

(1919) 12 BOM CK 0023

In the Bombay High Court

Case No : Second Appeal No. 648 of 1918

Bhujagonda Adgonda Patil

APPELLANT

Vs

Babu Bala Bhokare

RESPONDENT

Date of Decision : 11-12-1919

Acts Referred:

Citation : (1920) 22 BOMLR 817 : 57 Ind. Cas. 573

Hon'ble Judges : Norman Macleod, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff sued to recover possession of the property mentioned in the plaint on the ground that he was adopted by the widow of one Adgonda who died in 1911. The 1st defendant was adopted by Adgonda himself. The 2nd defendant, the elder brother of Adgonda, is sued on the ground that he was colluding with defendant 1, and had also held possession of the suit property wrongfully. The plaintiff's case depended absolutely on the question whether he could prove his title as the adopted son to Adgonda, and he contested the 1st defendant's claim to be the adopted son of Adgonda on the ground that the adoption was invalid, the adopted son being the son of Sonubai the sister of Adgonda. Both the lower Courts have considered the question of the invalidity of the 1st defendant's adoption at great length. But the real point in the case curiously enough has not been noticed by either of the lower Courts or by the parties, although one issue, namely, whether the adoption of the 1st defendant by Adgonda amounted to a prohibition against his widow's adopting, went somewhat near the point I am referring to. That point is, Adgonda having died leaving a son, although he was a son by adoption, the widow's right to adopt remained suspended as long as that son was in existence. If there had been a natural son, her right to adopt would not arise until the death of that son without issue, and without leaving a widow. As the son was an adopted son, the widow's right to adopt to her husband would also not arise until that adoption

was set aside. It is not sufficient for her to say "in my opinion my husband's adoption is invalid, and therefore I am entitled to ignore it and adopt a son to my husband." It was not for her to judge whether the adoption by her husband was valid or invalid. In other words, as long as there is a son in existence, it must be presumed that he is the son of the husband. The plaintiff therefore in this case is out of Court on his plaint, as it is not open to him to challenge the adoption of the 1st defendant. He has got to show first that he is the adopted son properly adopted to Adgonda, and he fails in doing that, because there was an adopted son in existence at the time of his own adoption. This point arose some time ago in a suit which I tried on the Original Side. I do not know whether it has been reported. But no authority has been cited for the proposition that a widow can adopt to her husband when there is in existence a son adopted by her husband. The appeal, therefore, must succeed and the plaintiff's suit must be dismissed with costs throughout. Same order in joint S. A. No. 418 of 1918.