SUPREME COURT OF INDIA

Kashi Nath

Vs.

Jaganath

(Doraiswamy Raju and Arijit Pasayat JJ.)

05.11.2003

JUDGMENT

Arijit Pasayat, J.

1. Leave granted in S.L.P. (C) No. 14360 of 1998.

2. Both the appeals being interlinked are disposed of together.

3. Kashi Nath, the original appellant's claim of being the adopted son of Bala Bux and Smt. Nangi having been rejected by the Trial Court (Court of sub-Judge, Jaipur City), First Appellate Court (Additional District Judge, Jaipur City) and the Rajasthan High Court by the impugned judgment in second appeal, the appeal (CA No. 6974 of 1996) has been filed. The other appeal is an offshoot of the other. The claim is intricately linked with functioning as a Pujari in the temple of Thakurji Shri Gopalji in the Jaipur City. The litigation started several decades back relating to the present controversy as to adoption.

4. There have been series of other litigations which are intimately linked with that basic issue also. During the pendency of the appeals the appellant Kashi Nath had died and his legal heirs were impleaded.

5. Coming to the genesis of the dispute regarding adoption the same started when the Kashi Nath the original appellant filed a suit for declaration that the temple called Thakurji Sri Gopalji belongs to the entire class of Vaishnava Worshippers and the defendants-respondents herein who belonged to Khati Community have no exclusive right over it and further plaintiff is exclusively entitled to manage the temple, to do sevapuja and to get offerings made to idols. The claim was resisted by the defendants on a number of grounds, one of which was that the plaintiff was not the adopted son of Bala Bux. The Trial Court framed issues and after recording evidence decreed the plaintiff's suit by judgment dated 30.5.1964. Defendants preferred appeal and the learned District Judge, Jaipur City, set aside the judgment of the Trial Court by judgment dated 3.6.1969 dismissing the plaintiff's suit.

6. Plaintiff filed an appeal before the High Court which was registered as SB Civil Second Appeal No. 149/69. The learned Single Judge who heard the appeal set aside the First

Appellant Court's judgment dated 6.3.1969 and remitted the matter back to the said Court with direction that an amended issue no.4 was to be framed and the parties were to be granted opportunity to lead evidence on the amended issue. The amended issue reads as follows:

> "Whether there was ceremony of giving and taking at the time of alleged adoption of the plaintiff to Bala Bux and whether the plaintiff is a legally and validly adopted son of the Bala Bux?" The First Appellate Court sent the matter to the Trial Court for recording evidence on the additional issue and also to remit its findings. The Trial Court recorded the evidence led by the parties and returned the findings on 25.4.75 deciding amended issue no.4 against the plaintiff, and holding that he was not the adopted son of Bala Bux. The Additional District Judge after hearing the parties confirmed the said findings of the Trial Court and ultimately accepted the appeal and dismissed the suit of the plaintiff by judgment dated 9.12.75.

7. Thereafter a second appeal was filed before the High Court. During pendency of the appeal in the High Court, defendant-respondent no.1 Narain died and as his legal representatives were already on record his name was deleted. Another defendant-respondent named Smt. Dekha wife of Kalyan Sahai also died during the pendency of the appeal and her legal representatives were also on record, therefore, her name was also deleted from array of respondents.

8. Stand of the appellant before the High Court was that the approach of the Trial Court and the First Appellate Court was erroneous in view of several judgments/orders passed in different proceedings. It was clearly established that the appellant was the adopted son of Bala Bux.

9. The minor variations highlighted by the Trial Court and the First Appellate Court were but natural, when one considers the position that the adoption was claimed to have been taken place in 1941. Since the evidence was recorded after about three decades the Courts' should not have insisted on strict proof and slight evidence is sufficient. Stand of the defendants-respondents was that the question whether one is adopted son of another is essentially a question of fact and the second appeal was not maintainable. The High Court by the impugned judgment held that pleadings were at variance with the evidence. There was no evidence whatsoever to support the plaintiff's case as reflected in the plaint and on the contrary evidence led by the plaintiff after the matter was remitted is completely at variance with the assertions made in the plaint and, therefore, have to per se not be relied at all.

10. Accordingly, it was held that findings of fact recorded on the basis of evidence were not open to challenge in the second appeal.

11. Learned counsel for the appellant submitted that the approach of the High Court is unsupportable. There were several orders and judgments which clearly establish that Kashi Nath was the adopted son of Bala Bux.

12. The Courts below erred in ignoring those and attaching undue importance to minor variations. When the documentary evidence was sufficient merely because the oral evidence was somewhat not in line with the pleadings that should not have weighed with the courts below.

13. Per contra, learned counsel for the respondents submitted that in this case adoption is claimed to have been made prior to enactment of *Hindu Adoption and Maintenance Act, 1955* (for short the 'Act'). Several essential ingredients have to be established to come to a conclusion about the valid adoption and, the evidence fell short of that legal requirement. Additionally, the evidence and the pleadings were not only at variance but directly contradictory and self destructive of the case on the claim of adoption. Therefore, the High Court was justified in dismissing the second appeal when basic question is whether there was a adoption, which is nothing but a conclusion arrived as of a fact.

14. Section 5 provides that adoptions are to be regulated in terms of the provisions contained in Chapter II. Section 6 deals with the requisites of a valid adoption. Section 11 prohibits adoption; in case it is of a son, where the adoptive father or mother by whom the adoption is made has a Hindu son, son's son, or son's son's son, whether by legitimate blood relationship or by adoption, living at the time of adoption. Prior to the Act under the old Hindu Law, Article 3 provided as follows:

> "Article 3 (1) A male Hindu, who has attained the age of discretion and is of sound mind, may adopt a son to himself provided he has no male issue in existence at the date of the adoption.
>
> (2) A Hindu who is competent to adopt may authorize either his (i) wife or (ii) widow (except in Mithila) to adopt a son to himself." Therefore, prior to the enactment of the Act also adoption of a son during the lifetime of a male issue was prohibited and the position continues to be so after the enactment of the Act. Where a son became an outcast or renounced Hindu religion, his father became entitled to adopt another. The position has not changed after enactment of Caste Disabilities Removal Act (XXI of 1850), as the outcast son does not retain the religious capacity to perform the obsequial rites. In case parties are governed by Mitakshara Law, additionally adoption can be made if the natural son is a congenital lunatic or an idiot.

15. The origin of custom of adoption is lost in antiquity. The ancient Hindu Law recognized twelve kinds of sons of whom five were adopted.

16. The five kinds of adopted sons in early times must have been of very secondary importance, for, on the whole, they were relegated to an inferior rank in the order of sons. Out of the five kinds of adopted sons, only two survive today, namely, the Dattaka form prevalent throughout India and the Kritrima form confined to Mithila and adjoining districts. The primary object of adoption was to gratify the means of the ancestors by annual offerings and, therefore, it was considered necessary that the offerer should be as much as possible a reflection of a real descendant and had to look as much like a real son as possible and

certainly not be one who would never have been a son. Therefore, the body of rules was evolved out of a phrase of Saunaka that he must be 'the reflection of a son'. The restrictions flowing from this maxim had the effect of eliminating most of the forms of adoption. (See Hindu Law by S.V. Gupte, Third Edition at pages 899-900). The whole law of Dattaka adoption is evolved from two important texts and a metaphor. The texts are of Manu and Vasistha, and the metaphor that of Saunaka. Manu provided for the identity of an adopted son with the family into which he was adopted. (See Manu Chapter IX, pages 141-142, as translated by Sir W. Jones). The object of an adoption is mixed, being religious and secular. According to Mayne, the recognition of the institution of adoption in early times had been more due to secular reasons than to any religious necessity, and the religious motive was only secondary; but although the secular motive was dominant, the religious motive was undeniable. The religious motive for adoption never altogether excluded the secular motive. (See Mayne's Hindu Law and Usage, 12th Edition, page 329).

17. As held by this Court in *V.T.S. Chandrashekhara Mudaliar v. Kulandaivelu Mudaliar*[1] substitution of a son for spiritual reasons is the essence of adoption, and consequent devolution of property is mere accessory to it; the validity of an adoption has to be judged by spiritual rather than temporal considerations, and, devolution of property is only of secondary importance.

18. In *Hem Singh and Anr. v. Harnam Singh and Anr.*[2] it was observed by this Court that under the Hindu Law adoption is primarily a religious act intended to confer spiritual benefit on the adopter and some of the rituals have, therefore, been held to be mandatory, and compliance with them regarded as a condition of the validity of the adoption. The first important case on the question of adoption was decided by the Privy Council in the case of *Amarendra Mansingh v. Sanatan Singh*[3]. The Privy Council said:

> "Among the Hindus, a peculiar religious significance has attached to the son, through Brahminical influence, although in its origin the custom of adoption was perhaps purely secular. The texts of the Hindus are themselves instinct with this doctrine of religious significance. The foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the necessary rites." With these observations it decided the question before it, viz., that of setting the limits to the exercise of the power of a widow to adopt, having regard to the well established doctrine as to the religious efficacy of son- ship. In fact, the Privy Council in that case regarded the religious motive as dominant and the secular motive as only secondary.

19. The object is further amplified by certain observations of this Court. It has been held that an adoption results in changing the course of succession, depriving wife and daughters of their rights, and transferring the properties to comparative strangers or more remote relations. (See *Kishori Lal v. Chaltibai*[4]. Though undeniably in most of the cases motive is religious, the secular motive is also dominantly present. We are not concerned much with this controversy, and as observed by Mayne it is unsafe to embark upon an enquiry in each case as to whether the motives for a particular adoption were religious or secular and an

intermediate view is possible that while an adoption may be a proper act, inspired in many cases by religious motives, Courts are concerned with an adoption, only as the exercise of a legal right by certain persons. The Privy Council's decision in Amerendra's case (supra), has reiterated the well established doctrine as to the religious efficacy of son-ship, as the foundation of adoption. The emphasis has been on the absence of a male issue. An adoption may either be made by a man himself or by his widow on his behalf with his authority conveyed therefor. The adoption is to the male and it is obvious that an unmarried woman cannot adopt, for the purpose of adoption is to ensure spiritual benefit for a man after his death and to his ancestors by offering of oblations and rice and libations of water to them periodically. Woman having no spiritual needs to be satisfied, was not allowed to adopt for herself. But in either case it is a condition precedent for a valid adoption that he should be without any male issue living at the time of adoption.

20. From the judgments of the Trial Court, First Appellate Court and the High Court it is clear that there was no consistency so far as the claim regarding the adoption is concerned particularly as to who and at what point of time it was made. The High Court has taken great pains to extract the relevant variations to indicate as to how it cut at the very root of plaintiff's claim. As noted by the Privy Council in *Siddiqui Mohammad Shah v. Mst. Saran and Ors.*[5]*, and M/s Trojan and Co. v. RM. N.N. Nagappa Chetiar*[6] when the evidence is not in line with the pleadings and is at variance with it and as in this case in virtual self contradiction, adverse inference has to be drawn and the evidence cannot be looked into or relied upon.

21. Additionally, as rightly submitted the conclusion whether there was adoption is essentially one of fact merely depending upon pure appreciation of evidence on record. This position has been stated in several decisions of this Court; *e.g., Rajendra Kumar v. Kalyan (dead) by Lrs.*[7] *and Raushan Devi v. Ramji Sah and Ors.*[8]. Consequently, no exception could be taken to the well- merited findings concurrently recorded by the courts below, with which the High Court also rightly declined to interfere on the facts and circumstances of this case.

22. The only result of Civil Appeal No. 6947 of 1996 is dismissal, which we direct. Consequentially the connected appeal also stands dismissed. Costs made easy.

[1]*AIR 1963 SC 185*
[2]*(AIR 1954 SC 581*
[3]*AIR 1933 PC 155*
[4]*AIR 1959 SC 504*
[5]*AIR 1930 PC 57*
[6]*AIR 1953 SC 235*
[7]*(2000 (8) SCC 99)*
[8]*(2002 (10) SCC 205)*