
(1963) 01 AHC CK 0013
In the Allahabad High Court
Case No : Second Appeal No. 886 of 1956

Kishni and Others

APPELLANT

Vs

Ratna and Others

RESPONDENT

Date of Decision : 03-01-1963

Acts Referred:

Citation : AIR 1964 All 17

Hon'ble Judges : J.N. Takru, J;B. Dayal, J

Bench : Division Bench

Advocate : P.N. Shukla and R.P. Gayal, for the Appellant; B.S. Darbari, for the Respondent

Final Decision : Allowed

Judgement

Dayal, J.—This second appeal has been referred to a Division Bench because of a conflict of views between two Bombay rulings reported in Putla Bai v. Mahadu, ILR Bom 107 and Panchappa v. Sanganbasawa ILR Bom 89.

2. The facts which have given rise to this appeal are not in controversy. One Bhupat, defendant No. 4, sold a house to the plaintiffs by means of a registered sale-deed. Having purchased the house, the plaintiffs filed a suit for possession of the house and for damages against defendants Nos. 1 and 2 on the allegations that they were in illegal possession of it, that they had caused some damages to the wall of the house, and that the plaintiffs had suffered a loss of Rs. 100/-. The plaintiffs also claimed Rs. 2/- per month for illegal use and occupation of the house by the defendants.

3. The defendants contested the suit on the ground that Bhupat had no right to sell the property to the plaintiffs as he had been given in adoption by his mother to one Chhajju, and having been adopted into another family he had lost all interests in this property. He, therefore, could not execute the sale-deed in favour of the plaintiffs. The trial Court decreed the plaintiffs' suit for the recovery of possession over the house and also awarded Rs. 24/8/- as damages

caused to the house. Future damages were also decreed at the rate of -/8/- per month for use and occupation of the house. The defendants appealed and the lower appellate Court allowed the appeal and dismissed the plaintiffs' suit on a finding that Bhupat had been validly adopted into another family, and consequently he did not pass good title to the plaintiffs.

4. The sole question for decision in this appeal which has been filed by the plaintiffs, is whether adoption of Bhupat was a valid adoption, so that, he lost his interest in the house, It is admitted that originally Bhupat along with Jiwa and others was the joint owner of this house. During the life-time of Jiwa, Bhupat was given by his mother in adoption to Chhajju. It is also not disputed that Smt. Kalawati, who was the mother of Bhupat, had married in the Karao form with one Girwar, the younger brother of Chhajju, before she gave Bhupat in adoption to Chhajju and the validity of this adoption depends upon whether Smt. Kalawati after marrying Girwar still retained the right to give over his son Bhupat in adoption. If she had lost the right to give her son by the previous husband in adoption to Chhajju, then the adoption of Bhupat was invalid and he retained his right in the house in question. Other joint owners having died, Bhupat remained as the last surviving owner of the property and he would have a right to sell it to the plaintiffs. If, on the other hand, it is held that Smt. Kalawati did not lose the right to give Bhupat in adoption to Chhajju, then his adoption by Chhajju was valid and Bhupat having been thus validly adopted in the family of Chhajju during the life-time of his other co-sharers would have lost all his interests in the house and would not get it as the last survivor. In that case sale by him in favour of the plaintiffs would not pass any interests to the plaintiffs.

5. On this question, the two conflicting cases mentioned above were considered by a Full Bench of the Bombay High Court in *Fakirappa v. Savitreva Sangappa* AIR 1921 Bom 1. The learned Judges who constituted the Full Bench agreed with the view that under the basic principle of Hindu Law a widow after her re-marriage must be held to have lost the right to give her son from a previous husband in adoption. Mr. Justice Shah, who delivered the judgment of the Full Bench, observed that:

"These Smriti writers did not permit any remarriage of a Hindu widow, and did not provide for the case such as, we have before us. On the contrary it is clear that in the Chapter relating to marriage in the Acharadhyaya, Yajnavalkya has in effect prohibited widow remarriage; at least Vijnanesvara has clearly understood Yajnavalkya in that sense as would appear from the words used by him in introducing Verses Nos. 68 and 69 in that Chapter.....It seems to me that a Hindu widow after her remarriage cannot claim to have any right to give a son by her first husband in adoption. Any such power would be entirely opposed to the spirit and the basic principles of Hindu law".

6. We entirely agree with this observation, if we may say so with great respect. Hindu society is based on patriarchal system. Sons are held to be essential not only for carrying on the family of the father but also for conferring spiritual

benefit on the father. A mother of the child who has married again and has completely left the family of her former husband cannot have any interest either in carrying on the family of her former husband or in providing spiritual benefit to him. Her interests are so essentially different that she cannot look at the matter from the correct perspective. In those circumstances, it would be against the very basic principle of Hindu Law to permit such a mother to deprive her former husband of the benefits both spiritual and temporal, of a son. In this case Bhupat is admittedly the only son of his father. A widow who has remarried contrary to the clear injunction of Hindu Law, cannot claim still to have the right to alter structure of the family of her former husband. We are, therefore, satisfied that a widow who has re-married can have no right to give away the child of her former husband in adoption.

7. Some arguments were based on interpretation of the different sections of Act XV of 1856. But that Act deals with the rights of inheritance to property and of guardianship to child. It has nothing to do with the right of adoption, and we do not think it necessary to take notice of those arguments in this connection. We are, therefore, of the opinion that the adoption of Bhupat was invalid and he did not lose his right in the property. The plaintiffs, therefore, acquired a good title to the house and the decree passed by the trial Court must be upheld.

8. This appeal is consequently allowed. The decree passed by the trial Court is restored and that passed by the lower appellate Court is set aside. In view of the special circumstances of tin's case, we pass no order as to costs of this appeal.