BOMBAY HIGH COURT

Ramchandra Hanmant

Vs.

Balaji Dattu Kulkarni

Second Appeal No. 940 of 1952.

(Chagla, C.J., Dixit and Chainani, JJ.)

18.11.1954. or 19-11-1954. 02.02.1955

JUDGMENT

Chagla, C.J.

1. Second Appeal No.940 of 1952 which has been referred to a full bench raises the vexed question of the right of an adopted son to divest the property which has already become vested, and the very few facts which are necessary to be stated in order to appreciate the question that has been raised are that Balaji and Ramchandra were two brothers. They were separate and Balaji had predeceased Ramchandra. Ramchandra died on 10-10-1903, leaving his widow Tarabai who died shortly after him on 12-10-1903. Ramchandra had a son by the name of Hanmant who had predeceased both his parents and he had left a widow by the name of Sitabai. Balaji had a son named Dattu who died on 20-1-1916, and Balaji the defendant is the adopted son of Dattu. Sitabai adopted the plaintiff as a son to her husband on 21-1-1945. Ramchandra left certain 'vatan' lands which went to Dattu on the death of Tarabai and on Dattu's death Balaji on his adoption went into possession of those lands, and the plaintiff filed the suit for recovery of lands belonging to Ramchandra which had gone to Balaji.

2. Now, before we consider the authorities that have been cited at the Bar, perhaps it would be better to approach this question on principle. When Dattu succeeded to the property of Ramchandra there was a potential mother in the family of Ramchandra, viz., Sitabai, and therefore it is well settled since the Privy Council decided - *'Anant Bhikappa v. Shankar Ramchandra[1]',* that Dattu inherited this property subject to defeasance, the defeasance coming into operation in the event of the potential mother Sitabai adopting a son into the family of Ramchandra. But it is equally well settled that subject to this defeasance Dattu had an absolute interest in the property which he inherited. He was the full owner of the property, he could deal with that property as his own, and it would be erroneous to suggest that Dattu had only a qualified interest in this property. As an absolute owner he could alienate the property and the

alienation would be binding upon any son adopted subsequent to the alienation. If the property had remained with Dattu when the plaintiff was adopted, no question could have arisen with regard to the right of the plaintiff to divest the property vested in Dattu. But the question that has arisen in this appeal is whether the right that the plaintiff had so long as the property remained with

[1] AIR 1943 PC 196

Dattu can be exercised against Balaji who is the heir of Dattu. The matter may be looked at in this way. Balaji has succeeded to the estate of his father Dattu, and what the plaintiff is really claiming is not the property of Ramchandra but the property of Dattu which Balaji has inherited as his son. If the property had been with Dattu, the result of the plaintiff's adoption would have been that the doctrine of relation back would have come into force and by legal fiction it would have been assumed that the plaintiff was alive at the date when Ramchandra died. Therefore, really, the plaintiff would have displaced Dattu as the preferential heir to his own grand-father. But it is difficult to understand how that principle can apply when we are dealing with property in the hands of Dattu's heir. It cannot be said that 'quae' the estate of Dattu the plaintiff is an heir preferential to Balaji, and really what the plaintiff is claiming is to displace Balaji and to contend that he is the heir of Dattu.

3. It has been urged by Mr. Albal on behalf of the plaintiff that it does not matter with whom the property is or who is in possession of the property. The limitation attaches to the property itself and it attaches as much in the hands of Balaji as it did in the hands of Dattu. Now, if that were the true principle, then it is difficult to understand why that limitation should not attach to property even if Dattu alienated the property. The answer given by Mr. Albal is that in the case of alienation certain equities arise and therefore the Courts have laid down that if there was a lawful alienation by Dattu, the alienation would have been binding on the plaintiff. But this Court has now held that if Dattu made a gift of the property which he inherited from Ramchandra or if he made a will with regard to the property, both the gift and the testamentary disposition would be binding upon the plaintiff. It cannot be suggested that there is any higher equity in favour of a donee or a legatee than there is in favour of Dattu's heir. Therefore, in our opinion, once the principle is accepted, as indeed it must be accepted, that the property which Dattu inherited from Ramchandra was held by him absolutely as a full owner, then it is impossible to accede to the plaintiff's contention that Balaji inherited to that property subject to certain limitations. The possibility of there being a defeasance only continued so long as Dattu was alive. When, he died, he left his property, which was his absolute property, to his heir, and there is no reason in principle why that provision with regard to defeasance should continue after the property had been inherited by Balaji as the heir of Dattu.

4. Now, we have been told by Mr. Albal that the Privy Council in '*Anant v. Shankar*, has clearly laid down a certain principle and that principle must be applied by us to the facts of this case. When we turn to '*Anant v. Shankar*, the facts of which are well known, what the Privy Council

emphasises as the principle at page 200 is:

> "In the present case the adopting widow was the mother of the last surviving coparcener. Her power to adopt could not have been exercised in his life-time, and if exercised after his death, cannot, as their Lordships think, be given any less effect than would have attached to an adoption made after his death by the widow of a predeceased collateral."

Then their Lordships go on to say what the effect would be, and that is the important part of the judgment (p.200) :

> "It must vest the family property in the adopted son on the same principle, displacing any title based merely on inheritance from the last surviving coparcener."

Therefore, what is displaced is not every title based on inheritance as Mr. Albal would want us to hold, but only that title is displaced merely on inheritance from the last surviving coparcener. It would be wrong, in our opinion, to attach importance merely to the expression "inheritance" and overlook the qualifying words "from the last surviving coparcener." Therefore, in this case, if the title of Dattu had been displaced, then it would have been a title which was based merely on inheritance from Ramchandra. But what the plaintiff wants us to do is to displace the title of Balaji which undoubtedly is based on inheritance but not inheritance from Ramchandra but inheritance from the heir of Ramchandra. Apart from the position that '*Anant v. Shankar* ' was not dealing with a case where the right of the heir of the last surviving coparcener arose for the consideration of their Lordships, even the ratio of that decision and the principle enunciated by the Privy Council is not applicable to the facts we have to consider in this Full Bench.

5. Reliance has been placed by Mr. Albal on three unreported judgments of this Court. The first is a judgment of Bhagwati J. and my brother Dixit J. and it is in - *'Hanamantrao v. Madhavrao*[2]*',* (Bom.) (B). It is true that the facts that the bench had to consider were identical with the facts before us, but with respect to the learned Judges they came to the conclusion that it made no difference in principle whether the property was being divested from the heir of the last owner or surviving coparcener or the heir of that owner without any considered arguments being advanced before them or without having applied their minds to the various aspects which have been presented before us. This decision was followed by Rajadhyaksha J. and my brother Chainani J. in - *'Krishnamurti v. Dhruvraj*[3]*',* and my brother Chainani, J. gave a considered judgment and it is clear from that judgment that it was with considerable reluctance that he came to the conclusion to which Bhagwati and Dixit, JJ. had come, and the main reason which influenced that bench to come to that conclusion was that they were bound by the earlier decision of a Division Bench. Finally there is a judgment of Bavdekar J. in - *'Yellappagauda v. Krishtagouda*[4]*',* where the learned Judge has also taken the same view. It is true that Bavdekar J. has given reasons why in his opinion the decision of Bhagwati and Dixit JJ. was a right decision. But with respect to the learned Judge, he seems to have been of the opinion that the interest which the heir had in the property was a qualified interest. Now, if the interest was qualified, then undoubtedly

the interest which his heir would inherit would be equally qualified. But if the interest was absolute, as we have pointed out, then the interest which the heir would have on inheritance would equally be absolute, and therefore in our opinion the very basis of the judgment that the interest is a qualified interest cannot be supported or accepted.

6. Then there is a decision of a Full Bench in - *'Jivaji Annaji v. Hanmant Ramchandra[5]',* There myself, Gajendragadkar and Shah JJ. were considering the case of an adoption made after the death of a collateral and we held that the adoption did not enable the adopted son to come in as the heir to the collateral. The argument was pressed upon us in that case that we should logically extend the principle laid down by the Privy Council in

[2] FA No.161 of 1949, D/-3-7-1952 [4] SA No.395 of 1949, D/-11-9-1952 (Bom)
[3] FA No.236 of 1950, D/-17-8-1954 (Bom) [5] AIR 1950 Bom 360

'*Anant v. Shankar*, and we refused to do so pointing out that the decision given by the Privy Council should be confined to the facts of that case.

7. The Supreme Court recently had occasion to consider '*Anant v. Shankar* ' in the case of - *'Srinivas v. Narayan[6]',* and the Supreme Court has impaired to a certain extent the authority of *'Anant v. Shankar (A)'* by disagreeing with that judgment with regard to one aspect of the decision, and their Lordships of the Supreme Court have pointed out that the claim of the appellant to divest a vested estate rests on a legal fiction and the legal fiction should not be extended so as to lead to unjust results. It may be pointed out that the whole basis of the decision of the Privy Council in '*Anant v. Shankar*, as pointed out by the Supreme Court, rests on a legal fiction, the legal fiction being that the adopted son was in existence at the date of the death of his adoptive father. It is this legal fiction which enables the adopted son to divest property which has already vested. In our opinion, we should be very slow further to extend the scope of this legal fiction. It is very necessary that titles should be perfected and there should be no doubt as to the title enjoyed by a person owning property. The heir of a surviving coparcener or the heir of an owner who leaves no family behind him may during his lifetime hold property which is subject to defeasance. But there is no principle why this uncertainty as to title should be continued after his death when his heir has succeeded to him. There is also another important principle of Hindu law of succession - indeed it is a principle of most laws of succession - that inheritance should not remain in abeyance, and that once the property has vested in the heir, it should not be divested. The case of adoption is a striking exception to this principle. The principle is based on sound reason and we would be extending that exception if we were to give a wider application to the decision in '***Anant v. Shankar*** ' than the facts of that case justified.

8. In this connection we might refer to a well known passage, which has almost become a 'locus classicus', in the judgment of Earl of Halsbury in the famous case of - *'Quinn v. Leathern[7]',* and the Lord Chancellor says (p.506) :

> "..... there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as

> applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

Applying this principle to the case of '*Anant v. Shankar*, in our opinion that case was not intended to be an exposition of the whole law of adoption, and that decision must be governed and qualified by the particular facts of that case. Similarly, in view of the excepted nature of that decision, in view of the fact that it creates a legal fiction and constitutes an exception to the Hindu Law of Inheritance, we would like to look upon that

[6] AIR 1954 SC 379

[7]1901 AC 495

decision as only an authority for what it actually decides and we do not propose to accept any proposition that may seem to follow logically from it. As a matter of fact, Mr. Albal concedes that '*Anant v. Shankar* ' is not directly applicable to the facts of this case. What he is contending for is that we should either logically extend the principle underlying that decision or we must hold that the proposition he contends for follows as a corollary upon the decision of the Privy Council.

9. In the result, we will proceed to answer the question that has been submitted to us, viz.

> "If on the death of a sole surviving coparcener his property has devolved upon his heir by inheritance and on his death it has vested in his own heir, would the subsequent adoption in the family of the sole surviving coparcener divest it from such heir?"

In postulating this question the learned Judges who have referred this question to us have assumed that Ramchandra was the sole surviving coparcener of his own branch and that on his death the property devolved upon Dattu and then it devolved upon Balaji. We therefore answer this question in the negative. We might point out that the position would be the same whether Ramchandra was the sole surviving coparcener or the last male owner.

Answer accordingly.