

(1948) 04 PRI CK 0002

In the Privy Council

Case No : Privy Council Appeal No. 17 of 1946

Neelangouda, adoptive father, Limbangouda Patil	APPELLANT
Vs	
Ujjangouda, adoptive father, Shankargouda Patil and others	RESPONDENT

Date of Decision : 20-04-1948

Acts Referred:

Citation : (1948) AIR(PC) 165

Hon'ble Judges : John Beaumont, Madhavan Nair, Macdermott, Normand, Lords Simonds, JJ.

Advocate : T.L. Wilson and Co., Cassavetti Coustas and Co., B.J. Umrigar, S.R. Khambatta, K.R. Bengari, for the Appearing Parties.

Judgement

Sir Madhavan Nair, J.

This is an appeal by the plaintiff from a judgment and decree of the High Court of Judicature at Bombay dated 12 - 11 - 1942, affirming a judgment and decree of the Subordinate Judge at Dharwar dated 26 - 6 - 1940.

2 The appeal arises out of a suit brought by the appellant for a declaration inter alia that he is the validly adopted son of one Limbangouda deceased, and has thereby acquired the right to recover possession of one half share in the suit properties which are in the possession of defendant - respondent 1. The factum of adoption though raised in the issues was abandoned at an early stage, and does not arise for decision.

3 Only two questions remain for decision before the Board, these being:

(1) Has the appellant by virtue of his adoption acquired the right to recover possession of one half share in the suit properties?

(2) Had defendant - respondent 2, the adoptive mother of the appellant, lost her right to adopt to her husband in view of the maintenance deed executed in her favour by defendant - respondent 1?

4 Question No. 1 was answered by the learned Judges of the Courts in India

against the appellant on the strength of the Full Bench decision of the Bombay High Court in ILR (1937) Bom 508,1 and of another decision in 41 Bom LR 12772 which followed it. The decision of the Full Bench has since been overruled by the Privy Council in 70 IA 232.3

5 Question 2 was answered in favour of the appellant by the trial Court, but was not considered by the High Court.

6 The facts of the case may be stated briefly. The relationship of the parties to the suit appears from the following pedigree:

Basanagouda

Shankargouda Limbangouda Channagouda Rudragouda

(d. 29 - 7 - 1906) (d. 1903) (d. 1903) (d. 1902)

=Neelawa =Savantrewa =Siddawa (d. 1916) =Ningawa (d. 1914)

(Defendant - Respondent 2)

Shivabasangonda (d. 4 - 12 - 1906)

Neelangouda (Plaintiff - Appellant)

Ujjangouda (Defendant - (adopted on 30 - 1 - 1936)

Respondent 1) (adopted 1908)

Rudragouda (Defendant - Respondent 4)

7 Shankargouda, Limbangouda, Channagouda and Rudragouda who were four brothers formed members of an undivided Hindu family governed by the Mitakshara School of Hindu law. Of these, Rudragouda died in 1902, and Channagouda died in 1903, leaving behind them their widows who died issueless in 1914 and 1916 respectively. Limbangouda died in 1903, leaving behind him his widow Savantrewa (defendant - respondent 2). Shankargouda died on 29 - 7 - 1906, leaving behind him his infant son, Shivabasan - gouda and his widow Neelawa. Shivabasangouda died on 4 - 12 - 1906, leaving behind him his mother, Neelawa, who succeeded to the inheritance, and she, in 1908, adopted Ujjangouda (defendant - respondent 1), who is in possession of the suit properties. Rudragouda (defendant - respondent 4), is his minor son. C. H. Patil (defendant - respondent 3) is the father - in - law of Ujjan - gonda, and is added as a party as the alienee of the suit property shewn in schedule "C."

8 In February 1908, defendant - respondent 1 executed in favour of the appellant's adoptive mother (defendant - respondent 2) a maintenance deed, Ex. 145.

9 On 30 - 1 - 1986, the widow of Limbangouda (Savantrewa) adopted the appellant to her deceased husband. As stated before, the factum of this adoption is not now in question.

10 Defendant - respondent 1 pleaded that the adoption would not confer any right to the appellant to the estate in his possession, and that the right of defendant - respondent 2 to adopt, was extinguished in view of the maintenance deed.

11 On behalf of the appellant, it is contended that since the Full Bench decision of the Bombay High Court on which the decision in this case was based has been reversed by the Privy Council, he is entitled to succeed in this, appeal. Whether this is so, or not is the first question for the Board to decide.

12 It will appear from the facts stated above, that at the time of, the adoption of Ujjangouda (defendant - respondent 1) there were only two living members of the family, these being the two widows of the two deceased coparceners, viz.: Neelawa, adoptive mother of defendant - respondent 1 and the appellant's adoptive mother, Savantrewa. Neelawa had succeeded to the estate of the last surviving coparcener, her son. It was after the property thus became vested in Neelawa, that the appellant was adopted by his adoptive mother, Savantrewa. The question of an adoption by a widow after the death of the last surviving coparcener came up for decision before a Full Bench of three learned Judges in the Bombay High Court in ILR (1937) Bom 508.1 In that decision it was held by a majority of the learned Judges that the adoption in such cases was valid for spiritual purposes only, and could not affect the property vested in the next reversioner. In that case, the estate of the last surviving coparcener had upon the remarriage of his widow passed to his sister, and the contest was between a purchaser from the latter, and a son adopted by a widow of another deceased coparcener before the widow of the last surviving coparcener had remarried. One of the propositions laid down in that case was that:

"Where the adoption takes place after the termination of the coparcenary by the death, actually or fictionally, of the last surviving coparcener, the adoption by a widow of a pre - deceased coparcener has not the effect of reviving the coparcenary, and does not divest property from the heir of the last surviving coparcener (other than the widow) or those claiming through him or her."

13 Commenting on this, Sir George Rankin delivering the judgment of the Board in 70 IA 2323 observed as follows:

"If, then, the appellant's adoption was valid, can it be held that it does not take effect on the property which had belonged to the joint family because there was no coparcenary in existence at the date of the adoption? On this point their Lordships, differing from the majority decision in ILR (1937) Bom 5081 hold that the adoption being valid cannot be refused effect. That the property had vested in the meantime in the heir of Keshav is not of itself a reason, on the principles laid down in 60 IA 2424 why it should not divest and pass to the appellant."

14 For the purpose of the present appeal it is not necessary to refer further to the detailed reasons given in the judgment of the Board.

15. In their Lordships' view the present case falls within the principles of the decision by the Board in 70 IA 232.3 The learned counsel for the respondents after some argument expressed his inability - in their Lordships' opinion rightly - to distinguish the decision of the Board on the facts from the present case. Their Lordships therefore hold, differing from the Courts below, that the appellant is entitled to claim a half share in the suit properties.

16 The next question is whether the appellant's adoptive mother has lost her right to adopt in view of the maintenance deed executed by defendant - respondent 1, in her favour. The deed is styled Potgi - patra (Maintenance Deed). It is Ex. 145 in the suit. It runs as follows:

"On ... 10th day of February 1908 A. D. maintenance deed is passed in favour of Sawantrewa, widow of Nimbangouda Patil, by Ujjangouda ... as follows:- "You are the wife of the younger brother of my adoptive father, Shankargouda. You have no issue. Your husband Nimbangouda died before my father, Shankargouda died. Up till now, we have been living together in a joint family. As you do not agree now to live in union, the immoveable properties of my ownership and in my management situate at the village of Haveri, . . . are given to you for your maintenance during your lifetime."

* * * *

I have given properties as above for your maintenance during your lifetime and have this day handed over possession thereof to you. You should live in the said house and maintain yourself from the income derived from the said lands. As these (lands) have been given to you only for your maintenance during your lifetime, you are not entitled to alienate the said properties in any manner whatever, nor am I entitled to do so. After your death, I alone shall be the absolute owner thereof. I myself shall pay the Government assessment of the said lands and the municipal taxes of the house. Deed of maintenance is duly given in writing as above of my free will. ..."

17 The deed is called a maintenance deed, pure and simple. There is nothing in it to show that it is anything more than a mere arrangement by which provision has been made for the maintenance of the appellant's mother by Ujjangouda, the head of the family. The appellant's mother as a widow of the undivided Hindu family is entitled to be maintained from the family properties. The deed says that as she does not agree "to live in union" with the other members of the family, the properties mentioned in it are allotted to her for her maintenance during her lifetime. The properties are not given to her absolutely, she is not entitled to alienate them in any manner; after her death they will revert to the family.

18. Their Lordships are unable to find in the document any reference to the appellant's mother's right to make an adoption, or abandonment by her of such a right. It was stated by the learned junior counsel for the respondents that the expression "as you do not agree now to live in union" impliedly shows that she

has left the family, giving up all her right, including the right to adopt, for the properties stated expressly as given to her for her maintenance. Their Lordships are unable to draw this inference from the deed. It is not stated that the translation of the document is incorrect. If there was any implied reference to abandonment by the appellant's mother of her right to adopt indicated in the Kannada language in which the document is written, the learned Subordinate Judge who knew the language, would certainly have referred to it. The question whether it is open to the appellant's mother to give up by agreement her right to adopt, does not arise for decision in this case, as the document in question does not refer to abandonment of any such right. Agreeing with the Subordinate Judge, their Lordships hold the appellant's adoptive mother's right to adopt was not extinguished by Ex. 145.

19 For the above reasons, the decrees of the Courts in India should be set aside and the appeal should be allowed with costs throughout, which should be paid by respondents 1, 3 and 4, Their Lordships will humbly advise His Majesty accordingly.