KRISHNAMURTHI VASUDEORAO DESHPANDE AND ANR.

v.

DHRUWARAJ

1961

May, 5.

(K. SUBBA RAO and RAGHUBAR DAYAL, JJ.)

Hindu Law—Joint family— Adoption—Rights acquired by adoptive son relating back to date of death of adoptive father— Property—Collateral succeeding to co-parcener—If inherits absolutely or subject to defeasance.

Respondent was adopted by a widow after about 63 years of her husband's death. The husband had predeceased his father 'N' leaving behind him the said widow and two sisters K. and S. On N's death K and S inherited in equal shares. On K's death her son succeeded and on his death his two sons the present appellants succeeded to her share.

The respondent instituted the suit for the recovery of the properties from the appellants, alleging that the immoveable properties formerly belonged to the ownership of and were under the Vahiwat of the joint family of his adoptive father and grandfather respectively. The appellants denied the respondent's right to the properties contending that K their grandmother was the full owner of the properties and thus became a fresh stock of descent and that they inherited the properties from their father to whom they had been alienated by K their grandmother.

The High Court held that the alleged alienation by K of her share to her son was not binding on the respondent, and further held that the respondent could divest the appellants of the properties which belonged to the respondent's adoptive grandfather.

The question was whether the respondent on his adoption, could divest the appellants of the properties of his adoptive father and grandfather.

Held, that when a person is the owner of property possessing a title defeasible on adoption, not only that title but also the title of all persons claiming under him will be extinguished on the adoption.

The heir of a collateral succeeding to the sole surviving co-parcener inherits the property absolutely, but subject to defeasance, and the right in the property devolves on his

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heirs who would take that property absolutely, but still subject to defeasance, as no better title could have been inherited, for the character of the property does not change from the co-parcenary property to self acquired property, so long as there was the possibility of the defeasance of the absolute title by a widow of the family of the last surviving co-parcener adding a member to the co-parcenary by adopting a son to her deceased husband.

Shrinivas Krishnarao Kango v. *Narayan Devji Kango and Ors.* (1955) 1 S.C.R. 1, applied.

Ramchandra Hanmant Kulkarni v. *Balaji Datto Kulkarni*, I.L.R. 1955 Bom. 837, disapproved.

Amarendra Mansingh v. *Sanatan Singh*, 60 I.A. 242, discussed.

Anant Bhikappa Patil (Minor) v. *Shankar Ramchandra Patil*, 70 I.A. 232, discussed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 499 of 1957.

Appeal from the judgment and decree dated the August 17, 1954, of the Bombay High Court in Appeal No. 236 of 1950.

Purushottam Trikumdas, N. S. Anikhinda and *M. S. K. Sastri*, for the appellants.

K. R. Bengeri and *A. G. Ratnaparkhi*, for the respondent.

1961. May 5. The Judgment of the Court was delivered by.

Raghubar Dayal J.

RAGHUBAR DAYAL, J. This appeal, on certificate under Art. 133 of the Constitution, raises the question, whether Dhruvraj, respondent, on his adoption, divests the defendants—appellants of the properties of his adoptive father and grandfather.

The facts giving rise to this question are as

follows : Bandegouda, father of the respondent, died in 1882, pre-deceasing his father Narasappagouda, who died later in 1892. Bandegouda left his widow Tungabai, who adopted Dhruvraj as her son on July 31, 1945.

Narasappagouda, on his death, left two daughters, Krishnabai and Shyamabai alias Chamavva. The two sisters succeeded to their father's property in equal shares. We are not now concerned with the share of Shyamabai, the respondent's suit with respect to it having been dismissed.

Krishnabai died on October 21, 1933. Her son Vasappa, succeeded her and died on February 20, 1934, leaving two sons, the appellants, Krisnamurti and Subbaji. Dhruvraj, respondent, instituted the suit for the recovery of the property from the two appellants alleging that the immovable properties formerly belonged to the ownership of and were under the vahiwat of the joint family of the above-mentioned Narasappagouda Patil and Bandegouda Patil. The suit also related to declaration that the plaintiff was entitled to the 'Patilki' rights in respect of the village Hombal, as the near relative of Narasappagouda. The appellants denied the respondent's rights to the properties contending that Krishnabai was the full owner of the properties and thus became a fresh stock of descent and that the appellants had inherited the properties from their father Vasappa to whom they had been alienated by Krishnabai in 1930. The High Court held that the alleged alienation by Krishnabai of her share to Vasappa in 1930 was not binding on the respondent as it amounted to a gift of immovable properties and was not made by a registered document. It further held that the respondent could divest the appellants of the properties which belonged to the respondent's adoptive grandfather and upheld the decree of the trial Court with respect to the property which had

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gone in the possession of Krishnabai on the death of her father.

This Court considered the rights of an adopted son with respect to the property of his adoptive father and of the collaterals, in *Shrinivas Krishnarao Kango* v. *Narayan Devji Kango and Ors.* (1). The principles to be edduced from what was said in this case may be summarised thus :

(i) An adopted son is held entitled to take in defeasance of the rights acquired prior to his adoption on the ground that in the eye of law his adoption relates back, by a legal fiction, to the date of the death of his adoptive father, he being put in the position of a posthumous son.

(ii) As a preferential heir, an adopted son (a) divests his mother of the estate of his adoptive father ; and (b) divests his adoptive mother of the estate she gets as an heir of her son who died after the death of her husband.

(iii) A coparcenary continues to subsist so long as there is in existence a widow of a coparcener capable of bringing a son into existence by adoption; and if the widow made an adoption, the rights of the adopted son are the same as if he had been in existence at the time when his adoptive father died and that his title as coparcener prevails as against the title of any person claiming as heir to the last coparcener.

(iv) The principle of relation back applies only when the claim made by the adopted son relates to the estate of his adoptive father. The estate may be definite and ascertained, as when he is the sole and absolute owner of the properties, or

(1) (1955) 1 S.C.R. 1.

it may be fluctuating as when he is a member of a joint Hindu family in which the interest of the coparceners is liable to increase by death or decrease by birth. In either case, it is the interest of the adoptive father which the adopted son is declared entitle to take as on the date of his death. This principle of relation back cannot be applied when claim made by adopted son relates not to the estate of his adoptive father but to that of a collateral. With reference to the claim with respect to the estate of a collateral, the governing principle is that inheritance can never be in abeyance, and that once it devolves on a person who is the nearest heir under the law, it is thereafter not liable to be divested. When succession to the properties of a person other then an adoptive father is involved, the principle applicable is not the rule of relation back but the rule that inheritance once vested could not be divested.

(v) The estate continues to be the estate of the adoptive father in whosoever's hands it may be, that is, whether in the hands of one who is the absolute owner or one who is a limited owner. Any one who inherits the estate of the adoptive father is his heir, irrespective of the inheritance having passed through a number of persons, each being the heir of the previous owner. This Court considered the case of *Amarendra Mansingh* v. *Sanatan Singh* (2) which related to an impartible zamindari. The last of its holder was Raja Bibhudendra. He died on December 10, 1922, unmarried. A collateral, Banamalia, succeeded to the estate as the family custom excluded females from succeeding to the Raj. On December 18, 1922 Indumati, mother of Bibhudendra, adopted Amarendra to her husband, Brajendra. The question for determination, in that case was whether Amarendra could divest Banamalia of the estate, and it was answered in the positive by the Judicial Committee. This Court said at page 19:

(2) 1923 L.R. 60 I.A. 249,

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"The estate claimed was that of his adoptive father, Brajendra, and if the adoption was at all valid, it related back to the date of Brajendra's death, and enabled Amarendra to divest Banamalai."

The last holder of the estate was not Brajendra, the adoptive father, but Bibhudendra, who may be said to be the adoptive brother. The estate in his hands is described as the estate of Brajendra, the adoptive father. This Court said about the decision in this case:

> "This decision might be taken at the most to be an authority for the position that when an adoption is made to A, the adopted son is entitled to recover the estate of A not merely when it has vested in his widow who makes the adoption but also in any other heir of his. It is no authority for the contention that he is entitled to recover the estate of B which had vested in his heir prior to his adoption to A."

Banamalai, heir of Bibhudendra, was considered to be the heir of Brajendra also.

In considering the case of *Anant Bhikappa Patil (Minor)* v. *Shankar Ramchandra Patil*(3), this Court observed at page 24 :

> "When an adoption is made by a widow of either a coparcener or a separated member then the right of the adopted son to claim properties as on the date of the death of the adoptive father by reason of the theory of relation back is subject to the limitation that alienations made prior to the date of adoption are binding on him, if they were for purposes binding on the estate. Thus, transferees from limited owners whether they be widows or coparceners in joint family, are amply protected. But no such safeguard exists in respect

(3) 1933 L.R. 70 I.A. 232.

> of property inherited from a collateral, because if the adopted son is entitled on the theory of relation back to divest that property the position of the mesne holder would be that of an owner possessing a title defeasible on adoption, and the result of such adoption must be to extinguish that title and that of all persons claiming under him. The alienees from him would have no protection, as there could be no question of supporting the alienations on the ground of necessity or benefit."

It follows from these observations that if A is an owner of property possessing a title defeasible on adoption, not only that title but also the title of all persons claiming under him, will extinguish on the adoption.

In the present case, Krishnabai owned the property as full owner on the death of her father Narasappagouda, according to the Hindu law in the area in which the property in suit lay. But her title was defeasible on Tungabai, widow of Bandegouda, adopting a son to her husband. Vasappa and after him, his sons, inherited this property of Krishnabai and thus the appellants claimed under Krishnabai. Their such claim is therefore defeasible on the adoption of a son by Tungabai. The fact that Krishnabai inherited the property of her father absolutely, does not affect this question of title being defeated on the adoption of a son by Tungabai. The character of the property does not change, as suggested for the appellants, from coparcenary property to self-acquired property of Krishnabai so long as Tungabai, the widow of the family, exists and is capable of adopting a son who becomes a coparcener.

The case of an adopted son's claiming to divest the heir of a collateral, who died before the adoption took place of the property inherited from the collateral, is different from the case of his

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claiming the property which originally belonged to the adoptive father but had devolved on a collateral and, after the death of the collateral which took place before the adoption devolved on a hee of thir collateral. In the former case, the claim is to the property of the collateral, while in the latter case it is to the property of the adoptive father, which, by force of circumstances, had passed through the hands of a collateral.

We may now consider the Full Bench Case of the Bombay High Court, *Ramchandra Hanmant Kulkarni* v. *Balaji Datto Kulkarni*, (4) which overruled the judgment in the instant case. The question formulated for the decision of the Full Bench was :

> "If on the death of a sole surviving coparcener his property has devolved upon his heir by inheritance and on his death it has vested in his own heir, would the subsequent adoption in the family of the sole surviving coparcener divest it from such heir?"

The facts having a bearing on the decision of the question were as follows : Ramchandra and Balaji were brothers. Ramchandra died on October 10, 1903, and his widow Tarabai died two days later. Their son Hanmant had died during Ramchandra's lifetime, leaving behind him his widow Sitabai. The Watan property of Ramchandra devolved on Balaji after the death of Tarabai. On Balaji's death, it devolved on Datto his son who died in 1916. On his death, the property devoled upon his son Balaji. Sitabai, widow of Hanmant, adopted Ramchandra, the plaintiff, on January 21, 1945. Ramchandra thereafter instituted the suit against Balaji, son of Datto, and claimed that property which originally belonged to his adoptive family on the ground that he was entitled to recover it by virtue of his adoption which related

(4) I.L.R 1955 Bom. 837.

back to the date of the death of his adoptive father.

Chagla, C. J., delivering the judgment of the Court in the above case said, in answer to the question formulated, that the subsequent adoption in the family the sole surviving coparcener would not divest the property, assuming that Ramchandra, the adoptive grandfather, was the sole surviving coparcener of his own branch and that on his death the property devolved upon Datto and then upon Balaji. The learned Chief Justice, in considering the question on principle, said at page 851 :

> "...and therefore it is well settled since the Privy Council decided *Anant* v. *Shankar* that Dattu inherited this property subject to defeasance, the defeasance coming into operation in the event of the potential mother Sitabai adopting a son into the family of Ramchandra."

He said at the page 852 :

> "Balaji has succeeded to the estate of his father Dattu and what the plaintiff is really claiming is not the property of Ramchandra but the property of Dattu which Balaji has inherited as his son.... Therefore, really, the plaintiff would have displaced Dattu as the preferential heir to his own grandfather. But it is difficult to understand how that principle can apply when we are dealing with property in the hands of Dattu's heir. It cannot be said that *qua* the estate of Dattu the plaintiff is an heir preferential to Balaji, and really what the plaintiff is claiming is to displace Balaji and to contend that he is heir of Dattu."

He therefore expressed the view :

> "Therefore, in our opinion, once the principle is accepted, as indeed it must be accep-

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ted, that the property which Dattu inherited from Ramchandra was held by him absolutely as a full owner, then it is impossible to accede to the plaintiff's contention that Balaji inherited to that property subject to certain limitations. The possibility of there being a defeasance only continued so long as Dattu was alive. When he died he left his property, which was his absolute property, to his heir and there is no reason in principle why that provision with regard to defeasance should continue after the property had been inherited by Balaji as the heir of Dattu."

We may say at once that this conclusion goes against what had been said by this Court in *Shrinivas Krishnarao Kango's Case* (1).

It has been overlooked that the heir of a collateral succeeding to the sole surviving coparcener inherits the property absolutely, but subject to defeasance, and that the right in the property devolves on his heir, who must consequently take that property absolutely, but still subject to defeasance, as no better title could have been inherited so long as there was the possibility of the defeasance or the absolute title by a widow of a family of the last surviving coparcener adding a member to the coparcenery by adopting a son to her deceased husband, and in overlooking what was stated in this connection by this Court in *Shrinivas Krishnarao Kango's Case* (1), though not as a decision, but as a reasoning to come to a decision in that case.

We are therefore of opinion that this appeal should fail and accordingly dismiss it with costs of this appeal.

(1) (1955) I S.C.R. 1.

Appeal dismissed.