power *i.e.* without consulting other members of the family of introducing strangers into the Taravan and making them

heirs to its property. Such a power may be essential to the preservation of the Taravan when the last possible Karnavan has been reached but the possession of such a power by any Karnavan who is not the last surviving head of his Taravan seems to their Lordships to be unnecessary and to be unjust to those members of the family who may survive him and become Karnavans in their turn. In the absence of proof it would be contrary to sound legal principles to hold that any such power was conferred by any alleged custom.

Their Lordships are of opinion that the decision of the High Court is correct and they will humbly advise Her Majesty that this Appeal should be dismissed. The Appellants will pay the costs.

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