
(1976) 11 BOM CK 0002
In the Bombay High Court
Case No : A.F.A.D. No. 1363 of 1969

Vithal	Vs	APPELLANT
Ansabai and Another		RESPONDENT

Date of Decision : 30-11-1976

Acts Referred:

Citation : AIR 1977 Bom 298 : (1977) 79 BOMLR 378 : (1977) MhLj 669

Hon'ble Judges : Kantawala, C.J

Bench : Single Bench

Advocate : R.G. Deo, for the Appellant; A.M. Dabir, for the Respondent

Judgement

1. Plaintiff has filed this appeal against a concurrent decree passed by both the Courts dismissing his suit for a declaration that he is the adopted son of one Deobhan Buwa and that he is entitled to possession of Survey No. 384/C admeasuring 9 acres 20 gunthas situate at village Isad, Taluka Gangakhed, and for perpetual injunction, His case in the plaint was that Deobhan died leaving two widows Yashodabai and Ansabai defendant No. 1. Both these widows adopted him on 10-7-1350 Fasli after performing due ceremonies and an adoption deed was executed which was registered at Shirad-Shahpur. According to the plaintiff, the original registered adoption-deed was in possession of defendant No. 1. He, however, was unable to produce a certified copy thereof as the records at Shirad-Shapur were transferred to the Office of the District Sub-Registrar, Parbhani and the same were burnt. His case was that in view of his adoption he became the owner of the suit property and was in possession thereof until June 20, 1965, when he was dispossessed by the defendants. It is on these allegations that the plaintiff has filed a suit for possession and injunction. The suit was resisted by both the defendants. The trial Court took the view that the plaintiff's adoption was not proved. After the evidence of both the sides was completed before the trial Court, an application was made on behalf of the plaintiff to produce a certified copy of the Registered adoption-deed, but the same was rejected by the trial Court. As the adoption of the plaintiff was not proved, the suit was

dismissed. In an appeal preferred by the plaintiff, the learned Assistant Judge, Parbhani, took the view that the trial Court ought to have permitted the plaintiff to produce the certified copy of the registered adoption-deed. In view of an application also made before the appellate Court, the certified copy was taken on record. The appellate Court, however, took the view that the adoption was invalid as, according to the plaintiff, the adoption was made by both, the widows which, under the Hindu Law, is not permissible. As the adoption was held to be invalid, the suit was dismissed and it is against this dismissal of the suit by both the Courts that the present appeal is filed by the plaintiff.

2. Mr. Deo on behalf of the plaintiff submitted that the appellate Court was in error in taking the view that the plaintiff was adopted by both the widows Yeshodabai and Ansabai, defendant No. 1. He urged that the adoption was done by Yeshodabai, the entire ceremonies were performed by her and that was done with the consent of Ansabai. He, therefore, submitted that the appellate Court was in error in taking the view that the adoption was made by both the widows and was, therefore, invalid in law. He submitted that in the certified copy of the registered adoption-deed that was produced by the plaintiff it is clearly mentioned that the adoption was made by Yeshodabai and not by both the widows.

3. Question whether the adoption was by Yeshodabai, one of the widows, or by both will depend upon the facts of this case. In the present case it is quite clear that the plaintiff was hardly 4 or 5 years old when his adoption took place. To support the case of adoption, plaintiff has led oral testimony of three witnesses, Venkatrao, Sambhaji and Sukhalabuwa. Each one of the three witnesses has stated in the beginning of the deposition that both Yeshodabai and Ansabai, defendant No. 1, adopted the plaintiff. If that was so, it is not possible for this Court to re-appreciate the evidence with a view to see what the view ought to be taken. The appellate Court has come to a conclusion; that having regard to the evidence of witnesses adduced on behalf of the plaintiff, was taken in adoption by both the widows Yeshodabai and Ansabai defendant No. 1 Hindu Law does not permit an adoption by even two co-widows together, what is the effect or validity of the adoption when such adoption is made by two co-widows has been considered by their Lordships of the Privy Council in the case at *Narasimha v. Parthasarathy* (1914) ILR 37 Mad 199 (PC) it is observed:--.

"..... In the next place only one wife can receive the child in adoption so as to step into the position of being its adoptive mother. This is evident from the cases which establish that the receiving mother acquires in the eye of the law the same position as a natural mother to such an extent that her parents become legally the maternal grandparents of the child. To hold that a child could bear such a relationship to more than one mother would be entirely contrary to settled law and would produce inextricable confusion in the law of inheritance."

These observations of their Lordships have been followed by the Nagpur High Court the case of AIR 1929 211 (Nagpur) It is held that whether the adoption is

made during the lifetime of the husband or after the death, only one wife can receive a child in adoption so as to step into the position of being its adoptive mother. It is clear from these decisions that Hindu law does not contemplate adoption by two co-widows. In this view of the matter, having regard to the oral evidence led by the plaintiff, the appellate Court was right in taking the view that the adoption was invalid in law. If that was so, then the suit was liable to be dismissed.

4. In the result, the appeal fails and is dismissed. As the plaintiff was adopted at the time when he was a mere child, the fair order as to costs would be that each party will bear its own costs of the case.

5. Appeal dismissed.