

Kondiba Rama Papal alias Shirke (dead) by his heirs & LRs & another

Vs

Narayan Kondiba Papal

Civil Appeal No. 1515 (N) of 1976

(R. M. Sahai, Dr. T. K. Thommen JJ)

22.01.1991

JUDGEMENT

THOMMEN, J.:-

1. Allowing the plaintiff's appeal and setting aside the decrees of the Courts below, the High Court, after finding that the factum of adoption had been established, stated as follows on the question of the validity of the adoption:

"The question then arises is the adoption legal and valid in law in view of the provisions of the Act? Section 10 of the Act inter alia provides that no person shall be capable of being taken in adoption unless the four conditions therein laid down are fulfilled. We are concerned with the fourth condition and it is as under:

'(iv) he or she has not completed the age of fifteen years. unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.'

At the time when the plaintiff was adopted he was about 22 years old, but even though there is a difference of opinion between various schools as to the age when a boy may be adopted, so far as the Bombay State is concerned the position is well settled in view of more than one judicial decision. As pointed out in Mulla's Hindu Law, 14th Edition at page 550 in the Bombay State a person may be adopted at any age though he may be older than the adopter and though he may be married and have children. The adoption is not invalid although it took place after the thread ceremony of the boy was performed. Thus the custom is judicially recognised in the Bombay State as regards adoption of a child at any age. Once the custom is judicially recognised, it is not required to be independently proved in subsequent cases. The plaintiff and the defendant No. 1 belonged to the area which was part of the old Bombay State and accordingly such a custom prevailed amongst them as regards adoption of a child at any age. Even independently of this position, in the old Bombay State evidence was led of two instances of adoption of persons belonging to the same caste as the plaintiff where a child was adopted at the age above 15 years after the Act came into force. Thus in my opinion, in view of the settled position in law as judicially recognised, if the factum of the adoption is established its validity cannot be challenged on the ground that the adopted child had completed the age of 15 years at the time of his adoption."

2. This observation of the High Court is well supported by a long line of decisions of that Court including the subsequent decision of the Full Bench of that Court in Anirudh Jagdeorao v. Babarao Irbaji, (AIR 1983 Bom 391). In the circumstances we see no reason to interfere with the impugned judgment. The appeal is, therefore, dismissed. We shall, however, make no order as to costs.

Appeal dismissed.

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