

(1924) 02 BOM CK 0002
In the Bombay High Court
Case No : Second Appeal No. 414 of 1922

Adiveva Fakirgowda Patil

APPELLANT

Vs

Chanmallgowda Ramangowda

RESPONDENT

Date of Decision : 19-02-1924

Acts Referred:

Bombay Hereditary Offices (Amendment) Act, 1886 — Section 2

Citation : AIR 1924 Bom 393 : (1924) 26 BOMLR 360

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, C.J.—The plaintiff sued to recover possession of the land described in the plaint with past and future mesne profits. He has succeeded in both the lower Courts. The defendants have now appealed to the High Court. The property in suit was Vatan property in the hands of one Fakirgowda who died leaving behind him a minor son Ramangowda. Ramangowda died unmarried and under age in 1915. Consequently the Vatan property was inherited by Chanmallgowda, a divided brother of Fakirgowda. In October 1919, Adiveva adopted Rudrappa to her husband. He is now defendant No. 4. He contests the plaintiff's claim on the ground that he is the owner of the property as the adopted son of Fakirgowda. There can no longer be any dispute with regard to the validity of the adoption of the fourth defendant. In any event in this case it could not be disputed as it is not suggested that the plaintiff was a co-parcener with Fakirgowda so that he might object to the adoption by Fakirgowda's widow. The question is whether the Vatan property which vested in Chanmallgowda on the death of Ramangowda could be divested from him by Adiveva's adoption of defendant No. 4, and no authority has been cited for the proposition that where the mother has not succeeded to certain property belonging to her deceased son, but it has gone to her husband's heirs, she can divest the property from them by adopting another son to her husband.

2. It was decided in *Bhimabai v. Tayappa Murarrao* ILR (1913) 37 Bom. 598, 15 Bom, L.R. 783) that in the case of Vatan property a widow could not make a second adoption so as to vest the Vatan property in the adopted son, if on the death of her natural or adopted son it was vested in a male member of the family in the absence of any heirs of the son. Batchelor J. there referred to the decision of the Privy Council in *Mussumat Bhoobwn Moyee Debia v. Ram Kishore Acharj Chowdhry* ILR (1913) 37 Bom. 598, 15 Bom, L.R. 783) and said:--

Here I think we have the summary and culmination of the judgment; and if this is the true ground and principle of the decision, then clearly the appellants are out of Court, for what the mother seeks to do by this second adoption is precisely to defeat and divest the estate of the deceased son's heir vested in possession.

3. It is argued for the appellants in this case that Chanmallgowda did not get possession on the death of Ramangowda. But it seems to me that the inheritance was vested in him, and it is that estate which cannot be divested by the subsequent adoption by Adiveva. We have been referred to Bombay Act X of 1923 whereby Section 2 of the Bombay Hereditary Offices (Amendment) Act V of 1886 has been amended by inserting after the word "widow" wherever it occurs the words "the mother or paternal grand-mother". If that amendment had been in force in 1915, then no doubt the Vatan property would have been vested in Adiveva. But retrospective effect has not been given to Act X of 1923, and consequently that argument in favour of the appellants cannot help them. The appeal must be dismissed with costs.

Shah, J.

4. I agree.