SUPREMECOURT OF INDIA

Laxmibai

Vs.

Bhagwantbuva

C.A.No.2058 of 2003

(Dr. B.S.Chauhan and V.Gopala Gowda JJ.)

29.01.2013

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and order dated 9.2.2001, passed by the High Court of Judicature at Bombay (Aurangabad Bench) in Second Appeal No. 906 of 1980, by way of which the High Court has affirmed the judgment and order of the First Appellate Court in Regular Civil Appeal No. 92 of 1977, dismissing Civil Suit No. 52 of 1971, which stood allowed by the trial court vide judgment and decree dated 15.3.1977.

2. The facts and circumstances giving rise to this appeal are:

A. One Narayanbuva Gosavi, a descendant of Shri Sant Eknath Maharaj was vested with the exclusive right to carry the Palki and Padukas of Sri Sant Eknath Maharaj from Paithan to Pandharpur at the time of Ashadi Ekadashi. He died in 1951, leaving behind his widow, namely, Smt. Laxmibai. Krishnabuva. Brother of Narayanbuva had pre-deceased him leaving behind his widow, Smt. Gopikabai.

B. After the death of Narayanbuva, the appellant Smt. Laxmibai, was vested with the exclusive right to carry the Palki and Padukas. The respondents herein, who are also descendants of Sri Sant Eknath Maharaj, served notice dated 6.5.1971 upon Shri Vasant Bhagwant Pandav, stating that he must not give his son Raghunath, aged 8 years, in adoption to Smt. Laxmibai.

C. On 10.5.1971, some of the respondents herein, filed Civil Suit No. 47 of 1971 against Shri Vasant Bhagwant Pandav, Smt. Laxmibai and Smt. Gopikabai, restraining them from effectuating the adoption of Raghunath. The aforementioned suit was withdrawn subsequently, in September 1974.

> It was during the pendency of the said suit filed by the respondents, that on 11.5.1971, Raghunath was adopted by Smt. Laxmibai after the performance of all requisite ceremonies which were conducted in the presence of a huge crowd, wherein the process of giving and taking of the child by the parents of Raghunath and by Smt. Laxmibai respectively, was held. The ceremony was performed by a priest, and several photographs were also taken on this occasion. On the same day, an adoption deed was executed and registered in this respect, and the said deed was duly signed by seven witnesses. Owing to the fact that the respondents had tried to create some hindrance in the performance of the duties of the appellants, in relation to carrying the Palki and Padukas, Smt. Laxmibai and Smt. Gopikabai filed Suit No. 52 of 1971, against the respondents seeking a decree of perpetual injunction preventing them from causing any obstruction or interference in the exercise of their exclusive rights, on 14.6.1971.

D. The suit was contested by the respondents and a large number of issues were framed. The trial court decreed the suit, holding that the adoption of Raghunath by Smt. Laxmibai was valid; that the adoption deed was a legal document which could in fact, be relied upon; that the ceremony of giving and taking of the child and that performance of all other religious ceremonies was conducted; and also that photographs taken at the time of adoption could be relied upon. The said adopted child Raghunath, inherited all the property of Smt. Laxmibai when she died before the trial of the suit even commenced. The inheritance was held to be valid, as it was held that there was no custom of adopting of a male child only from within the said family and, consequently, the adoption of Raghunath by Smt. Laxmibai from outside, was upheld.

E. Aggrieved, the respondents preferred Civil Appeal No. 92 of 1977 and for certain reliefs, the appellants also filed a cross appeal. Various points were considered by the First Appellate Court, after which, the decree of the Civil Court was reversed vide judgment and decree dated 1.8.1980, by which it was held that the respondents had proved, that there did in fact exist a custom which prohibited the taking of a male child in adoption from outside.

The adoption itself was suspicious as independent witnesses were not examined. The witnesses who proved the validity of the adoption were interested witnesses, and the adoption deed was also suspicious.

F. Aggrieved, the appellants preferred a Second Appeal, which was dismissed by the High Court vide impugned judgment concurring with the First Appellate Court.

Hence, this appeal.

3. Shri Aarohi Bhalla, learned counsel appearing for the appellants, has submitted that there is a presumption of validity with respect to the registered adoption deed under Section 16 of Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as 'the Act 1956'). Therefore, the appellate courts committed an error in doubting the validity of the registered adoption deed. The burden of rebutting the aforementioned presumption which was on the respondents, was not discharged effectively, as they examined only two witnesses, Narharibuva (DW.1) and Somnath (DW.2), and neither of them made any reference to the said deed at all. Therefore, in the absence of any attempt on the part of the respondents to rebut the said presumption, holding that the adoption deed was suspicious, is not sustainable. The appellate courts have categorically held, that in the past 375 years, a total of four adoptions have taken place, and that it was only in each of these cases that a male child from within the family was adopted, and not one from outside. Thus, the appellate courts committed an error in holding that there was a custom to this effect. In the absence of any evidence, a statement alleging that either one of the said adoptive parents wanted to take a child in adoption from outside, and that the same was attempted, must not be accepted. Moreover, the occurance of only four instances, over a period of almost four centuries, is not sufficient to establish the existence of a custom. The non-examination of Smt. Laxmibai during the trial of the suit on account of her death, prior to the commencement of the trial, cannot be taken as a circumstance against the appellants. Thus, the appellate courts have erred in taking such a perverse view. The photographer present at the adoption ceremony, who was examined by the appellants before the trial court, was not asked any questions in the cross-examination by the respondents, with respect to any doubts they had regarding the genuineness of either the negatives, or the photographs of the ceremony. In the absence of resorting to such a course by the respondents, the appellate courts could not have drawn any adverse inference as regards his deposition, particularly when the photographer had proved the existence and validity of both the negatives, and the photographs. Thus, the

judgments and decrees of the appellate courts are liable to be set aside, and the judgment of the trial court deserves to be restored.

4. Per contra, Shri Aniruddha P. Mayee and Shri Devansh A. Mohta, learned counsel appearing for the respondents, have opposed the appeal, contending that the first appellate court has the right to re- appreciate all material on record, after which it has rightly reached a conclusion as regards the suspicious nature of the adoption deed and adoption ceremonies, and has also rightly concluded, that since over a period of 375 years only four adoptions have taken place, and as in each case, a male child was adopted only from within the family, there certainly existed a custom which did not permit the adoption of a male child from outside the family. Such findings do not warrant any interference by this court. The appeal lacks merit, and is therefore, liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties, and perused the record.

6. Section 3(a) of the Act 1956 defines 'custom' as follows:

> "The expressions, 'custom' and 'usage' signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:
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> Provided that the rule is certain and not unreasonable or opposed to public policy: and
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> Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family".

7. Custom is an established practice at variance with the general law. A custom varying general law may be a general, local, tribal or family custom. A general custom includes a custom common to any considerable class of persons. A custom which is applicable to a locality, tribe, sect or a family is called a special custom. Custom is a rule, which in a particular family, a particular class, community, or in a particular district, has owing to prolonged use, obtained the force of law. Custom has the effect of modifying general personal law, but it does not override statutory law, unless the custom is expressly saved by it.

> Such custom must be ancient, uniform, certain, continuous and compulsory. No custom is valid if it is illegal, immoral, unreasonable or opposed to

public policy. He who relies upon custom varying general law, must plead and prove it. Custom must be established by clear and unambiguous evidence.

8. In Dr. Surajmani Stella Kujur v. Durga Charan Hansdah AIR 2001 SC 938, this Court held that custom, being in derogation of a general rule, is required to be construed strictly. A party relying upon a custom, is obliged to establish it by way of clear and unambiguous evidence. (Vide: Salekh Chand (Dead) thr. Ors. (2008) 13 SCC 119).

9. A custom must be proved to be ancient, certain and reasonable. The evidence adduced on behalf of the party concerned must prove the alleged custom and the proof must not be unsatisfactory and conflicting. A customcannot be extended by analogy or logical process and it also cannot be established by a priori method. Nothing that the Courts can take judicial notice of needs to be proved. When acustomhas been judicially recognised by the Court, it passes into the law of the land and proof of it becomes unnecessary under Section57(1) of the Evidence Act, 1872. Materialcustomsmust be proved properly and satisfactorily, until the time that suchcustomhas, by way of frequent proof in the Court become so notorious, that the Courts take judicial notice of it. (See also: Effuah Amissah v. Effuah Krabah,AIR 1936 P.C. 147; Anr., AIR 1953 SC 201; Ujagar Singh v. Mst. Jeo, AIR 1959 SC 1041; and Siromani v. Hemkumar Ors., AIR 1968 SC 1299).

10. In Ramalakshmi Ammal v. Sivanatha Perumal Sethuraya,14 Moo. Ind. App. 570, it washeld: It is essential that special usage, which modifies the ordinary law of succession is ancient and invariable; and it is further essential that such special usage is established to be so, by way of clear and unambiguous evidence. It is only by means of such evidence, that courts can be assured of their existence, and it is also essential that they possess the conditions of antiquity and certainty on the basis of which alone, their legal title to recognition depends.

11. In Salekh Chand (supra), this Court held as under:

> "Where the proof of a custom rests upon a limited number of instances of a comparatively recent date, the court may hold the custom proved so as to bind the parties to the suit and those claiming through and under them.
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> All that is necessary to prove is that the usage has been acted upon in practice for such a long period and with such invariability as to show that it has, by common consent, been submitted to as the established governing rule

of a particular locality. A custom may be proved by general evidence as to its existence by members of the tribe or family who would naturally be cognizant of its existence, and its exercise without controversy."

12. In Bhimashya Ors. v. Smt. Janabi @ Janawwa, (2006) 13 SCC 627, this Court held:

"Acustomis a particular rule which has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm……it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.

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Customis authoritative, it stands in the place of law, and regulates the conduct of men in the most important concerns of life; fashion is arbitrary and capricious, it decides in matters of trifling import; manners are rational, they are the expressions of moral feelings.Customshave more force in a simple state of society. Both practice andcustomare general or particular but the former is absolute, the latter relative; a practice may be adopted by a number of persons without reference to each other; but acustomis always followed either by limitation or prescription; the practice of gaming has always been followed by the vicious part of society, but it is to be hoped for the honour of man that it will never become acustom."

(See also: Ram Kanya Bai Anr. v. Jagdish Ors. AIR 2011 SC 3258).

13. Adoption is made to ensure spiritual benefit for a man after his death.The primary object of adoption was to gratify ancestors' by means of annual offerings, and therefore it was considered necessary that the offerer, must as far as possible be a reflection of the real descendant, and must look as much like a real son as possible, and must certainly not be one, who could never have been a son. Therefore, the present body of rules has evolved out of a phrase of Saunaka, which emphasizes that an adopted male, must be 'the reflection of a son'. (Vide: GherulalParakh v. Mahadeodas Maiya, AIR 1959 SC 781; and V.T.S. Chandrashekhara Mudaliar (Dead thr. Lrs.) Ors. v.Kulandaivelu Mudaliar, AIR 1963 SC 185).

14. So far as the present case is concerned, the trial court, after appreciating the evidence on record regarding custom, came to the conclusion that the evidence led by the defendants/respondents revealed, that over a period of 375 years, there had arisen only 4 occasions, when an adoption had taken place, and in each of these cases, a male child from the same family was adopted. It therefore, did not establish the existence of any custom. Moreover, while serving notice dated 6.5.1971 upon Vasant Bhagwant Pandav, the natural father of Raghunath, asking him not to give his son in adoption, the defendants/respondents made no reference to the existence of any such special custom in their family. The documents submitted on record also did not reveal the existence of any such custom prevailing in their family, and no reference was ever made in this regard by them in their pleadings. The burden of proof with respect to this issue, was placed upon the defendants/respondents, which they failed to discharge. The First Appellate Court rejected the argument of the appellants/plaintiffs, to the effect that the issue of the existence of such custom, was neither specifically pleaded, nor proved, by the defendants/respondents. After considering a large number of cases decided by various courts, the High Court while deciding Second Appeal reached the conclusion that there was, in fact, a special custom that existed, which required the taking of a child from within the same family.

15. We have appreciated the evidence on record, and are of the view that in the present case, only four adoptions have taken place over a time-span of 375 years and even though each time, a male child was taken from within the same family, the same may merely have been done as a matter of convenience, and may additionally also be only to prevent the property of the family, from going to an outsider. There is nothing on record to establish that a child from outside the family could not have been adopted, or that any such attempt was ever made, but was resisted and discarded. The respondents/defendants could not establish that a male child from outside the family could not be adopted. Thus, in view of the fact that the defendants/respondents have never made any reference with respect to the existence of a custom prohibiting the adoption of a child from outside the family, either in the notice served by them on 6.5.1971 upon Vasant Bhagwant Pandav, or in their written statement, the mere fact that it may only be for the sake of convenience, that a child was taken in adoption from within the same family on each of the four occasions over a period of 375 years, would not be sufficient to establish the existence of a custom in this regard, for the reason that custom cannot be proved by way of logic or analogy. Thus we hold, that the finding recorded by the Appellate Courts on this issue, is not based on any evidence, and that the appellate courts have committed an error in holding that the defendants/respondents have successfully proved the existence of such special

family custom. The appellate courts have failed to appreciate that a negative fact cannot be proved by adducing positive evidence. This is not a case where there have been adequate judicial pronouncements on the said issue previously, of which the court could have taken judicial notice.

> Special customs; which prevail in a family, a particular community etc., require strict proof and the defendants/respondents have failed to prove the same.
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> Section 10 of the Act 1956, provides that a child upto the age of 15 years can be taken in adoption. Section 11 thereof prescribes, that in the event that a female adopts a male child, there must be a difference of 21 years between the age of the female and that of the adoptive child. In the event that there is a registered adoption deed, there is a presumption of validity with respect to the said adoption. If these tests are applied, the following situation emerges: The adopted child was 8 years of age at the time of adoption. Laxmibai, the adoptive mother, was 70 years of age at the relevant time and there is in fact, a registered adoption deed. Therefore, there is a presumption under Section 16 of the Act 1956, to the effect that the aforementioned adoption has been made in compliance with the provisions of the Act, 1956 until and unless such presumption is disproved. In the event that a person chooses to challenge such adoption, the burden of proof with respect to rebutting the same, by way of procedures accepted by law, is upon him. In the instant case, the defendants/respondents never made any attempt whatsoever, to rebut the presumption under Section 16 of the Act 1956. The defendants have examined two witnesses, namely Narharibuva (DWI) and Somnath (DW2). We have been taken through their depositions, in which there has been no reference whatsoever to the registered adoption deed, let alone any attempt of rebuttal. Therefore, the defendants/respondents have failed to discharge the burden of rebuttal placed upon them, with respect to the presumption of validity of adoption under Section 16 of the Act 1956.

16. Undoubtedly, the court while construing a document, is under an obligation to examine the true purport of the document and draw an inference with respect to the actual intention of the parties. The adoption deed was registered on 11.5.1971, and the same provided complete details stating that the adopted child was 8 years of age, and that the adoptive mother was an old lady of 70 years of age. The adoptive child was related to Smt. Laxmibai. Her husband had expired in 1951 and it had been his desire to adopt a son in order to perpetuate the family line and his name. The natural parents of the adoptive child had agreed to give their child in adoption,

and for the purpose of the same, the requisite ceremony for a valid adoption was conducted, wherein the natural parents, Vasant Bhagwant Pandav and Smt. Sushilabai Vasantrao Pandav, placed the adoptive child in the lap of the adoptive mother, in the presence of a large number of persons, including several relatives. A religious ceremony called "Dutta Homam", involving vedic rites was performed by a pandit, and photographs of the said occasion were also taken. Registration of the adoption deed was done on the same day, immediately after its execution, before the concerned Registrar. The adoptive mother put her thumb impression on the deed, and it was also signed by the natural parents of the child. Additionally, the deed was signed by 7 witnesses, and all the parties have been identified. The registered document when read as a whole, makes it evident that Vasant Bhagwant Pandav and Smt. Sushilabai, the natural parents of the adoptive child, have signed the same as attesting witnesses, and not as executing parties.

17. It has been laid down that it would defy common sense, if a party to a deed could also attest the same. Thus, a party to an instrument cannot be a valid attesting witness to the said instrument, for the reason, that such party cannot attest its own signature. (Vide: Kumar Harish Chandra Singh Deo Anr. v. Bansidhar Mohanty Ors., AIR 1965 SC 1738).

18. A document must be construed, taking into consideration the real intention of the parties. The substance, and not the form of a document, must be seen in order to determine its real purport.

19. Anr., AIR 1999 SC 2607, this Court held that the intentionof the parties is to be gathered from thedocument itself. Intention must primarily be gathered from the meaning of the words used in thedocument,except where it is alleged and proved thatthe document itself is a camouflage. If the terms of the document are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for the purpose of ascertaining the real relationship between the parties. If a dispute arises between the very parties to the written instrument, thenintentionof the parties must be gathered from the documentby reading the same as a whole.

20. In Vodafone International Holdings B.V v. Union of India Anr., (2012) 6 SCC 613, while dealing with a similar situation, this Court held:

> "The Court must look at a document or a transaction in a context to which it properly belongs to.While obliging the court to acceptdocumentsor transactions, found to be genuine, as such, it does not compel the court

tolook atadocumentor a transaction in blinkers, isolated from any context to which it properly belongs.

If it can be seen that adocumentor transaction was intended to have effect as part of a nexus or series of transactions, or as an ingredient of a wider transaction intended as a whole, there is nothing in the doctrine to prevent it being so regarded; to do so innot to prefer form to substance, or substance to form.It is the task of the court to ascertain the legal nature of any transaction to which it is sought to attach a tax or a tax consequence and if that emerges from a series or combination of transactions intended to operate as such, it is that series or combination which may be regarded." (emphasis added)

21. Ors., (2007) 10 SCC 761, this Court observed that the adoptiondeed must be read as a whole and that on reading the same in such a way, the intention of the parties with respect to whether the adoptive father/mother wanted to make an adoption according to law and not merely, to appoint an heir, must be clearly established.

22. In Debi Prasad (dead) by L.Rs. v. Smt. Tribeni Devi, AIR 1970 SC 1286, this Court held that the giving and receiving are absolutely necessary to the validity of an adoption. All that is required is that the natural father be asked by the adoptive parent to give his son in adoption, and that the boy be handed over and taken for this purpose.

Furthermore, in Mst. Deu Ors. v. Laxmi Narayan Ors., (1998) 8 SCC 701, the presumption of registered documents under Section 16 of the Act was discussed. It was held that in view of Section 16, wherever any document registered under any law is produced before any court purporting to record an adoption made, and the same is signed by the persons mentioned therein, the court shall presume that the said adoption has been made in compliance with the provisions of the Act, until and unless such presumption is disproved. It was further held, that in view of Section 16 it is open for a party to attempt to disprove the deed of adoption by initiating independent proceedings.

23. Mere technicalities therefore, cannot defeat the purpose of adoption, particularly when the defendants/respondents have not made any attempt to disprove the said document. No reference was ever made either by them, or by their witnesses, to this document i.e. registered adoption deed. Undoubtedly, the natural parents had signed alongwith 7 witnesses and not at the place where the

executants could sign. But it is not a case where there were no witnesses except the executants. Instead of two witnesses, seven attesting witnesses put their signatures.

24. In Atluri Brahmanandam (D), Thr. LRs. v. Anne Sai Bapuji, AIR 2011 SC 545, the Court held:

> "The aforesaid deed of adoption was produced in evidence and the same was duly proved in the trial by the evidence led by PW-1, the respondent. We have carefully scrutinized the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the appellant herein either to the legality of the said document or to thevalidityof the same. Therefore, the said registeredadoptiondeedwent unrebutted and unchallenged. We have already referred to the recitals in the said documents which is a registered document and according to the recitals therein, the respondent was legally and validly adopted by the adoptive father. Since the aforesaid custom and aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption." (emphasis added)

25. The appellate courts could therefore, not have drawn any adverse inference against the appellants/plaintiffs on the basis of a mere technicality, to the effect that the natural parents of the adoptive child had acted as witnesses, and not as executors of the document. Undoubtedly, adoption disturbs the natural line of succession, owing to which, a very heavy burden is placed upon the propounder to prove the adoption. However, this onus shifts to the person who challenges the adoption, once a registered document recording the adoption, is brought before the court. This aspect must be considered taking note of various other attending circumstances i.e., evidence regarding the religious ceremony (giving and taking of the child), as the same is a sine qua non for valid adoption.

26. The trial court in this regard, has held that the fact that the natural parents of the adoptive child had signed alongwith seven other witnesses as attestants to the deed, and not as its executors, would not create any doubt regarding the validity of the adoption, or render the said registered document invalid, as they possessed sufficient knowledge with regard to the nature of the document that they were executing, and that additionally, no challenge was made to the registration of the document, immediately after its execution. The First Appellate Court took note of the deposition of Shri Vasant Bhagwantrao Pandav (PW-1), who had deposed that

the adoption deed had been scribed, and that the signatures of the parties and witnesses to the deed had been taken on the same, only after the contents of the said document had been read over to Smt. Laxmibai, the adoptive mother, and then to all parties present. Smt. Laxmibai, appellant/plaintiff was in good health, both physically and mentally, at the time of the adoption. The validity of the adoption deed, however, was being challenged on the basis of the mere technicality, that only interested witnesses had been examined and the court finally rejected the authenticity of the said document, observing that witnesses who wanted to give weight to their own case, could not be relied upon.

27. The appellate courts further held that the adoption deed had neither been properly executed, nor satisfactorily proved, and that as the adoption remains a unilateral declaration by the appellants/plaintiffs, owing to the fact that the natural parents of the adopted child, had not signed the adoption deed as executors but as witnesses, the same could not be held to be a valid deed. Undoubtedly, a mere signature or thumb impression on a document is not adequate with respect to proving the contents of a document, but in a case where the person who has given his son in adoption, appears in the witness box and proves the validity of the said document, the court ought to have accepted the same, taking into consideration the presumption under Section 16 of the Act 1956, and visualising the true purport of the document, without going into such technicalities. This must be done particularly in view of the fact that the defendants/respondents have not made even a single attempt to challenge the validity of the said document. In fact, they have not made any reference to the same. We have no hesitation in holding that the document was valid, and that the same could not have been discarded by the appellate courts.

28. There is ample evidence on record to prove the occurrence of the giving and taking ceremony. The trial court, after appreciating such evidence, found the same to be a valid ceremony. The appellate courts have expressed their doubts only with reference to the fact that the witnesses that were examined in court, were all beneficiaries of the said adoption. Shri Vithal Pandit Mahajan (PW-4), by any means, cannot be labeled as an interested witness. He was a freedom fighter, who worked in the Hyderabad Liberation Movement. He was a medical man by profession, and was also involved in public life. He was not therefore, likely to be influenced by any of the parties, and he had duly supported the case of the appellants/plaintiffs regarding the adoption ceremony. The appellate courts adopted a rather unusual course, and drew adverse inference on the basis of the non-examination of the appellant/plaintiff, Smt. Laxmibai, observing that considering her old age, she could have taken recourse to the procedure, prescribed

under Order XVIII Rule 16, Code of Civil Procedure, 1908, which lays down, that where a witness is about to leave the jurisdiction of the court, or where some other sufficient cause is shown to the court owing to which it would be prudent for it to ensure that his evidence is taken immediately, the court may, upon the application of the party or of the witness at any time after the institution of the suit, take the evidence of such witness/party, in the manner provided therein.

> The appellant was just above 70 years of age and hale and hearty. She was not suffering from any serious ailment e.g. cancer or has been on death bed. Thus, there was no occasion for her to file an application under Order XVIII Rule 16 CPC which provides for taking evidence De Bene Esse for recording statement prior to the commencement of the trial. Mere apprehension of death of a witness cannot be a sufficient cause for immediate examination of a witness. Apprehension of a death applies to each and every witness, he or she, young or old, as nobody knows what will happen at the next moment. More so, it is the discretion of the court to come to a conclusion as to whether there is a sufficient cause or not to examine the witness immediately.
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> We are of the view that had Smt. Laxmibai moved such an application, the trial court could not have allowed it after considering the aforesaid facts.

29. Admittedly, before the trial commenced, Smt. Laxmibai had died. The other witnesses who entered the witness box however, proved the adoption ceremony and adoption deed. Smt. Gopikabai was not examined. Thus, the question that arises is whether the court has to weigh or count the evidence and also whether a deposition of a witness is to be doubted merely on the ground that the witness happened to be related to the plaintiff.

30. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time- honoured principle, that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced, do not carry any weight.

(Vide:Vadivelu Thevar v. State of Madras; AIR 1957 SC 614; Jagdish Prasad v. State of M.P. AIR 1994 SC 1251; Sunil Kumar v. State Govt. of NCT of Delhi AIR 2004 SC 552; Namdeo v. State of Maharashtra AIR 2007 SC (Supp) 100; Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal AIR201O SC 3638; Mahesh Anr. v. State of Madhya Pradesh (2011) 9 SCC 626; Kishan Chand v. State of Haryana JT 2013(1) SC 222).

31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. (See: Khem Chand v. State of Himachal Pradesh, AIR 1994 SC 226; State of U.P. v. Nahar Singh (dead) Ors., AIR 1998 SC 1328; Rajinder Pershad (Dead) by L.Rs. v. Darshana Devi (Smt.), AIR 2001 SC 3207; and Sunil Kumar Anr. v. State of Rajasthan, AIR 2005 SC 1096).

32. Binorkar (PW-2), photographer was examined by the appellant, and he deposed that he was engaged by Laxmibai, the appellant, to take photographs of the 'Datta Homam' ceremony on 11.5.1971. He narrated the manner in which the adoption ceremony had taken place, and further stated that one another photographer had also been present at the said ceremony. He further deposed that he had developed the photographs taken by him, and also identified the photographs produced under exhibit 112/18. Photographs marked as serial nos.11, 12 and 13, alongwith their negatives, were produced by him in court. Thus, the photographs as exhibits 251, 252 and 253 were admitted in evidence. He also proceeded to identify Laxmibai

appellant, and the adopted son in these photographs, as also Vasantrao, who was present in court and stated that he had in fact, been present at the time of adoption. He was cross-examined thoroughly, and was asked a large number of questions regarding his dealings with clients. However, in the course of the cross-examination, he was not asked whether he had followed the practices mentioned by him in the case of Laxmibai as well. He denied suggestions made to him with respect to whether the aforesaid photographs had been developed by him by resorting to trick photography, in view of the fact that he had certain obligations towards Vasantrao Pandav, on account of financial assistance provided to him by the latter. The trial Court found his deposition worthy of reliance, taking note of the fact that once he had deposed that he had himself taken the photographs, and had also developed the negatives, there was no reason to doubt his veracity. It was not put to him in the cross-examination, whether, for the purpose of making or preparing enlarged prints of the photographs from the negatives thereof, the negatives themselves were also required to be enlarged. Moreover, the defendants/respondents did not examine any expert on this point, who could have provided clarity with respect to whether the aforesaid negatives of the photographs of which enlarged prints were taken, were also required to be enlarged. It was in this backdrop that his version was found to be correct, and that the same came to support the case of the validity of the adoption.

33. The First Appellate Court dealt with the same issue and doubted the veracity thereof, on the ground that there was another photographer as per the version of events provided by this witness, who was not examined. Therefore, the occasion itself was deemed suspicious. Furthermore, the photographer failed to produce the record of his studio to show that he had been called to photograph the said occasion, or that any order was given to him in this connection. In such circumstances, it was difficult to hold that he had in fact been engaged for the purpose of taking photographs of the adoption ceremony and the entire testimony of Binorkar (PW-2) became doubtful. The photographs produced in court, did not contain a stamp and date on their rear side, to show for holding that they were prepared at a particular juncture, as per the instructions of the appellants/plaintiffs. The photographs were of different sizes. The First Appellate Court also doubted the enlargement of the said photographs. In addition to this, he was labeled as an interested witness merely on the basis of a statement made by him, stating that he wished that Raghunath be recognised as the adopted son of Laxmibai. The witness (PW-2), produced only 3 undeveloped negatives, even though he had stated that he had taken a total of 15 photographs.

34. In Smt. Rajbir Kaur Anr. v. M/s. S. Chokosiri Co., AIR 1988 SC 1845, this Court held that the trial Court is the best judge of evidence. Furthermore, in Ors., AIR 1951 SC 120, this Court held, that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice, or where there is a sufficient balance of improbability to displace his opinion as to where credibility lies, the appellate court must interfere with the finding of the trial Judge on a question of fact.

35. In Jagdish Singh v. Madhuri Devi, AIR 2008 SC 2296, this Court held:

> "When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies.... When the Court of original jurisdiction has considered oral evidence and recorded findings after seeing the demeanour of witnesses and having applied its mind, the appellate court is enjoined to keep that fact in mind. It has to deal with the reasons recorded and conclusions arrived at by the trial court. Thereafter, it is certainly open to the appellate court to come to its own conclusion if it finds that the reasons which weighed with the trial Court or conclusions arrived at were not in consonance with law."
>
> (See also: Dharamvir v. Amar Singh, AIR 1996 SC 2314; Santosh Hazari v. Purushottam Tiwai (Dead) by Lrs. , AIR 2001 SC 965; and G. Amalorpavam Ors. v. R.C. Diocese of Madurai Ors. (2006) 3 SCC 224)

36. Similarly, in Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179, this Court observed:

> The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. …..While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the

> appellate Court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact.
>
> (See also: Union of India Ors., AIR 2008 SC 938)

37. There is no prohibition in law for the appellate court to reappreciate the evidence where compelling and substantial reasons exist. The findings can also be reversed, in case convincing material has been unnecessarily and unjustifiably stood eliminated from consideration. However, the evidence is to be viewed collectively. The statement of a witness must be read as a whole as reliance on a mere line in a statement of a witness is not permissible. The judgment of a court can be tested on "touchstone of dispassionate judicial scrutiny based on a complete and comprehensive appreciation of all views of the case, as well as on the quality and credibility of the evidence brought on record". The judgment must not be clouded by the facts of the case.

38. The High Court dealt with an issue and disbelieved the testimony of said witness, observing as under:-

> "Apparently, the photographer did not produce any record whatsoever other than the negative and the photographs. Therefore, the lower appellate Court had rightly concluded that the photographs could not be taken in evidence as the same were not proved as per law for the cogent and proper reasons mentioned therein."

39. Respondents/defendants did not examine any expert to discredit the testimony of their witness. The adoption had taken place on 11.5.1971, and the evidence of Binorkar (PW-2) was recorded on 7.2.1977. Thus, we are of the view that the view taken by the appellate courts is entirely impracticable and does not resonate with the attending circumstances, particularly, when the photographer (PW- 2), had denied the suggestion that he had not brought the Account Bill Books etc. of his studio as he had not taken the photographs as stated by him, on 11.5.1971 i.e., the day of adoption. His evidence has also wrongly been doubted because there were two photographers and the other was not examined by the appellants/plaintiffs. It is

not permissible to reject evidence on irrelevant grounds. Nor the judgment can be based on surmises and conjectures. (Vide: Ashish Batham v. State of Madhya Pradesh, AIR 2002 SC 3206; and Rathinam alias Rathinam v. State of Tamil Nadu Anr., (2011) 11 SCC 140)

40. The appellate court has erred by considering the irrelevant material, while the most relevant evidence, i.e., the adoption ceremony and the adoption deed, have been disregarded on the basis of mere surmises and conjectures. The correctness or authenticity of adoption deed is not disputed. What is disputed is that the natural parents of adoptive child who were definitely executing parties of the deed have signed as witnesses alongwith 7 other witnesses. In such a fact-situation, by gathering the intention of the parties and by reading the document as a whole and considering its purport, it can be concluded that the adoption stood the test of law. We think that cause of justice would be served, instead of being thwarted, where there has been substantial compliance of the legal requirements, specified in Section 16 of the Act 1956. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best.

In view of the above, the appeal succeeds and is allowed. The judgments and decrees of the appellate courts are set aside and judgment and decree of the trial court is restored. There shall be no order as to costs.