

(1923) 06 BOM CK 0014
In the Bombay High Court

Khairuddin and Others

APPELLANT

Vs

Sahu Gulab Das and Another

RESPONDENT

Date of Decision : 01-06-1923

Acts Referred:

Citation : 74 Ind. Cas. 220

Hon'ble Judges : Ryves, J

Bench : Single Bench

Judgement

Ryves, J.—The plaintiff sued for a declaration that the sale-deed passed by deceased defendant No. 1 who was the adoptive father of the plaintiff in favour of the defendant No. 2 was void, and to recover possession of the property in suit. In the alternative the plaintiff sued for possession of half the suit property on partition. The suit has been dismissed in both the Courts.

2. The plaintiff was adopted by Ghenappa, the first defendant, on the 30th November 1903, at which time the plaintiff was a major. Exhibit 50 is the adoption deed and it is on the interpretation of a particular passage in that deed that the decision in this suit depends.

3. For the plaintiff it was contended that the material portion of the deed ran as follows:

You have acquired whatever right and authorities a natural son should have acquired had I got any, and you have from to-day become the owner of the property moveable and immovable. You should stay with us and take care of us as long as we, that is, I and my wife, live. After our death you are the sole owner and should thereafter make Vahiwat as owner. In whatsoever manner the estate, moveable or immovable, is managed, as long as I live it is to be taken that you approve of it. You have no authority to object to it. On this condition I have taken you in adoption of my free will on your and your father's consenting to it.

4. The word used, in the original is Vyavastha and the learned Appellate Judge at page 3 has quoted the various meanings assigned to that word in Molesworth's

Marathi English Dictionary and Wilson's Glossary of Judicial and Legal terms. It would appear that the word itself has no distinct and separate meaning. It may either mean settlement, arrangement, just disposition; establishment in suitable, connection, or order or separating, setting apart, settlement, arrangement.

5. The learned Subordinate Judge considered that the word "Vyavastha" in the context in which it was used could mean only settlement, disposition, and that the adoptive father had thus reserved to himself unlimited, powers of disposal over, the property both moveable and immovable.

6. The learned Appellate Judge held that the word "Vyavastha". connotes just disposition as manager of the family. There is further an ingenious argument raised that because a manager of a joint Hindu family can alienate the family estate with the consent of the other members of the family, the plaintiff consented, prior to his adoption, to his adoptive father's management, and, therefore, it must be taken that he consented to any alienation which might be made in future by the adoptive father as manager. There is, an obvious fallacy in that argument, because, ordinarily, a general consent given to a manager of a joint Hindu family would not include a consent to alienations for value; which are not within his province as manager, so that, for other alienations express consent would be necessary. Therefore, the consent given to a manager by other members of the family does not necessarily include consent to future alienations. It would only mean, as in this case, that the family would not interfere in any way with the ordinary management of the family property.

7. But it has been contended for the respondent that the word "Vyavastha" connotes unlimited powers of alienation. It seems to us that when we have to interpret a word of this indeterminate character, we must read it strictly with the context in the adoption deed, and although it would be very natural for a son if he is major to consent, and if he is a minor; then for those who are acting on his behalf to consent, to the adoptive father's acting as manager of the family property, yet it would be extremely unlikely that there should be, a consent given to the adoptive father having unrestricted powers of, alienation which might result, as it did in this case, in the father's dissipating the whole of the family property or the best part of it before the adopted son, could succeed. That being the case, in our opinion, we should interpret this adoption deed as conferring on the father powers of management free from any interference on the part of the adopted son, and as such, a provision might naturally have been made in the deed although the adopted son at that time was a major, it is by no means necessary or even natural that we should interpret the clause as giving to the adoptive father an unrestricted power of alienation. We think, therefore, that the learned Appellate Judge was wrong in dismissing the plaintiff's suit.

8. We think that the alienation in this suit was not competent with regard to the plaintiff's share. It is a question on which apparently there is some conflict of authorities whether an unauthorised alienation by the manager of a Hindu joint family is altogether void or whether it would be held good to the extent of the

share of the person making the alienation. In *Kasam v. Jorawar Singh* 68 Ind. Cas. 573 : 49 I.A. 358 : 31 M.L.T. 46 : 16 L.W. 223 : 18 N.L.R. 127 : AIR (1922) (P.C.) 353 : 43 M.L.J. 676 : 21 A.L.J. 57 : 25 Bom. L.R. 1 : 37 M.L.J. 73 : 27 C.W.N. 179 their lordships of the Judicial Committee accepted the view that the Mitakshara is to be interpreted in Berar in the same manner as in Bombay, and that accordingly a member of a joint family in Berar could sell his undivided share without the consent of his co-owners. If, therefore, the plaintiff's father had power to alienate his own share without the consent of the plaintiff, it is difficult to say why in the case of an alienation for value as in this case of the whole interest of the family property it could not remain good with regard to the plaintiff's father's share.

9. We think, therefore, that the plaintiff is entitled to a declaration that he is the owner of half the suit, property and that the suit should be referred to the Collector for partition of the suit property in equal moieties between the plaintiff and, the second defendant.

10. There should be usual enquiry as to mesne profits from the date of suit. The plaintiff should pay Court-fees to the extent of mesne profits to which he has succeeded.

11. The plaintiff is entitled to half his costs throughout.