

# BOMBAY HIGH COURT

Jivaji Annaji

Vs.

Hanmant Ramchandra

Second Appeal No. 571 of 1946

(Chagla, C.J. Gajendragadkar and Shah, JJ.)

10.03.1949. 27.06.1949

## JUDGMENT

### **Chagla, C.J.**

1. The question referred to this Full Bench is, will an adoption after the death of a collateral allow the adopted son to come in as an heir of the collateral; and the few facts which are necessary to be stated for the determination of this question are these. One Krishnappa had five sons, Keshav, Anappa, Bhimrao, Apparao and Madhav. After the death of Bhimrao and Apparao, the brothers became divided and Keshav, Annappa and Madhav each got a one-third share of the joint family property. Annappa died in 1901 and Madhav died in 1903. Annappa left a widow Tungabai. Keshav left a son Vishnu who died in 1918, and as this was watan property, although Keshav had a daughter, the property went to the nearest male heir who was at that time Hanmant, a collateral of Keshav. Amlappa's widow adopted defendant 1 on 18th July 1922, Hanmant's sons are the plaintiff and defendant 2, and the plaintiff and defendant 2 claimed the property which Keshav had and which descended to Vishnu. The question that has got to be considered is whether on the adoption of defendant 1 on 18th July 1922, the property which would go to the plaintiff and defendant 2 by inheritance is divested and the adopted son can lay a claim to that property.

2. Now, it has been observed by the Privy Council in several cases that an adoption relates back to the death of the adoptive father and an adopted son must be looked upon as if he was in existence, at the date of the death of the adoptive father. But it is not a correct proposition to say that the rights of an adopted son are in all respects identical with that of a natural born son. The principle of relation back is not an absolute principle but it has certain limitations. For instance, one limitation is that any lawful alienations made by the last absolute owner would be binding on the adopted son, and the question that we have to consider in this Full Bench is whether there is a further limitation on the rights of the adopted son and the limitation, that is contended for is that if the property by inheritance goes to a collateral and the adopted son is adopted after the death of the collateral, the adoption cannot divest the property which has vested in the heir of the collateral. Reliance is placed on the Privy Council decision in *Bhubaneswari Debi v Nilkomul Lahin*<sup>1</sup>, There it was expressly held that according to Hindu law an adoption

<sup>1</sup>12 IA 137 : (12 Cal 18 PC)

after the death of a collateral does not entitle an adopted son to come in as heir to the collateral. Mr. Madbhavi has attempted to distinguish this case by pointing out that Sir Barnes Peacock, both while arguments were going on at the bar and in the judgment of the Privy Council which he delivered, emphasised the fact that the adopted son was not in existence at the time of the death of the widow in whom the property was vested. But in our opinion that particular fact cannot be looked upon as the deciding factor in the decision. That is certainly not the ratio which led the Privy Council to come to the conclusion. It is immaterial whether an adopted son is or is not in existence at the time of the death of the person whose property is attempted to be divested. The question is, what is the effect of the adoption which for certain purposes relates back to the death of the adoptive father. But whatever might have been said of the decision of the Privy Council in Bhubaneswar's case, 12 IA 137 : (12 Cal 18 PC), all doubt has been set at rest by the manner in which the Privy Council has reaffirmed and re-emphasised that principle in the recent decision of *Anant Bhikappa v. Shankar Ramchandra*<sup>2</sup>, At p. 9 their Lordships say :

"Neither the present case *Mr. Amarendra Mansingh v. Sanatan Singh*<sup>3</sup>, brings into question the rule of law considered in *Bhubaneshwari Debi v. Nilkamal Lahiri*<sup>4</sup>, and stated by the Board to be that :

"According to the law as laid down in the decided cases, an adoption after the death of a collateral does not entitle the adopted son to come in as heir of the collateral.' "

This is not a stray observation. It is the considered view of the Privy Council that the rule of law as laid down in Bhubaneswari's case, 12 IA 137 : (12 Cal 18 PC), is still good law notwithstanding the decision of *Anant Bhikappa v. Shankar Ramchandra*<sup>5</sup>,

3. Now, when we return to the facts of *Anant v. Shankar*<sup>6</sup>, we must frankly confess that the actual decision of the Privy Council does create some difficulty because Keshav, who died in 1917, left property which was both ancestral and his own personal property, and when Anant was adopted in 1930 the Privy Council held that the property which had gone out of the family must come back to the family, because Anant, although he was adopted in 1930, must be deemed to have been born on the death of Bhikappa, the father of Keshav and Anant, and therefore as far as the ancestral property was concerned no difficulty is created with regard to the decision. But Keshav also had two parcels of land which he inherited from one Narayan, a collateral, who died in 1908, and even with regard to these parcels of land the Privy Council held that Anant displaced the title of Shanker and he was entitled to be put in possession of these two parcels of land. It is difficult to understand, with great respect to their Lordships of the Privy Council, in what capacity could Anant have inherited the two parcels of land from Keshav except as being the heir of a collateral. When a person succeeds to the property of his brother, he undoubtedly succeeds to the property of a collateral. It is only when he succeeds to his father or to his ancestors in the direct line that it can be said that the succession is in the same line. Therefore, although Anant was adopted after the death of the collateral Keshav the Privy Council held that Anant was entitled to the property of the collateral although the property had been inherited by

<sup>2</sup>70 IA 232 : (AIR 1943 PC 196)

<sup>4</sup>(12 IA 137 : 12 Cal 18 PC)

<sup>3</sup>35 Bom LR 859 : (AIR 1933 PC 155)

<sup>5</sup>70 IA 232 : (AIR 1943 PC 196)

<sup>6</sup>70 IA 232 : (AIR 1943 PC 196)

Shanker, the next heir of Keshav. Therefore, although the Privy Council re-enunciated and re-emphasised the principle laid down in *Bhubaneshwari Debi v. Nilcumitt Lakin*<sup>7</sup>, it may be urged with some force that they did not give effect to that principle and did not, apply it to the facts found in Anant's case, 70 IA 232 : (AIR 1943 PC 196). But one important and distinguishing feature in the case of *Anant v. Shankar*<sup>8</sup>, must be borne in mind. Anant by adoption was brought into the same family of which Keshav was the last sole surviving coparcener, and according to the Privy Council there was no disruption of the family and Anant must be deemed to get by survivorship the ancestral property which Keshav had, and further, according to the Privy Council, Anant, who was introduced in the family, was entitled not only to get by survivorship ancestral property, but even the property which Keshav had as his own personal property and which he had inherited as an heir from a collateral. Therefore the ratio of *Anant v. Shankar*<sup>9</sup>, seems to be that when the last surviving coparcener dies and the widow of a deceased coparcener adopts a son, the property left by the sole surviving coparcener, whatever the nature of the property may be, becomes divested from the person who was the next heir of the last surviving coparcener and reverts in the new member introduced in the family.

4. We are really being asked now to extend that principle contrary to the decision in *Bhubaneshwari Debi v. Nilkomul Lahiri*<sup>10</sup>, and the strongest argument urged before us is that it would only be a logical extension of the doctrine of adoption laid down by the Privy Council. Now, it is no always safe logically to extend a ratio to be deduced from a particular case decided by a particular tribunal. A decision is good with regard to the facts found in a particular case and the principle that emerges on a consideration of those facts. Different facts may lead to a different decision and it is not proper to apply a principle based on the facts of one case to the facts of another case merely because relentless logic may so require. There is another consideration which has also got to be borne in mind. The Hindu law of adoption has undergone a drastic change as a result of a series of decisions recently given by their Lordships of the Privy Council. In giving these decisions the Privy Council was not unmindful of the fact that they were disturbing vested rights and perfected titles. But their Lordships had no alternative as a proper interpretation had to be put upon the Hindu scriptures and the law had to be enunciated in accordance with the underlying principles of adoption. But as far as we are concerned, unless we are led to the conclusion that the decision of the Privy Council leaves us no option we do not think it right that we should come to a decision which would further disturb titles which have already become perfected ; and therefore we do not wish to extend the principle of *Anant v. Shankar*<sup>11</sup>, beyond its strict application to the facts as found by the Privy Council; the more so as the principle which we are accepting and adopting is a principle which the Privy Council itself has laid down and which has again been, as already pointed out, re-affirmed and re-emphasized in the case of *Anant v. Shankar*<sup>12</sup>

5. Therefore we must answer the question put to us in the negative.

Reference answered.

<sup>7</sup>(12 IA 137 : 12 Cal 18 PC)

<sup>9</sup>(70 IA 232 : AIR 1943 PC 196)

<sup>8</sup>(70 IA 232 : AIR 1943 PC 196)

<sup>10</sup>(12 IA 137 : 12 Cal 18 PC)

<sup>11</sup>(10 IA 232 : AIR 1943 PC 196)

<sup>12</sup>(70 IA 232 : AIR 1943 PC 196).