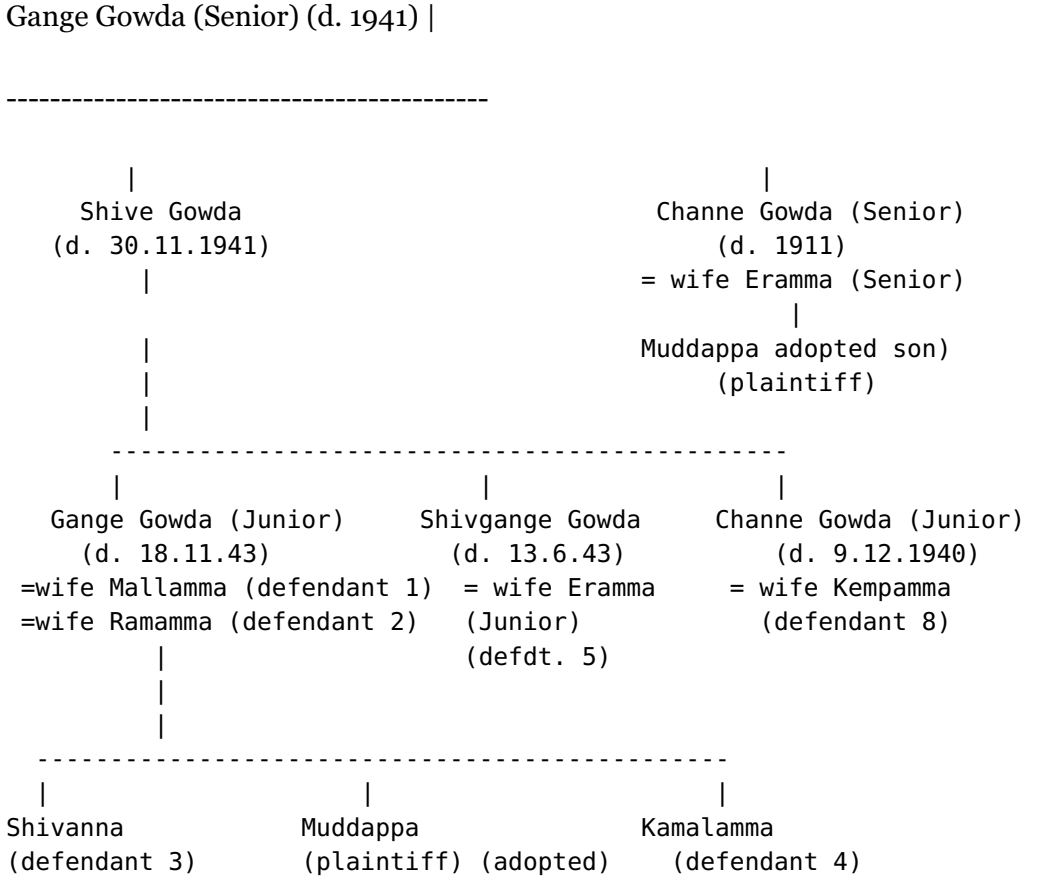
Supreme Court of India
Eramma And Ors. vs Muddappa on 20 October, 1965
Equivalent citations: AIR 1966 SC 1137
Author: J Mudholkar
Bench: K S Mudholkar, R Bachawat
JUDGMENT J.R. Mudholkar, J.

1. The point in dispute amongst the parries to this appeal by certificate from a judgment of the High Court of Mysore pertains to the adoption of the plaintiff-respondent No. 1, Muddappa. Muddappa who was the natural born son of Gange Gowda (Jr.) and his second wife Ramamma (defendant No. 2) and according to him, was adopted by Eramma (Sr.) as a son to her deceased husband Chenne Gowda (Sr.). The fact as well as the validity of the adoption were denied by the defendant Eramma (Jr.) who was defendant No. 5 to the suit and by her brothers Purade Gowda and Nanjunde Gowda who were defendants 6 and 7 to the suit being donees from her of property belonging to the family The relationship between the parries to the suit would be apparent from the following genealogy which is set out in the plaint:



It is common ground that Channe Gowda (Sr.) died some time in the year 1911 leaving behind him his widow Eramma (Sr.) but without leaving any male issue. It is said that he had left two daughters, one of whom died shortly after his death but the other probably is still alive. According to the plaintiff he was adopted by Eramma (Sr.) on September 22, 1950. But the deed of adoption which was executed on that very day was registered on October 31, 1950. After the adoption, however, Eramma (Jr.) the 5th defendant executed a deed of gift in favour of her brothers Purande Gowda and Nanjunda Gowda, defendants 6 and 7, on September 28, 1950 whereunder she conveyed the joint family property which at family partition in the year 1940 had been allotted to her share. The plaintiff being a minor, instituted a suit on December 2, 1950 for a declaration of his status as a validly adopted son of the deceased Channe Gowda (Sr.) through his next friend, his adoptive mother Eramma (Sr.). The plaint alleged that even though several demands were made to deliver possession of half of the joint family property to which the plaintiff was entitled, the defendants did not deliver it to him. He, therefore, claimed a partition of the joint family property, possession of his half share therein and mesne profits.

2. The suit was resisted by defendants 5, 6 and 7 but not by the other defendants, who, ft may be mentioned, are the other members of the family. It will be seen from the genealogy that the plaintiff Muddappa is no stranger. He is a son of Gauge Gowda (Jr.), the elder son of Shive Gowda. Shive Gowda was the elder brother of Channe Gowda (Sr.). Eramma (Jr.) is the widow of Shivaganga Gowda who was the second son of Shive Gowda. The only other male members of the family existing at the date of suit were Muddappa and his natural brother Sivanna defendant No. 3. The former claimed half share in the family property. According to the contesting defendants, however, no adoption at all took place on September 22, 1950, that the adoption deed was antedated, that in any case Eramma (Sr.) had no authority to make the adoption, that even if the fact as well as the validity of the adoption is found in favour of the plaintiff the adoptive mother was divested of her interest in the family property by reason of a partition which took place in the year 1940 during the lifetime of Gange Gowda (Jr.). This last contention, however, was not raised before the High Court and we have not permitted it to be raised in the appeal before us. It was faintly suggested that the alienation by Eramma, defendant No. 5, in favour of her brothers of certain family property which was in her possession was not affected by the adoption. This contention, however, was not persisted in for the obvious reason that it is plainly unsustainable. The only points which were argued before us were, therefore, (1) whether the adoption had in fact been made; and (2) whether Eramma ('Sr.) was not authorised to take a son in adoption to her deceased husband.

3. In so far as the fact of adoption is concerned there is ample evidence. In the first place there is the evidence of Eramma (Sr.) herself. In addition, there is the evidence of Sidda Gowda, P. W. 1, Chaluve Gowda, P. W. 2, Shivappa, P. W. 3, and Patil Nanjunde Gowda, P. W 4. They have vividly described what was done on that occasion. The evidence of all of them proves giving and taking which is the essence of adoption. In addition, there is the evidence of P. W. 2 Chaluve Gowda, scribe to the adoption deed. Their evidence reads natural and has been accepted as true by the High Court. The main criticism of Mr. Chaudhury for the appellants is that three of the witnesses were related to Eramma and the fourth was a chance witness. Adoption after all is a family affair and the most

natural witnesses would ordinarily be members of the family. In so far as the scribe is concerned, he has given good reasons for being present at the time of adoption and for scribing the deed The adoption deed itself was executed contemporaneously with the adoption and thus furnishes evidence of the adoption. We have been taken through the evidence of these witnesses and there is no reason for us to disagree with the High Court as to the credibility of the witnesses examined on behalf of the plaintiff. Moreover the adoptive mother herself is alive and has sworn to the, fact of adoption. By reason of the adoption it is she who has been divested of her interest in the property. It was, therefore, not in her interest to depose falsely as to the fact of adoption if it had not in fact taken place.

4. On the question of authority the law in the State of Mysore is to be found in Mysore Act 10 of 1933 entitled Hindu Law Women's Rights Act. 1933 . Section 9(1) of that Act runs thus:

"In the absence of an express prohibition in writing, by the husband, his widow, or, where he has left more widows than one, the seniormost of them shall be presumed to have his authority to make an adoption." It will be clear from this provision that ordinarily authority to adopt will be presumed. The law in this respect is thus in line with the law in the Bombay State. Learned counsel for the defendants-appellants relying upon the decision of the Mysore High Court in Srinivasachar v. Lakshmikantha, (1942) 20 Mys LJ 384, contended that the presumption arising under Section 9(1) of the Act is not an irrebuttable one and that this presumption should be deemed to have been rebutted by reason of the following circumstances:

(1) that though her husband died in the year 1911 his widow did not think of making adoption for almost 40 years;

(2) that her deceased husband had left two daughters at the time of his death and must have, therefore, prohibited his wife from making an adoption after his death;

(3) that she did not mention in the deed of adoption the fact that she had authority from her husband to adopt;

(4) that in the year 1942 she had instituted a suit against the other members of the family for partition of the family property and alternatively for maintenance in forma pauperis but she did not mention in me plaint that she had a power to adopt.

It seems to us that there is no substance in the argument of learned counsel. A bare look at Sub-section (1) of Section 9 shows that it raises a presumption as to the right of a widow to make an adoption to her husband. Ordinarily this presumption can be rebutted by establishing that the husband had expressly prohibited her from making an adoption. Such a prohibition could be established either by direct evidence or by circumstantial evidence. Can it be said that from the four circumstances relied upon by learned counsel that it is possible for any court to draw a reasonable conclusion to the effect that the husband of Eramma (Sr.) had expressly prohibited her from adopting? The strongest circumstance upon which reliance is placed by learned counsel is the long delay in making the adoption. This delay is explicable by reason of the fact that Eramma was in her

twenties when her husband died and it was natural that at such an early age she would not take the risk of divesting herself of her interest in the property by making mi adoption and leave herself at the mercy of the adopted son. Later the Hindu Law Women's Rights Act came into force under Section 8 of which the widow of a deceased coparcener belonging to the joint Hindu family was given a right to share in the family property. That being the position it is no wonder that Eramma was in no hurry to make an adoption. As regards the second circumstance it is sufficient to say that the real object behind her adoption is the belief of the Hindu community in general that unless there is a son to offer oblations to the deceased ancestors their souls will not reach the higher regions and may even sink into hell. The mere existence of a daughter is not sufficient to save the souls of ancestors and that is why a sonless Hindu makes an adoption of a son even though he may have a number of daughters. As regards the next two circumstances we do not see any relevance at all. These circumstances were pressed in aid by learned counsel apparently upon an error as to the true legal position. The law as it stood in Mysore at the relevant time did not require a widow to proclaim to anyone that she had an authority to adopt a son to her husband. The law on the other hand was that she could make an adoption unless she was expressly prohibited from doing so. The circumstances upon which reliance was placed by learned counsel do not help the defendants-appellants in discharging the onus cast upon them by law of establishing a prohibition to the widow from making an adoption, In the result, therefore, the appeal fails and is dismissed with costs throughout.