

(1974) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Second Appeals No"s. 69 and 99 of 1967

Chauth Mal

APPELLANT

Vs

Hagami Lal and Another

RESPONDENT

Date of Decision : 05-02-1974

Acts Referred:

Hindu Minority and Guardianship Act, 1956 — Section 11

Citation : (1974) RLW 156 : (1974) WLN 202

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Judgement

C.M. Lodha, J.—These are two connected appeals directed against the judgment and decree by the Senior Civil Judge, Udaipur dated 24.9.1966.

2. The facts giving rise to these appeals are as follows : One Ganesh Lal died leaving behind widow Smt. Ganga Bai He had no sort and consequently Smt Ganga Bai adopted respondent No. 2 Roshan Lal to her husband Ganeshlal by a registered adoption deed dated 30.10.1950, a copy of which has been placed on the record and marked Ex. A 3. Shortly thereafter she executed an agreement to sell the house in question belonging to her husband for Rs. 800/- in favour of appellant Chauthmal and obtained Rs. 200/ in cash as part of the sale price. A copy of this agreements has also been placed on the record and marked Ex A. 2. It was signed by Roshan Lal also. It may be relevant to state, here that Chauthmal was already occupying a part of the house i. e. two "media", a covered stair-case and also an open terrace as a tenant of Ganeshlal. However, before the sale deed could be executed, it appears that relations between Smt. Ganga Bai and Roshan Lal got strained, with the result that ignoring the first adoption she adopted respondent No. 1, Hagamilal who was then a minor on 20.1.1954. This adoption was oral and is not evidenced by any writting. On 11.3.1951 Roshan Lal executed a sale deed in respect of the house in question in favour of Chauthmal in pursuance of the agreement Ex. A.2. A copy of this sale deed has also been produced and marked Ex A. 1. Two days after the execution

of the said sale deed Roshanlal and Mohanlal brother of Hagamilal as guardian defacto of Hagamilal entered into an agreement whereby the dispute as to the adoption of Roshanlal and Hagamilal by Smt. Ganga Bai was amicably settled Roshanlal chose to withdraw himself from his adoptive family and accepted Hagamilal as the validly adopted son of Ganeshlal. In order to avoid litigation Mohanlal also agreed on behalf of Hagamilal that Roahnlal would be paid Rs. 1300/- in lieu of giving up his right to the property of Ganeshlal. It was further agreed that the transactions entered into by Roshan Lal as the adopted son of Ganesh Lal would be recognised and not challenged by Hagamilal. The original agreement entered into between Mohanlal, as guardian of Hagami Lal minor and Roshan Lal is marked Ex. 1. There is no dispute between the parties that this agreement bears the singatires of Mohan Lal and Roshan Lal. As to what are the implications of agreement is of course a point of serious disputes and will be dealt with at the proper place.

3. Hagamilal having come up of age, filed a suit on 11.2.1962 in the Court of Munsiff, Rajsamand against Chauth Mal and Mohan Lal praying that the sale deed Ex. A.1 dated 11.3.1951 executed by Roshan Lal in favour of Chauthmal in respect of the house in dispute may be declared void and ineffective. It was further proved that the possession may be granted to him of the premises already in occupation of Chauthmal as tenant. This suit was registered Suit No. 281 pf 1962. Soon after the institution of this suit, Chauthmal also filed a suit against Hagamilal and Roshan Lal praying that a decree for possession of the property sold to him by Roshan Lal vide Ex. A. 1 may be granted in his favour on payment of Rs. 300/- as the rest pf the sale price i. e. Rs. 500/- had already been paid. Chauthmal's suit was registered as suit No. 59 of 1963. An application was filed by Chauthmal in his suit on 22.1.1965 praying that the proceeding in his suit may be stayed till suit No. 281 of 1962 filed by hagamilal was decided. To this prayer the defendant also agreed with the result the trial proceeded in suit No. 281 of 1962 only.

4. After recording the evidence produced by the parties, the learned Munsiff decreed suit No. 281 of 1962 in favour of Hagamilal-plaintiff. It was agreed on behalf of Chauthmal that as a necessary corollary his suit No. 59 of 1963 was liable to be dismissed and accordingly by his judgment & decree dated 23.12.1965 the learned Munsiff dismissed Chauthmal's suit.

5. Aggrieved by the judgments and decrees in both the cases Chauth Mal filed appeals in the Court of District Judge. Udaipur from where they were transferred to the Court of Senior Civil Judge Udaipur for disposal. The appeal arising out of suit No. 281/2 was registered as Appeal No. 154/65 and that arising out of suit No. 59/63 was registered as Appeal No. 22/66.

6. As already stated above, by a single judgment dated 24.9.1966 the learned senior Civil Judge dismissed both the appeals Hence these appeals by Chauthmal before this Court Appeal No. 69/67 is with respect to suit No. 281 of 1962 & Appeal No 99/67 is with respect to suit No 59/63.

7. Learned Counsel for the appellant has urged that the court below have erred in holding that Roshan Lal's adoption by smt. Ganga Bai was not valid for want of evidence of giving and taking. He has also argued in this connection that the courts below have erred in upholding Hagami Lal's adoption by Smt. Ganga Bai. This point, in my opinion, cannot be accepted. No doubt there is a registered adoption deed Ex A 2 in favour of Roshanlal, evidence regarding giving and taking in connection with his adoption is conspicuous by its absence. It is not disputed that giving and taking was essential to validate the adoption, and mere existence of a registered deed of adoption, could not fill up the lacuna caused by lack of the ceremony of giving & taking. The best person to support the case of Roshanlal's adoption by Smt Ganga Bai was undoubtedly Roshanlal himself. But even he states that the ceremony of giving and taking did not take place and there is no other evidence in this respect. On the other hand there is overwhelming evidence from the side of Hagami Lal which clearly indicates that Iris natural mother had delegated authority to his elder brother Mohan Lal to give him in adoption and that Smt. Ganga Bai took Hagamilal in adoption at the time the ceremony of adoption took place in presence of her relations. No exception can be taken to this evidence and no criticism worth the name has been advanced in respect of it. All that has been argued is that the natural mother of Hagamilal should have physically handed over the boy to Smt. Ganga Bai. This is not essential. It is trite law that the authority of giving the boy in adoption can be delegated by the natural parent. In this state of evidence, the learned Senior Civil Judge was perfectly justified in coming to the conclusion that Roshanlal's adoption was not proved to be valid whereas Hagamilal's adoption is proved to have taken place in accordance with law and I do not see any reason to interfere with that finding.

8. There is yet another aspect of the case. There is no gain-saying the fact that ever since 13-3-51 the agreement took place between Mohanlal and Hagamilal, Roshanlal completely withdrew from his adoptive family and Hagamilal has been treated to all intents and purposes as the adopted son of Ganeshlal. Even Roshanlal in the course of this litigation has not asserted his right as the adopted son of Ganeshlal. In these circumstances it would be most inequitable and improper to call into question the adoption of Hagamilal at the instance of a stranger viz Chauthmal, who has nothing to do with the devolution of the property of Ganeshlal, and is only interested in getting the sale made by Roshanlal in his favour declared valid. I am clearly of opinion that the fact of adoption so well established and not challenged by the person concerned vis. Roshanlal cannot be undone at the instance of a stranger like Chauthmal. In the result I hold that Hagamilal is the validly adopted son of Ganeshlal.

9. The next important question is whether sale of the house in question made by Roshanlal vide Ex. A1 in favour of Chauthmal is liable to be declared ineffective as against Hagamilal. It is true since Hagamilal is the adopted son of Ganeshlal and not Roshanlal, Roshanlal had no authority to sell Ganeshlal's property and on that reasoning Hagamilal is not bound by the sale made by Roshanlal in

respect of the property in question. However, there is an important aspect of the case which does not seem to have been placed before the courts below. There was a genuine dispute between Hagami Lal and Roshanlal as to who was the lawfully adopted son of Ganeshlal. Mohanlal the defacto guardian of Hagamilal, in order to avoid litigation, entered into an arrangement with Roshanlal (Ex.7) that the latter would forgo all his rights in Ganeshlal's property and would not hold himself out as an adopted son of Ganeshlal, on his agreeing on behalf of the minor Hagamilal not to question certain transactions made by Roshanlal in respect of Ganeshlal's property. A reference to Ex.7 (agreement between Mohanlal and Roshanlal) would show that in the first place Roshanlal was given Rs. 1300/- for forgoing his claim to the property of Ganeshlal as his adopted son. Then it was agreed that the discharge of mortgage by accepting the mortgage money made by Roshan Lal of agricultural land belonging to Ganesh Lal in the tank of Swarup Sagar would be considered as a valid discharge. It was further agreed that the amount due to Ganesh Lal recovered by Roshan Lal from debtors- Chagan, Bhura, Kesara of Guda would be also considered as a valid recovery. So also there is mention of other recoveries made by Roshan Lal of debts due to Ganesh Lal and all those recoveries have been recognised as binding upon Hagami Lal.

10. As regards the sale in question it has been mentioned that Roshan Lal had already recovered Rs. 500/-, a major part of the sale price, and the balance Rs. 300/- would be received by Hagami Lal who would hand over possession of the property in dispute to the vendee Chauth Mal and if necessary take proper proceedings against Chauthmal, but that Roshan Lal would not be liable to refund Rs. 500/- recovered by him.

11. Larned Counsel for the respondent Hagami Lal, however, submits that this condition clearly meant that Hagami Lal would be at liberty to challenge the validity of the sale. It has been also argued on Hagami Lal's behalf that Hagami Lal was a minor at the time when the sale deed Ex. A. 1 was executed by Roshan Lal and consequently the sale was void and could not have been ratified by Hagami Lal. In support of his contention he has relied upon *Kanchi Kamamma and Others Vs. Yerramsetti Appanna*,

12. So far as interpretation of C1. (5) pertaining to the sale in question contained in the agreement Ex 7 is concerned, I am of opinion, that it clearly meant that Hagami Lal would be entitled to recover the balance price Rs. 300/-and that for that he would be entitled to sue Chauthmal, There is no mention in this clause that this sale made by Chauthmal would be considered as unauthorised and not binding on Hagami Lal. PW3 Hagami Lal has admitted that the portion A to B which refers to C1. (5) of Ex. 7 pertaining to the sale in question is correct, and he has also admitted that he has not challenged the other transactions made by Roshan Lal in respect of the property of Ganeshlal described in Ex. 7. He has further stated that he is bound by the averments contained in Ex. 7. Mohan Lal PW 8 has also stated in the course of cross examination that what has been

stated in the agreement Ex 7 with respect to sale of the house to Chauthmal by Roshan Lal was accepted by him. Thus on the basis of the averments in C1. (5) of Ex. 7 coupled with the statement of Hagami Lal and his brother Mohan Lal who acted as his Guardian De facto at the relevant time, I am led to believe that it was not the intention of any of the parties to the agreement to challenge the sale in question made by Roshan Lal and all that was settled was that the balance of the sale price Rs. 300/- would be taken by Hagami Lal from Chauth Mal.

13. The question then is whether Hagami Lal is bound by this condition? In *Kanchi Kamamma and Others Vs. Yerramsetti Appanna*, it was held that where sale by a de facto guardian of minor's property is invalid being hit by Section 11 of the Hindu Minority and Guardianships Act and the sale is later on ratified by either the natural guardian or title-holder, such subsequent ratification does not validate the sale which initially was void in law. In support of this view the learned Counsel referred to *Rajalakshmi and Others Vs. Ramachandran and Another*, and *Daneyi Gurumurthy Vs. Raghu Podhan and Another*,

14. It may, however, be pointed out that the agreement Ex. 7 in the present case is not hit by Section 11 of the Hindu Minority and Guardianships Act, as it was made before the said Act came into force. It appears to me that the agreement Ex. 7 was made for the benefit of the minor and Mohanlal his guardian de facto in his prudence thought it fit that by entering into the said agreement the minor would be greatly benefited. The act of Mohan Lal in making the agreement Ex. 7 as de facto guardian of the minor Hagami Lal therefore cannot be said to be against his interest or void ab initio.

15. It is true that the doctrine of estoppel does not apply to minors and still less the court will hold a minor estopped by the acts and omissions of others. There is, however, another principle that a minor is not entitled to repudiate an agreement and yet retain the advantage derived by him under it. General principles of equity seem incompatible with such a position. If the respondents' contention is accepted, it would result in the minor's accepting that part of the agreement which is beneficial to him and repudiating the rest which he considers not beneficial to his interest. It is a sound dictum of law that one cannot approbate and reprobate at the same time. In the facts and circumstances of the present case, it would be, in my opinion, highly inequitable to allow Hagamilal to take all the advantages under the agreement Ex 7 and yet repudiate the particular clause which pertains to the sale of the house in question, to the detriment of the appellant Chauthmal, by allowing him to challenge the sale. In this view of the matter, I am inclined to hold that Hagamilal is not entitled to get the sale in question declared ineffective. The inevitable result of this finding is that Hagamilal's suit is liable to be dismissed and that of Chauthmal entitled to be decreed.

16. Accordingly, I allow both the appeals, set aside the judgments and decrees by the courts below and dismiss Hagamilal's suit No. 281 /62 and decree Chauthmal's suit No. 59/63, and direct that Chauthmal shall be delivered

possession of the property in dispute on payment of Rs. 300/-. The amount of Rs. 300/- shall be deposited in the trial court within 2 months from today In case Chauthmal fails to deposit the amount within the prescribed period his suit shall stand dismissed. In the circumstances of the case, I leave the parties to bear their own costs throughout.

17. Leraned Counsel for the respondents prays for leave to appeal u/s 18 of the Rajasthan High Court Ordinance. Looking to the important question of law involved in the case, I certify it to be a fit one for appeal.