SUPREME COURT OF INDIA

Jupudi Venkata Vijaya Bhaskar

Vs.

Jupudi Kesava Rao

C.A.Nos.14870 with 14871 of 1996

(Y. K. Sabharwal and B. N. Agrawal JJ.)

19.09.2003

JUDGEMENT

Y. K. Sabharwal, J.

1. The question for determination in these appeals is about the validity of an ante-adoption agreement entered into prior to adoption between to-be adopted son and the would-be adoptive father after coming into force of the *Hindu Adoptions and Maintenance Act, 1956* (for short 'the Act').

2. The question has arisen in a suit instituted by the appellant for partition in respect of properties mentioned in the Schedule to the ante-adoption agreement. Defendant No. 1 is the adoptive father of the appellant and defendant No. 2 is a formal party being son of the appellant supporting his father. The appellant, in May, 1957, was brought by defendant No. 1 and his wife to their house from the house of his natural parents. Since then, he was brought up by defendant No. 1 and his wife. The wife of defendant No. 1 also brought up her niece. Undisputedly, the ante-adoption agreement (Exhibit B-16) dated 14th March, 1962 entered into between the appellant (plaintiff) and defendant No. 1 was executed when the appellant was a major. The execution and genuineness of Exhibit B-16 is not under challenge. The challenge is about the validity of Exhibit B-16 on the ground that it is hit by S.17(1) of the Act. The concurrent findings of fact that have not been challenged are that the appellant was adopted by defendant No. 1 and his wife in the morning hours on 24th March, 1962. On the same date, in the evening marriage between the appellant and niece of wife of defendant No. 1 took place.

3. The suit instituted by the plaintiff was dismissed by the trial Court. The judgment and decree of the trial Court has been upheld by the High Court in the first appeal. Exhibit B-16 has been held to be valid and not hit by S. 17 of the Act. In these appeals, challenging the impugned judgment of the High Court, the only point canvassed by Mr. Sunil Gupta, Senior Advocate for the appellant, is about Exhibit B-16, being invalid in view of prohibition contained in S. 17 of the Act. To consider this question, we would assume as correct the conclusion of the High Court that the appellant on adoption on 24th March, 1962 became a

coparcener and the first defendant ceased to be a sole surviving coparcener. Learned counsel for the respondents has not raised the invalidity of adoption under Cl. (iv) of S. 10 of the Act on the ground that the appellant was more than 15 years of age. Finding of the High Court on the said aspect is that in view of the custom in the Vaish community to which the parties belong adoption after the age of 15 years is permissible. This finding is also not under challenge.

4. Prior to enforcement of the Act, S. 500 of Principles of Hindu Law stipulated that where the adopted son was a major at the time of the adoption, he may by an agreement with the adoptive father or the adopting widow made before the adoption, consent to a limitation of his rights in the property of his adoptive father. The settled law before the commencement of the Act was that when a person of full age at the time of adoption agrees or assents to the condition under agreement entered into with the adoptive father limiting his right in the properties of the adoptive father, such agreement was legal and binding on the adoptive son (See *Kashibai Ramchandra Ghatge v. Tatya Genu Pawar and others*[1] *Pandurang Sakharam Thakur v. Narmadabai Ramkrishna Keluskar*[2], *and Kanduru Venkata Somaiah v. Kanduru Ramasubbamma*[3]).

5. Learned counsel for the appellant has, fairly and rightly, not disputed the legal proposition that prior to the enforcement of the Act, it was permissible in law to enter into an ante-adoption agreement. Mr. Gupta, however, strenuously contends that after the enforcement of the Act, such an agreement is clearly hit by S. 17 and, therefore, the legal position prevailing prior to the enforcement of the Act is of no relevance. The question, therefore, is whether the ante-adoption agreement Exhibit B-16 dated 14th March, 1962 is hit by S. 17 of the Act. Section 17 of the Act reads as under:

17. Prohibition of certain payments.-

> (1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.
>
> (2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.
>
> (3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf."

6. Exhibit B-16 mentions that it is an ante-adoption agreement executed before the adoption. It is recited therein that the first defendant and his wife, for 5 years have been fostering the plaintiff with an intention to take him in adoption. It also mentions that wife of defendant No. 1 at the instance of her husband, namely, defendant No. 1 had settled certain properties detailed therein in favour of the plaintiff under two settlement deeds date 10th September,

1957 (Exhibit A-42) and dated 12th September, 1957 (Exhibit A-19). She had also conveyed with absolute right certain properties detailed therein in favour of the wife of the plaintiff under two settlement deeds dated 31st July, 1957 (Exhibit B-49) and 15th August, 1957 (Exhibit B-50). The document further mentions that it is already agreed that the plaintiff would marry niece of wife of defendant No. 1 to whom the aforesaid properties were settled. The document shows that the plaintiff agreed, in respect of the properties shown in the Schedule to Exhibit B-16, not to advance any claim or raise any dispute. The plaintiff further agreed that the first defendant shall have absolute right without any limitation and he shall have no right or interest in the said properties which are now subject-matter of partition suit.

7. Mr. Gupta places strong reliance on S. 4 of the Act in support of the contention that the principles of Hindu Law shall ceases to have any effect. The contention is that since in the matter in issue, provision has been made in the Act by enacting S. 17, the principles of Hindu Law or interpretation thereof prior to commencement of the Act will have no relevance. Regarding the legal status and rights and interest of the appellant before and after adoption, it cannot be doubted that before adoption on 24th March, 1962, appellant had no interest in the properties in question. With effect from the date of adoption, the plaintiff by legal fiction severed all the ties with the natural parents and became the child of defendant No. 1 and his wife. The question, however, is the validity of agreement, Exhibit B-16, entered into before adoption. Would it amount, in the facts and circumstances of the case, to defendant No. 1 receiving or agreeing to receive any payment or reward in consideration of the adoption? The contention urged is that giving up of right in the properties of defendant No. 1 to which the appellant would have been otherwise entitled on and after adoption but for Exhibit B-16, would amount to payment or reward or the appellant agreeing to make payment or reward to his would-be adoptive father in consideration of the adoption. It is argued that such an agreement is prohibited by sub-section (1) of S. 17 of the Act.

8. Section 17 of the Act has been enacted with a view to prevent trafficking of children. The contravention of sub-section (1) is punishable with imprisonment which may extend to six months or fine or both as provided for in sub-section (2) of S. 17. The question is whether the agreement Exhibit B-16 comes within the purview of S. 17(1) of the Act. The recital in Exhibit B-16 does not show any payment was either made or agreed to be made by the appellant/plaintiff to the first defendant. It cannot be construed as an agreement whereby any payment was made or agreed to be made by the appellant/plaintiff to defendant No. 1. It also seems difficult to construe this agreement whereby the plaintiff gave or agreed to give to his adoptive father any 'other reward.' The plaintiff before adoption had no interest of any kind in the properties, subject-matter of Exhibit B-16. As earlier noticed, various properties had been settled prior to Exhibit B-16 in favour of the plaintiff and the girl with whom he had to marry and which marriage ultimately took place on the date of adoption. In our view, S. 17 enacted to prevent trafficking of children is not intended to cover cases of the present nature where a major person agrees not to set up any claim with regard to certain items belonging to the adoptive family. Section 17 cannot be held to have an overriding effect so as to change the legal proposition prevalent prior to the commencement of the Act. Section 17, under the circumstances, has no applicability.

9. Learned counsel for the appellant, however, places strong reliance on a Division Bench decision of Andhra Pradesh High Court in *Commissioner of Gift-tax, A. P. v. Smt. Gollapudi Santhamma*[4]. In this case, the High Court has held that the ante-adoption agreement attracted the vice of S. 17. It has to be borne in mind that the High Court was not considering any dispute between the adoptive son or adoptive father or natural heirs or members of the adoptive father but was considering the question whether property of the 'P' was to be subjected to estate duty or not. In that case, the dispute between the Controller of Excise Duty and the estate of one late 'P' arose under these circumstances. On 14th June, 1963 'P' adopted one 'R', his brother's grandson. Earlier to that on 11th June, 1963 'P' executed gift deeds in respect of certain lands in favour of his daughter, grand-daughter and a great grandson. On 20th July, 1963, deed of adoption was registered. On the same date he executed a settlement deed in favour of 'R' whereby the properties in question were settled upon him. 'P' died on 20th January, 1965. At the time of adoption 'R' was a major but in accordance with the customs prevailing in Vysya community to which the parties belonged, such adoption was permissible. After the death of 'P,' the accountable person, viz. his daughter, filed the estate duty return. One of the questions arose relating to the inclusion of properties covered by the settlement deed dated 20th July, 1963 which had been executed by 'P' in favour of 'R.' The properties covered by the settlement deed were included for the purpose of determination of the estate duty by the Assistant Controller. Aggrieved by the decision of the Assistant Estate Controller, the matter was carried in appeal where a new ground was taken by the accountable person that the deed though described as settlement deed, was not merely a settlement deed operating as a gift but as one executed in consideration of the ante-adoption agreement entered into between the adopted son and the deceased. The Appellate Controller held that even if there was such an ante-adoption agreement in existence, that would be invalid in view of the prohibition contained in S. 17 of the Act. The Tribunal on appeal reversed the finding of the Aappellate Controller and inter alia held that there was an ante-adoption agreement entered into between 'P' and 'R' and the same was valid and not hit by S. 17 of the Act. In the reference at the instance of the Controller of Estate Duty before the High Court it was contended that the ante-adoption agreement was not valid under the Act and even assuming it is valid, the Tribunal committed an error in law in holding that oral antecedent agreement conferred antecedent rights upon the adopted son. The High Court noticing that the Tribunal has recorded a finding in favour of the accountable person that there was in fact an oral ante-adoption agreement between the parties proceeded to consider the question whether such an agreement is valid in view of S. 17 of the Act. It was noticed that nowhere in the deed of settlement there was any mention of an oral agreement between the adopted son and his adoptive father as to the manner in which the property should be settled in the event of his being adopted. The relevant portion of the settlement deed quoted in the judgment of the High Court is as follows:

> "It has been already arranged between your natural parents and ourselves prior to the adoption, that you cannot exercise right over any other property except those and are specifically set out in the deed. If at any time you were to deal with them, then this settlement deed will not be operative and my properties are to be vested in my legal heirs. This was also agreed to by us before the adoption."

10. Under the aforesaid circumstances, noticing that it is manifest that the natural parents of the adopted son were parties to the agreement and rightly observing that S. 17 lays down a public policy so that there may be no trafficking in children, on facts, the High Court came to the conclusion that the ante-adoption agreement in that case attracted the vice of S. 17.

11. What in fact the ante-adoption agreement was in that case is not clear at all. If there was an agreement between natural parents of 'R' and 'P' that prior to adoption 'P' must transfer certain properties in favour of 'R' as a consideration for adoption it would, of course, be hit by S. 17. The oral agreement was set up at the appeal stage with a view to exclude the properties from payment of the estate duty. An agreement had been entered into between the natural parents and the adoptive father whereby the latter agreed to transfer the properties in favour of the adoptive son prior to adoption as a consideration of adoption. The High Court did not lay down any proposition that every ante-adoption agreement would attract the vice of S. 17. An agreement which violates S. 17 alone would come within the vice of said provision. Further, the High Court did not analyse the provisions of S. 17 of the Act. Under S. 17 one has to receive or agree to receive any payment or reward for consideration of adoption. Both recipient and giver come within the purview of S. 17.

12. In the present case there is no question of adoptive father giving any payment or reward to the plaintiff as a consideration for the adoption. As already noticed, there was no question of any payment or agreement to make payment by plaintiff to his would-be adoptive father. Regarding giving of reward by plaintiff or agreement to give any reward to his would-be adoptive father for consideration of adoption, that question would arise only if the plaintiff had any right in the properties. Prior to adoption plaintiff had no such right and, therefore, the question of his giving anything to defendant No. 1 does not arise. On facts earlier noticed, the plaintiff was being fostered by adoptive father and his wife for five years prior to adoption. The wife of adoptive father had transferred various properties in favour of the plaintiff about five years earlier to adoption. At the same time she had also settled certain properties in favour of the girl with whom the plaintiff was to marry and in fact married. By agreement Exhibit B-16, the appellant/plaintiff agreed not to claim any interest in some of the properties of his adoptive father. It did not cover all the properties of defendant No. 1. Such an agreement is not prohibited by S. 17. Under the circumstances of the case, there was no question of any trafficking in children. Section 17 does not prohibit every kind of agreement between a major adoptee and the would-be adoptive father. Exhibit B-16 does not suffer from the vice of S. 17 of the Act.

13. For the aforesaid reasons, we find no infirmity in the impugned judgment of the High Court. Resultantly, the appeals are dismissed leaving the parties to bear their own costs.

Appeals dismissed.

[1]*(AIR 1916 Bom 313)*
[2]*AIR 1932 Bom 571)*
[3]*(AIR 1984 Andh Pra 313)*
[4]*(1979) 116 ITR 930)*