

(1957) 07 MP CK 0010
In the Madhya Pradesh High Court
Case No : First Appeal No. 55 of 1951

Vimal Kumar Babulal and Another	Vs	APPELLANT
Sanat Kumar Mathoelal and Another		RESPONDENT

Date of Decision : 26-07-1957

Acts Referred:

Citation : AIR 1958 MP 287 : (1958) JLJ 238

Hon'ble Judges : T.C. Shrivastava, J;G.P. Bhutt, J

Bench : Division Bench

Advocate : N.P. Dwivedi, for the Appellant; B.L. Seth, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal of defendants 1 and 2 against the judgment and decree of the Court of Additional District Judge, Sagar, in civil suit No. 8-A of 1948, by which the claim of the plaintiff for declaration of his title to a house at Khurai was allowed. This judgment shall also dispose of First Appeal No. 54 of 1951, which has been filed by the plaintiffs of civil suit No. 12-A of 1948 of the Court of 2nd Civil Judge, Class II, Sagar, against the judgment and decree dismissing their claim for possession of another house at Khurai.

2. The two houses in dispute belonged to one Hate Bhaiji; on his death, they devolved on his two daughters, Nanhibai and Gangabai. Nanhibai predeceased her sister Gangabai who thereon became full owner of the houses. She died on 4-3-1936.

3. In civil suit No. 8-A of 1948, out of which the present appeal arises, Sanat Kumar, respondent No. 1, was the plaintiff, Babulal and his minor son Vimal Kumar, who are the appellants, were "defendants Nos. 1 and 2; and Gattulal, respondent No. 2, who is the son of Gangabai's daughter, was defendant No. 3. In civil suit No. 12-A of 1948, out of which first appeal No. 54 of 1951 arises, Babulal and his brother Dharamchand, who are the appellants, were the plaintiffs, and Sanat Kumar and his tenants, who are the respondents, were the

defendants.

4. Gattulal sold the two houses -- one to Vimal Kumar and the other to Babulal and Dharamchand by two registered sale deeds, dated 14-2-1948. The house sold to Vimal Kumar is the subject-matter of civil suit No. 8-A of 1948, and the other house, of civil suit No. 12-A of 1948. Gattulal claimed to have inherited these houses as the next heir (Bandhu) of Hate Bhaiji. Sanat Kumar challenged these sales as being without consideration, champertous and against public policy, and claimed the houses on the basis of his adoption by Gangabai as the son to her husband.

5. It is not disputed that Babulal had taken the house of civil suit No. 8-A of 1948 on lease from Sanat Kumar on 9-11-48, and since then the said house was occupied by him and his minor son Vimal Kumar. Babulal and Vimal Kumar, however, denied Sanat Kumar's adoption and alleged alternatively that the adoption, being by Gangabai to herself, was invalid.

They thus denied Sanat Kumar's title to the house and claimed that Vimal Kumar had acquired a lawful title from Gattulal who, according to them, had inherited the house on the demise of Gangabai. Similar was the case set up by Babulal and Dharamchand in civil suit No. 12-A of 1948.

6. Gattulal supported the case of Sanat Kumar in civil suit No. 8-A of 1948 on the grounds alleged by him. Later on he made an application for withdrawal of his written statement but ultimately did not press it,

7. The two suits (8-A of 1948 and 12-A of 1948) were tried jointly. In civil suit No. 8-A of 1948 filed by Sanat Kumar, the trial court held his adoption by Gangabai was proved but found that he was adopted by her to her own self and not to her husband. In this view, the adoption was held to be invalid. The learned Judge, however, held that Sanat Kumar had acquired title to the house by prescription and in this view allowed his claim for declaration of his title thereto. He also held both the sales to be void on the ground that they were without consideration and champertous. In this view, civil suit No. 12-A of 1948 filed by Babulal and Dharamchand was dismissed.

8. The adoption of Sanat Kumar by Gangabai was not contested before us. What, however, was contended was that he was adopted by Gangabai to herself and, therefore, did not acquire any title to the houses. In this connection, we shall first examine the law on the subject before considering the question of fact.

9. In *Lakshmi Chand v. Ghattobai* ILR 8 All 319 (A), which has been referred to by the trial court, it was held that if an adoption by a widow has been proved, it shall be presumed to be to her husband. The trial court, however, seems to have been influenced by the decision in *Chowdhary Padam Singh v. Udaya Singh* 12 Moo IA 50 (PC) (B), in which it was observed :

"Of course, such authority must be strictly pursued as the adoption is for the husband's benefit, so the child must be adopted to him and not to the widow

alone. Nor would an adoption by the widow alone for a purpose required by the Hindu Law give to the adopted child, even at her death, any right to the property inherited by her from her husband."

The discussion, however, which followed was only on the point whether the adoption was made at all and the finding was that there was no adoption. In the circumstances, the dictum in *Lakshmi Chand v. Ghattobai (A)*, (*supra*) still holds good.

10. In *Sannamma v. Earappa* AIR 1950 Mysore 77 (C) the following observations were made :

"From the very conception of adoption as known to Hindu Law, it is only to man and his properties that a boy can be adopted. Adoption to a woman so as to enable the adopted son to inherit her *streedhana* properties is unknown to Hindu Law. An unmarried woman cannot adopt at all. If a married woman or a widow can under certain restrictions take a boy in adoption, it is to her husband that she can do so and not to herself."

To the same effect are the observations in *Narendra Nath Bairagi v. Dinanath Das* ILR 36 Cal 824 (D), where it was held that there was no authority either in the text or text books, or decided cases, for the proposition that a Hindu woman could, in any circumstances, adopt a son to herself. In that case, the applicant claimed to have been adopted by the deceased *Ramani Debi* and as such entitled to her property.

The adoption was not held proved, but it was also observed that even if the adoption was proved, it would not have any effect. The position then is that where an adoption by a Hindu widow has been proved, there is a strong presumption that it was to her husband and not to herself. The question whether the adoption was to the husband or to the widow herself is doubtless a question of fact in each case; but unequivocal evidence is necessary to rebut the presumption.

11. *Sanat Kumar's* adoption by *Gangabai* as a son to her husband is testified to by *Puranchand* (P. W. 3) and *Battulal* (P. W. 4). Their evidence is supported by the entry of Rs. 28 in the accounts of Jain temple, Ex. P. 4, in which the money was credited as a donation to the temple by the plaintiff, *Sanat Kumar*, who was described as the son of *Gangabai's* husband, *Rakhulal*. The fact that the accounts were regularly maintained and the entry was genuine has been found by the trial court.

It was, however, of the view that the entry could be made by the scribe on his own impression. The probability, in our opinion, however, is that the money was bought to the temple by the persons who had knowledge of the adoption and the entry was made in accordance with their instructions. This lends assurance to the evidence of the witnesses who have testified to the adoption as being made to both the parents. Their evidence, therefore, strengthens the presumption that

Gangabai had taken Sanat Kumar as a son to her husband.

12. The trial Court, however, in coming to the conclusion that the adoption was to Gangabai herself, has relied upon the following facts :

(1) That in the plaints and applications filed on behalf of Sanat Kumar by his natural father Matholelal as the agent of Gangabai, Sanat Kumar has been described as the son of Matholelal and not as the son of Gangabai's husband; and

(2) That the deed of adoption Ex. P. 2, lends support to the interpretation that the adoption was personally to Gangabai.

13. So far as the description of Sanat Kumar by Matholelal as his son is concerned, it can only support the inference that the adoption had not taken place. The adoption, however, is not in dispute before us. Therefore, the description of Sanat Kumar as made by Matholelal can only be said to be negligent or mistaken, and is not inconsistent with Sanat Kumar's adoption as a son of Gangabai's husband.

14. As regard the deed of adoption, the lower court had laid stress on the word "mera" used by Gangabai in describing Sanat Kumar as a son. In this connection, reliance was placed upon AIR 1950 34 (Privy Council) , in which the word "mera" in the adoption deed was interpreted to refer to the widow alone. That case, however, arose under the French Law in Pondicherry where the adoption by a woman to herself is recognised.

The ambiguity in the document was, therefore, resolved by their Lordships of the Privy Council in favour of what was contemplated by the French Law. The presumption in this country, however, is to the contrary. Therefore, the word "mera" cannot have the significance that Gangabai had taken Sanat Kumar as son to her own self apart from her husband. That she had acted for the benefit of both the parents appears clear from her wish as expressed in the document that Sanat Kumar would perpetuate the name and fame of not only herself but also of her Kutumb, meaning the family to which she belonged.

She also expressed a wish that the status of Sanat Kumar as an adopted son would be accepted by the caste and the State, which indicates that the adoption was of the usual type. The scribe of the document might have been clumsy in expression, but the tenor of the document, particularly the reference to the adoption as having been made in accordance with Dharma (religion), Deshriti (local usage) and Kulachar (family practice), leaves no manner of doubt that the adoption was to both the parents.

15. Differing from the lower court, therefore, we find that the adoption of Sanat Kumar by Gangabai was to her husband. It, therefore, follows that the two houses were inherited by Sanat Kumar and not by Gattulal.

16. In view of the above finding, the connected civil suit No. 12-A of 1948, filed

by Babulal and Dharamdas, fails as they could get no title to the house through Gattulal. Accordingly, the question whether the sale of the house was void on the grounds alleged by Sanat Kumar do not arise for consideration. Nor does the nature of the sale by Gattulal to Vimal Kumar affect civil suit No. 8-A of 1948, instituted by Sanat Kumar for possession of the other house.

In case Sanat Kumar had title to the houses, their sale by Gattulal, whatever the nature thereof, would not affect his rights. On the other hand, if he had no title, then also the question as regards the nature of the sales would not arise for consideration. It is not, therefore, necessary to consider this question in the appeals, which really would, arise between the parties to the transfer.

17. The houses in dispute were admittedly never in possession of Gattulal, and both of them were in possession of Sanat Kumar through his tenants. So far as the house of civil suit No. 8-A of 1948, which is in possession of Babulal as a tenant is concerned, it was not disputed before us that he would be estopped from denying Sanat Kumar's title. So far as Vimal Kumar is concerned, he is just a boy, and evidently occupied the house as a dependant of his father.

He cannot, therefore, claim any independent status of his own to be able to deny the title of Sanat Kumar. However, even if he was free to deny his title on the ground that he was not personally inducted as a tenant, he would not gain thereby as he did not himself acquire any title to the house. The suit was, therefore, rightly allowed. The dismissal of civil suit No. 12-A of 1948 was also proper as no title passed to Babulal and Dharamdas by the transfer.

18. In the result, both the appeals (Nos. 54 and 55 of 1951) are dismissed with costs.