

(2012) 07 MAD CK 0030

In the Madras High Court

Case No : S.A. No. 1359 of 2008 and M.P. No. 1 of 2008, 1 of 2009 and 1 of 2011

M.A.K. Balakrishnan and others

APPELLANT

Vs

P. Chandran and others

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Hindu Succession Act, 1956 — Section 8, 8(a), 8(b)
Transfer of Property Act, 1882 — Section 51, 52

Citation : (2012) 5 LW 255

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : M.S. Krishnan, for Mr. R. Balasubramanian, for the Appellant; V. Raghavachari and Mr. M. Chidambaram for R1, R3 to R7 R11 to R14, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The defendants 3 to 6 are the appellants. Originally the plaintiff C. Amminiammal filed a suit, on the file of the Original

Side of the High Court, Madras, in C.S.No. 429 of 1988 against one Devaki and Bhuvaneswari, for partition of her half share in the suit

properties. The case of the plaintiff C. Amminiammal was that her son Govindaraju was allotted plot No. 4832, 6th Cross Road, Anna Nagar,

Madras and before he obtained a sale deed from the Tamil Nadu Housing Board, he died in harness on 14.01.1985 leaving behind his widow the

1st defendant and the plaintiff, namely the mother and therefore, both the plaintiff and the first defendant are entitled to each undivided half share in

the property left by Late Govindaraju and during the pendency of the suit before the Original Side, an application in A.No. 1913 of 1988 was filed

by the plaintiff for an order injunction restraining the first defendant from alienating the suit property and that was also ordered on 21.04.1988 and

despite the same, the first defendant sold the property to the defendants 3 and 4 and the defendants 3 and 4 in-turn settled the property in favour

of the defendants 5 and 6 and therefore, they were also impleaded as one of the defendants. Later, the suit was transferred to City Civil Court,

Chennai due to the enhancement of pecuniary jurisdiction of the Hon"ble High Court and renumbered as O.S.No. 4710 of 1996 and thereafter, C.

Amminiammal died and therefore, her legal-heirs were added as plaintiffs 2 to 5 and C. Amminiammal alleged to have executed a Will, dated

17.12.1992 and under the Will, she bequeathed of her right over the suit property in favour of her sons, namely the plaintiffs 2 to 5 and therefore,

the plaintiffs 2 to 5 together inherited half share of C. Amminiammal and the 2nd plaintiff died leaving behind the plaintiffs 6 to 9 as his legal- heirs

and therefore, they are entitled to half share in the undivided property of the deceased Govindaraju.

2. The defendants 1 and 2 filed a statement stating that the 2nd defendant was the adopted daughter of Govindaraju and the first defendant and the

adoption took place in the year 1975 as per the Hindu Customs and Usage and after the death of Govindaraju, his widow and daughter, namely

the 2nd defendant inherited the property and the plaintiffs mother has no right or title over the property and even assuming that Govindaraju died

intestate, the mother was entitled to only 1/3rd share and not half share.

3. The defendants 3 to 6 also filed a separate statement stating that the first defendant purchased the property in her name from the Housing Board

and therefore, the property was her absolute property and the plaintiffs were not in joint possession with her and the first defendant sold the

property in favour of the defendants 3 and 4 under two registered sale deeds and they in- turn settled the properties to defendants 5 and 6 and

therefore, they are the absolute owners of the property and therefore, the suit has to be dismissed.

4. The trial court held that the property in plot No. 4832, 6th Cross Road, Anna Nagar, Madras, was the property of Govindaraju and after his

death, his mother and his widow inherited the property in equal moiety and each entitled to half share and the defendants 3 and 4 purchased the

properties during the pendency of the suit, they cannot claim any right over the property and decreed the suit in respect of the said plot number

holding that the first plaintiff was entitled to half share and dismissed the suit in respect of other reliefs.

5. The defendants 3 to 6 have filed appeal in A.S.No. 28 of 2004 and the learned appellate Judge, after holding that the properties belonged to

Govindaraju and after his death, it was inherited by his mother and widow and therefore, each of them entitled to half share in the undivided

property and the plaintiffs 2 to 5 cannot claim any right over the property under the Will alleged to have been executed by the first plaintiff on the

ground that the Will was not proved and remanded the matter to the trial court for deciding the issues, namely quantum of share to which the

plaintiffs are entitled to and that was challenged in C.M.A.No. 2534 of 2005 and the Civil Miscellaneous Appeal was allowed and the order of

remand was set aside and the first appellate court directed to consider the issues regarding the quantum of share to which the plaintiffs are entitled

to. Thereafter, the first appellate court held that the plaintiffs 3 to 5 are each entitled to 1/10th share each and the plaintiffs 6 to 9 jointly entitled to

1/10th share each and the first defendant is entitled to 6/10th share over the plot No. 4832, 6th Cross Road, Anna Nagar, Madras and dismissed

the suit in respect of other items of properties. Aggrieved by the same, this second appeal is filed.

6. The following substantial questions of law were framed at the time admission:-

1. Have not the courts below grossly erred in law in misconstruing and misapplying the clear provisions of Section 8(a) and 8(b) of the Hindu

Succession Act, in favour of the respondents/Plaintiffs, which goes to the root of the matter?

2. Whether the courts below have committed a grave error of law in misconstruing as if when it is an individual property of C. Govindaraju as

allottee and upon his demise, the State Housing Board conveyed the title of his widow (1st Defendant), on herself complying with all the pre-

conditions, such as completion of construction,, payment of final cost with interest and other charges and such other formalities?

7. Mr. M.S. Krishnan, the learned Senior counsel appearing for the appellants submitted that the courts below without appreciating of the

provisions of 8(a) and 8(b) of the Hindu Succession Act, erred in holding that the mother was entitled to half share in the property left by her son in

the presence of widow. He further submitted that the appellants are bona-fide purchasers for value and after the purchase, they have demolished

the existed structure and put up a new structure by spending more than 50 lakhs and that was also known to the respondents/plaintiffs and they

have not objected to the construction made by the appellants and therefore, the respondents are estopped from claiming any right over the

property purchased by the appellants. He further submitted that as per the sale deed executed by Tamil Nadu Housing Board in favour of the first

defendant, the first defendant became the absolute owner of the property and the defendants 3 and 4 purchased the property from the first

defendant and therefore, they got valid title to the suit property. He further contended that even though, a lease-cum-sale was executed by

Govindaraju in favour of Housing Board, that did not fructify into a sale deed and Govindaraju had only a right to get the sale deed in his favour by

paying installments and as per the agreement, that right will not devolve upon first plaintiff and the right of Govindaraju over the property was in the

nature of spes successionis and therefore, that cannot be a subject matter of transfer or inheritance and therefore, no right can be claimed by the

first plaintiff and in-turn no right can be claimed by the other plaintiffs.

8. On the other hand, Mr. V. Ragavachari, the learned counsel appearing for the respondents submitted that originally the suit was filed before the

Original Side of this court in C.S.No. 429 of 1988 for partition and in that suit, Application No. 1913 of 1988 was filed by the first plaintiff for

injunction restraining the first defendant from alienating the property and injunction was also granted in the year 1989 and thereafter, contrary to the

order of injunction and in-defiance of the order of injunction, the first defendant sold the property to defendants 3 and 4. Therefore, the sale in

favour of defendants 3 and 4 is not a valid sale, as it was against the order of injunction passed by this court.

9. He further submitted that at any rate, the sale in favour of defendants 3 and 4 were effected during the pendency of the suit and therefore, the

sale was hit by doctrine of lis pendens and hence, the defendants 3 and 4 cannot claim any right or equity in their favour by reason of construction

made by them and no proof was adduced by the defendants regarding the improvements made by them and there was no pleading to that effect

and therefore, the defendants are not entitled to claim equity or right in their favour in respect of the alleged improvements made by them. He also

relied upon the following judgments in support of his contention:-

1. Vijayalakshmi Leather Industries (P) Ltd. Vs. K. Narayanan, Lalitha, Venkatanarayanan, Murali, Sumithra and Selvi,
2. Har Narain (Dead) by LRs. Vs. Mam Chand (Dead) by LRs. and Others,
3. Gayatri De Vs. Mousumi Co-operative Housing Society Ltd. and Others,
4. Mrs. Pauline Frederick Vs. V.L. Narayanan and Another,
5. Raghavan alias Bhagavathikannu Pillai and 6 others Vs. M. Krishnammal and 2 others
6. R.J. Paul Vs. S.N. Kulasekaran, S. Rajeswari and S. Packiaraj,
- 7 B. Premanand and Others Vs. Mohan Koikal and Others,
8. Surjit and others Vs. Harbans Singh and others etc. etc.,
9. R.S. Madanappa and Others Vs. Chandramma and Another,

and contended that there cannot be any estoppel and having regard to section 52 of Transfer of Property Act, the defendant cannot claim any right

u/s 51 of the Transfer of Property Act for the alleged improvement made by them.

10. On the other hand the learned Senior counsel appearing for the appellants relied upon the following judgments in support of his contention.

1. Dayanandammal alias Dayalammal and Another Vs. St. Thomas Tamil Church and Another,
2. Brahmavart Sanathan Dharam Mahamandal, Kanpur and Others Vs. Prem Kumar and Others,
3. K. Rangasamy Vs. Tamil Nadu Housing Board,
4. J. Narayana Rao Vs. V.G. Basavarayappa and Others,
5. Shri Krishnan Vs. The Kurukshetra University, Kurukshetra,
6. Banarsi Das Vs. Seth Kanshi Ram and Others,

11. The learned Senior counsel appearing for the appellants also relied upon the unreported judgment of this court rendered in S.A.No. 336 of

2002 in the matter of Syed Abdul Rahman vs. Muthan alias Muthayyan, in support of his contention that the first plaintiff cannot claim any right

over the property, which was purchased by the first defendant, though the lease was in favour of her son.

12. The admitted facts are as follows:-

Govindaraju was allotted Plot No. 4832 situated in 6th Cross Road, Anna Nagar, Madras and he also entered into a lease-cum-sale agreement

with the Tamil Nadu Housing Board and was paying installments and before he completed the entire dues, he died on 14.01.1985 leaving behind

his mother and widow, the first defendant in the suit. Though, the first defendant claims that the 2nd defendant is her adopted daughter and that

adoption was also accepted by the employer of the deceased Govindaraju and there was a adoption deed and therefore, the 2nd defendant was

also entitled to claim equal share along with the plaintiffs and the first defendant, no such argument was advanced before the trial court and the first

defendant, namely the widow of Govindaraju did not enter the box and no evidence was adduced to prove the adoption. Therefore, we will have

to see whether the first plaintiff, namely the mother and the first defendant, namely the widow are entitled to half share each in the property

belonged to Govindaraju.

13. It was contended by the learned Senior counsel Mr. M.S. Krishnan appearing for the appellants that the right Govindaraju got under the lease-

cum-sale agreement was in the nature of spes successionis and until a sale deed was executed by Housing Board in favour of an allottee, the

allottee can not claim any right over the property and that right cannot be a subject matter of transfer or inheritance and hence, the first plaintiff

cannot claim any right over the property, namely the plot No. 4832 on the death of her son.

14. The argument of the learned Senior counsel appearing for the appellants cannot be accepted and in my view, the right of Govindaraju got in the

plot, cannot be considered as a spes successionis. Admittedly, Govindaraju entered into a lease-cum-sale agreement with the Housing Board and

as per the terms of agreement, on payment of the entire installments, he was entitled to get the sale deed in his favour and therefore, till the sale

deed was executed, he was entitled to be in possession of the property as a lessee, which is heritable. Further, he was entitled to get the sate deed

by paying the entire installments and hence, it cannot be treated as a spes

successionis. Spes successionis is merely an expectation or hope of succeeding to a property, a chance or a possibility which may be defeated by an act of somebody else and it cannot be stated that the right Govindaraju got in the plot was only a spes successionis. Hence, the argument of the learned Senior counsel for the appellants that the first plaintiff cannot claim any right over the property, as Govindaraju had got only a right of spes successionis cannot be accepted.

15. According to Hindu Succession Act, as per section 8 the property of a male Hindu dying intestate shall devolve according to the provisions, firstly, upon the heirs, being the relatives specified in class I of the Schedule; and (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule. As per the schedule wife and mother are classified in class I and therefore, both of them inherited the property simultaneously and each one is entitled to half share. Hence the 1st substantial question of law is answered against the appellants and I hold that u/s 8(a) and (b), both the wife and the mother shall inherit the property equally and each of them entitled to half share.

16. It is the contention of the learned Senior counsel appearing for the appellants that though Govindaraju was an allottee, after his death, the property was conveyed to his wife, namely the first defendant by the Housing Board and therefore, the first defendant became the absolute owner of the property and therefore, the first plaintiff, namely mother cannot claim any right over the property.

17. No-doubt, under Ex.B1 the property was sold in favour of the first defendant by the Housing Board and it was also stated in the sale deed that the property was allotted to the first defendant, which is patently false and subsequently, the first defendant paid the consideration.

18. It is admitted in evidence and also admitted by the first defendant in Exs.B2 and B3 that major part of the sale consideration was paid by Govindaraju, when he was alive and he also constructed a building in that property during his life time. Therefore, it is evident from the recitals in Exs.B2 and B3 that the superstructure was constructed by Govindaraju during his life time and he also paid major part of installments. Therefore, even though the sale was executed in favour of the first defendant, having regard to the fact that the property was originally allotted to Govindaraju

and he paid the major part of consideration, the first defendant cannot claim exclusive right over the property. In Exs.B2 and B3 also, it was admitted by the first defendant that the construction was made by Govindaraju and he paid the major part of consideration for the plot. Hence, the courts below rightly held that the plot was allotted to Govindaraju and he paid the entire sale consideration and put up a superstructure and thereafter, on his death, the property was inherited by the first plaintiff and the first defendant and they are each entitled to half share in the property. Therefore, the substantial question of law No. 2 is also answered against the appellants.

19. Though, no substantial question of law was framed regarding the scope of sections 51 and 52 of Transfer of Property Act, at the time of admission, having regard to the arguments advanced by the learned counsels appearing for the both parties, in my opinion, an additional substantial question law also arises for consideration in the second appeal regarding the scope of sections 51 and 52 of Transfer of property Act. Therefore, the following substantial question of law was framed at the time of argument:- Whether the appellants are entitled to claim improvement made by them over the suit properties?

20. It is the specific contention of the learned Senior counsel appearing for the appellants that admittedly, a small house was constructed by Govindaraju in the plot allotted to him and after purchase by the defendants 3 and 4 and after settling the same in favour of the defendants 5 and 6, the superstructure was demolished and they constructed a new superstructure covering the entire property at the cost of Rs. 50,00,000/- and that was also known to the respondents and the appellants are the bona-fide purchasers for valuable consideration and they have spent their money by putting up a new construction and therefore, they are equally entitled to claim the improvements as per section 51 of the Transfer of Property Act.

21. On the other hand, Mr. V. Ragavachari, the learned counsel appearing for the respondents submitted that section 51 is subject to section 52 of the Transfer of Property Act and when transaction is hit by doctrine of lis pendens, the purchaser cannot claim any benefit u/s 51 of the Transfer of Property Act.

22. In the judgment reported in 1991-2-LW 84 in the case of Raghavan alias

Bhagavathikannu Pillai and 6 others vs. M. Krishnammal & 2 others,
it has been held as follows:-

..It is needless to point out that the doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject matter of litigation from the ambit of the court's power to decide a pending dispute or frustrate its decree and that the alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the said doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine was held to be to subject the parties to the litigations as well as others who seek to acquire right in immovable property, which are the subject matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of a pending action from being defeated.

12.The relative scope and effect of sections 51 and 52 of the Transfer of Property Act came up for consideration many times before courts. In

Moti Chand v. British India Corporation [A.I.R. 1932 Allahabad 210] a Division Bench of the Allahabad High Court held that section 51 of the

Transfer of Property Act cannot be taken advantage of by a person to whom the provisions of section 52 applied.

23. In Vo. 99 LW 873, in the case of Pauline Frederick vs. V.L. Narayanan, it was held that the transfer in favour of the parties during the

pendency of the suit is hit by section 52 of the Transfer of Property Act and the party is entitled to claim for value of improvement made by them.

24. In Har Narain (Dead) by LRs. Vs. Mam Chand (Dead) by LRs. and Others, , it has been held that when there was a sale during the pendency

of the suit, then the doctrine of lis pendens came into operation.

25. In the judgment reported in 2003-1-L.W. 772 in the case of Vijayalakshmi Leather Industries (P) Ltd., Chennai-3 vs. K. Narayanan and

others, after relying upon the Hon''ble Supreme court's judgment reported in Jayaram Mudaliar Vs. Ayyaswami and Others, in the case of Kedar

Nath Lal and Another Vs. Ganesh Ram and Others, after quoting section 52 of Transfer of property Act, it is held as follows:-

From the above provision, it could be seen that during the pendency of the

proceedings, in any court, in which any right to immovable property is in question, the property cannot be transferred or otherwise dealt with by any party to the suit so as to affect the right of any other party thereto under any decree or order which may be made therein except under the authority of the court.

7. It is a clear statutory bar on the parties to the proceedings from transferring any property which is the subject matter of the litigation. In view of such statutory bar, any transfer made by any of the parties to the proceeding pendente lite is non-est in the eye of law because the transferee will be entitled for the right of his transferor alone and nothing more, the restriction imposed also includes that the transfer should not be made in such a manner to affect the right of other parties. From the words "under the authority of the court", it is needless to explain that the party who wants to transfer the property pendente lite must get the prior permission of the court.

26. Further, in the judgment reported in Sarvinder Singh Vs. Dalip Singh and Others, , the Hon''ble Supreme Court held as follows:-

It would, therefore, be clear that the defendants in the suit were prohibited by operation of Section 52 to deal with the property and could not transfer or otherwise deal with it in any way affecting the rights of the appellant except with the order or authority of the court. Admittedly, the authority or order of the court had not been obtained for alienation of those properties. Therefore, the alienation obviously would be hit by the doctrine of lis pendens by operation of Section 52.

When such statutory restriction or prohibition is there and in-spite of the same if any party to the litigation transfers any of the property which is the subject matter of the proceeding, then the purchaser is getting the Property subject to the result of the litigation and only the right of his transferor.

8. We are unable to appreciate the contention of the learned senior counsel for the appellant that the appellant was not a party to the proceeding and he was not impleaded as a party and consequently the decree is not binding on him. The learned senior counsel for the appellant totally forgot that the appellant purchased the property from the transferee of the party to the litigation. He, at the best, can step into the shoes of his vendor and cannot have any independent claim or right. In such circumstance, it is not open to the appellant to claim that he is a bona fide purchaser without

notice of the litigation.

27. In the judgment reported in R.J. Paul Vs. S.N. Kulasekaran, S. Rajeswari and S. Packiaraj, the same principle has been reiterated.

28. Further, the defence of bona fide transferee or value without notice is not available as per the decision in Ceean International Private Limited

and Sukhendu Bhusan Basu Vs. Ashok Surana and Another, and it is immaterial whether the alienee pendente lite had, or had not, notice of the

pending proceeding as per the decision in Maharaj Bahadur vs. Shaikh Abdul Rahim [1992 ILR (1) Pat. 5].

29. On the other hand, in J. Narayana Rao Vs. V.G. Basavarayappa and Others, the Hon"ble Supreme court held as follows:-

8. In our opinion Section 51, Transfer of Property Act merely lays down an equitable principle and enables a Court to determine the equities

between the parties. A decree in the form in which it has been passed in this case which was a suit for redemption and possession, could have

been passed.

We regard the decision of the Privy Council in 128 Ind. Cas. 261 (Privy Council) as an authority which supports our opinion. We think, however,

having regard to the provisions of Section 51, Transfer of Property Act, that, if the evidence enable a Court to do so it should assess the valuation

of the improvement as at a date as near as possible to the date of actual eviction rather than the date of election as has been done in this case.

30. In Brahmavart Sanathan Dharam Mahamandal, Kanpur and Others Vs. Prem Kumar and Others, the Hon"ble Supreme Court has held that

when the party has made a valuable construction, after the purchase of the suit property during the pendency of the suit, it would be inequitable in

the circumstances of the case to ask the parties to pay the present market value of the land.

31. In the judgment reported in T.G. Ashok Kumar Vs. Govindammal and Another, the Hon"ble Supreme Court has held as follows:-

In Jayaram Mudaliar Vs. Ayyaswami and Others, this court held that the purpose of Section 52 of the Act is not to defeat any just and equitable

claim, but only to subject them to the authority of the court which is dealing with the property to which claims are put forward. This court in Hardev

Singh Vs. Gurmail Singh (Dead) by LRs., held that Section 52 of the Act 8 does

not declare a pendente lite transfer by a party to the suit as void or illegal, but only makes the pendente lite purchaser bound by the decision in the pending litigation.

10. The principle underlying Section 52 is clear. If during the pendency of any suit in a court of competent jurisdiction which is not collusive, in

which any right of an immovable property is directly and specifically in question, such property cannot be transferred by any party to the suit so as

to affect the rights of any other party to the suit under any decree that may be made in such suit. If ultimately the title of the pendente lite transferor

is upheld in regard to the transferred property, the transferee's title will not be affected. On the other hand, if the title of the pendente lite transferor

is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent

and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the

transferee will not get any right, title or interest in that portion. If the property transferred pendente lite, is allotted in entirety to some other party or

parties or if the transferor is held to have no right or title in that property, the transferee will not have any title to the property. Where a co-owner

alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division

during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting

the property or portion of the property transferred pendente lite, to the share of the transferor, so that the bonafide transferee's right and title are

saved fully or partially.

Therefore, having regard to the law laid down by the Hon''ble Supreme court in the judgment reported in Jayaram Mudaliar Vs. Ayyaswami and

Others, and Hardev Singh Vs. Gurmail Singh (Dead) by LRs., section 52 of the Transfer of Property Act does not declare a pendente lite transfer

by a party to the suit as void or illegal, but only makes the pendente lite purchaser bound by the decision in the pending litigation. Therefore, it

cannot be stated that the sale in favour of the defendants 3 and 4 are void and the sale in favour of the 3 and 4 defendant are valid subject to the

rights of the plaintiffs. In this case, the lower court has rightly held that the first

defendant was entitled to 6/10th share and therefore, the plaintiff also claims 4/10th share of the property and 4/10th share belong to the plaintiffs/respondents. Admittedly, the appellants have put up a construction over the property and it is not in dispute that the Housing Board executed a sale deed in favour of the first defendant and on that basis, the defendants 3 and 4 purchased the property from the first defendant, believing her as the absolute owner of the property. Therefore, in my opinion, the appellants are the bona fide purchasers for value and in good faith, they have put up a superstructure and therefore, they are entitled to claim the cost of improvements and the same can be decided in the final decree proceedings by adducing evidence regarding the cost of construction put up by them. Therefore, the additional substantial question of law is answered in favour of the appellant holding that though, the properties were purchased by the appellants during the pendency of the suit, the sale in favour of the appellants are not void and they are subject to the result of the litigation and the appellants are entitled to 6/10th share and the respondents are entitled to 4/10th share and the claim of improvement can be decided in the final decree proceedings.

32. M.P.No. 1 of 2011 was filed by the appellants to receive the documents to prove the adoption of the second defendant by the first defendant, thereby seeking 2/3rd share in the property of Govindaraju. The documents are registered adoption deed and the order passed by the CAT directing the employer of Govindaraju to give appointment to the second defendant accepting the 2nd defendant as the adopted daughter and give an appointment on compassionate ground and other relevant documents. In my opinion, those documents are not relevant to decide the issue in this case. Though, the first defendant claims that the 2nd defendant was adopted by her, no evidence was let in during trial and the first defendant did not enter the box to prove the adoption.

Further, the plea of adoption was not canvassed during trial and before first appellate court and the same cannot be canvassed at this stage.

According to the first defendant, the adoption took place in the year 1975 and that was evidenced by adoption deed of the year 1995 and the adoption deed was executed by the first defendant and the natural parents of D2. It was stated in the adoption deed that adoption took place in

the year 1975 and no proof was adduced by the first defendant that there was adoption in the year 1975 and in the absence of any proof of

adoption, the adoption cannot be presumed on the basis of the adoption deed.

Further, the order of Central Administrative Tribunal, directing the employer to give appointment D2 and on the basis that, she was the adopted

daughter of the deceased and that cannot be taken advantage of by the appellants to presume adoption, in the absence of any evidence to that

effect. Hence, the documents cannot be received in evidence and the application in M.P.No. 1 of 2011 is dismissed.

In the result, the second appeal is dismissed and the judgments and decrees of the courts below are confirmed. Consequently, connected

Miscellaneous Petition M.P.Nos. 1 of 2008 and 1 of 2009 are closed. No costs.