

BOMBAY HIGH COURT

Yamunabai

Vs.

Ram Maharaj Shreedhar Maharaj Pandit

First Appeals Nos. 386 and 480 of 1955

(Shah and Patel, JJ.)

24.03.1959

JUDGMENT

Shah, J.

1. By interlocutory judgment, dated 11-2-1958, further hearing in these two appeals was adjourned to enable the first defendant to apply to the State of Bombay for sanction ex post facto to his adoption. The first defendant then submitted an application to the State of Bombay for sanctioning his adoption ex post facto. The first defendant was informed by the under Secretary to the Government of Bombay, Political and Services Department, by his letter dated 6-6-1958 that orders granting sanction ex post facto to his adoption by Shri Annapurnabai, widow of late Bala Maharaj, on 14-3-1949 have been issued, and that the first defendant may "approach the Collector of Kolhapur in that behalf". The first defendant, then, applied for a certified-copy of the order, but none was supplied to him. We are informed by Mr. Gokhale who appears on behalf of the plaintiff, that his client - the plaintiff - also applied for a certified-copy of the order, but a copy of the order has not been furnished to her. But on the intimation which has been received by the first defendant, we hold that an order sanctioning ex post facto the adaption of the first defendant made on 14-3-1949 by Annapurnabai, widow of Bala Maharaj, was issued by the State of Bombay.

2. Mr. Gokhale, who appears on behalf of the plaintiff, contends that under the Vat Hukums issued by the Kolhapur State, no sanction ex post facto could be granted in respect of an adoption which took place after the year 1930. But in our judgment, it is now too late to entertain the contention having regard to the decisions of this Court. In a recent judgment - *Balgonda v. Bhimgonda*¹ - it was observed by Mr. Justice Gokhale sitting with my Teared brother :

"Under Political Agent Judi Niyam of Fasli 1281, published in Volume 2 of the Kolhapur Vat Hukums, at p. 817, there was a provision under which the Kolhapur Darbar could

accord sanction to adoptions which affected Inam properties. It appears from this *Vat Hukum* that the Kolhapur Government had power to accord ex post facto sanction to adoptions which were made without getting such a sanction". In several decisions of this Court e.g. First

¹61 Bom LR 184

Appeal No. 424 of 1952, Letters Patent Appeal No. 60 of 1955 and First Appeal No. 115 of 1953, the privilege of the Kolhapur Government to accord sanction ex post facto to adoptions made initially without sanction so as to invest title in respect of Inam properties had been affirmed.

3. Mr. Gokhale submitted that even if the sanction was accorded by the State of Bombay upon which devolved the authority of the Kolhapur State, such a sanction will not divest the absolute title vested in the plaintiff by the Hindu Succession Act, 1956. To appreciate this contention, we may review the undisputed facts. Bala Maharaj, the last male holder of the property died on 6th January 1937 leaving him surviving his two widows Annapurnabai and Yamunabai and no lineal descendants and the revenue authorities of the Kolhapur State recognized Annapurnabai as the "Navawali" of the Inam properties. On 14th March 1949, the first defendant was adopted by Annapurnabai as a son to her deceased husband. "On 18th March 1949 Annapurnabai died, and to the estate of Annapurnabai, which included Inami lands, her co-widow Yamunabai became entitled by inheritance, because the sanction of the Kolhapur State authorities to the adoption of the first defendant by Annapurnabai was not obtained. Proceedings were commenced before the revenue authorities for recognizing the claim of the first defendant as the adopted son of Bala Maharaj, but the plaintiff objected to the claim and the Collector of Kolhapur passed an order that the name of neither of the parties may be entered in the Revenue Record and that status quo be maintained till the decision of a civil suit adjudicating upon the claims of the parties. The plaintiff then filed on 17th January 1952 a suit in the Court of the Civil Judge (Senior Division), Kolhapur, for a declaration that she was the owner of the properties described in Schedules A, B, C and D annexed to the plaint and for an injunction restraining the first defendant from collecting the rents and profits from his tenants, and also for a declaration that the first defendant was not in fact adopted as a son to her husband by Annapurnabai. The suit was partially decreed by the trial Court. The trial Court held that the first defendant was proved to be the duly adopted son of Bala Maharaj and that view was upheld by this Court by the interlocutory judgment dated 11th February 1958. It is after the decision of this Court that on some unspecified date the Government of Bombay have sanctioned the adoption ex post facto of the first defendant made by Annapurna on the 14th March 1949.

4. The first defendant as the adopted son claims the Inami lands of Bala Maharaj relying on the sanction to his adoption accorded by the State of Bombay, and in support of his claim he relies upon 61 Bom. LR 184 . In that case, the contention that since the Hindu Adoptions and Maintenance Act, 1956, was brought into force on 21st December, 1956, a sanction ex post facto granted to the plaintiff's adoption by an order of the Government of Bombay dated 26th June

1957 was invalid and could not divest the estate which was vested in the defendant was negated. It was held that as the adoption of the plaintiff took place long before the Act, Section 30 excluded the operation of the Act in its application to the adoption of the plaintiff.

5. The plaintiff contends that on the death of Annapurnabai, her estate which consisted of Inami land has devolved upon her by inheritance, and since then the Hindu Succession Act having been brought into force on 21st December 1956, she has acquired rights of full ownership in the property, and relying upon an adoption made prior to 21st December 1956, the first defendant cannot divest her of her title which is by law made absolute and indefeasible. Evidently in 61 Bom LR 184 : AIR 1960 Bombay 7 relied upon by the first defendant, the Court was not called upon to consider whether an estate possessed by a Hindu widow which became absolute by virtue of Section 14 of the Hindu Succession Act, was liable to be divested on the grant of a sanction ex post facto to an adoption in the family to which the widow belonged.

6. There is no doubt that Inam property in the former Kolhapur State was inheritable as any other class of property. That was so decided by a Full Bench of this Court *Ramappa Vanappa v. Laxman Malyappa*², It was held in that case :-

"Under the vat-hukums issued in Kolhapur State (now merged in the State of Bombay), Sanadi Inam land, which is impartible, does not revert to the State on the death of the holder but passes by rule of primogeniture to his heir.....".

In the present case, the nearest heir to Annapurnabai's estate which consisted of Inam land, was the plaintiff Yamunabai, and upon her devolved the right by inheritance to that property. The plaintiff, when she inherited the property became a limited owner according to the rules enacted by the Digest of Hindu Law of the Kolhapur State, but by the combined operation of Sections 4 and 14 of the Hindu Succession Act of 1956, she acquired full ownership even in the Inam property. Sub-section (1) of Section 14 provides that :

"Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner". and by Section 4(i) it is provided that :

"Save as expressly provided in this Act

(a) Any text, rule or interpretation of Hindu Law, or any custom or usage to the contrary, or any other law applicable to the Hindus shall be deemed to be superseded by the provisions of this Act".

(b) "Any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act".

Notwithstanding the interpretation of the text of the Hindu Shastras whereby the estate inherited

by a Hindu widow is regarded as a limited estate, by the operation of Section 14, a Hindu female possessed of any property becomes invested with an absolute title, and the texts which made the estate a limited estate are by Section 4 expressly superseded. A sanction ex post facto to an adoption may have the effect of divesting property vested in another person, by inheritance from the sole surviving coparcener, or a limited owner but that rule in so far as it is inconsistent with Section 14 is superseded by clause (b) of Section 4.

7. Mr. Paranjpe, who appears on behalf of the first defendant, contends that full ownership is not inconsistent with liability to divestment by adoption, and he invites our attention to the judgments of the High Courts in India and also of the Privy Council which have taken the view that an adoption made by a Hindu widow in a joint family may divest the estate which has, by operation of the rules of Hindu Law, vested in another person

²⁵² Bom LR 839

even if the holder who acquired the estate on the death of the last absolute owner may himself be holding an absolute estate. Mr. Paranjpe contends that if an absolute estate, which is acquired under the relevant rules of inheritance of succession applicable to Hindus, is liable to be divested, then this Court may not be justified in investing the estate which is conferred upon a Hindu widow as the estate of a full owner by Section 14 of the Hindu Succession Act, an incident inconsistent with the normal rules of Hindu Law. In the hands of Bala Maharaj, the estate was undoubtedly subject to the incident that by the birth of a legitimate son to him, or by adoption by him or by a widow of a deceased coparcener who died in union, his estate was liable to be restricted, and the plaintiff inherited that estate subject to the same restrictions. That incident, contends Mr. Paranjpe was inherent in the estate of Bala Maharaj, and there is nothing in the Hindu Succession Act which abrogates that incident. The estate held by a Hindu, who is a sole surviving coparcener in a joint Hindu family is, it is true, liable to be restricted by the introduction of a coparcener by birth or adoption, and such new coparcener acquires an interest in the entire estate equal to the interest in the estate held by the existing coparcener. But that incident of the estate, does not in our judgment, justify the imposition of a limitation restricting the connotation of the expression "full owner" used in Section 14 of the Hindu Succession Act. Full ownership contemplated by Section 14 of the Succession Act, is not made by the legislature subject to any incident of divestment by adoption. If liability to divestment be implied, it will cut across the estate and the estate will not be regarded as of a full owner within the meaning of Section 14 of the Act. We are, therefore, unable to hold that the estate of the plaintiff was liable to be divested by the recognition ex post facto of the adoption of the first defendant by the State.

8. Mr. Paranjpe concedes that the rights of the first defendant as an adopted son could arise for the first time on the grant of the sanction by the State and not before, and that concession is properly made having regard to the judgment of this Court in First Appeal No. 424 of 1952 decided on 17th April 1952. Evidently before the date on which the sanction ex post facto was given by the State to the first defendant's adoption, the plaintiff Yamunabai had acquired full ownership in the property, which she had inherited on the death of her co-widow Annapurnabai

as a limited owner, but that right is sought to be defeated by the first defendant who acquired by the sanction ex post facto the rights of an adopted son in the property of Bala Maharaj. In resolving the conflict between these two rights, clause (b) of Section 4 of the Hindu Succession Act is, in our judgment, decisive. By that clause any other law in force immediately before the commencement of the Hindu Succession Act ceases to apply to Hindus in so far as it is inconsistent with any of the provisions contained in the Act. The claim of the first defendant to the Inam properties of his father, which had devolved upon his adoptive mother Annapurnabai and thereafter by succession upon the plaintiff Yamunabai, must in our judgment, be subject to her title, which by statute became absolute.

9. But Mr. Paranjpe submitted that to Inam properties, the Hindu Succession Act has no application, and in support of his contention, Mr. Paranjpe invites our attention to Vat Hukum No. 44 of 1913 issued by the Government of Kolhapur. By that Vat Hukum it was declared that all lands held in Inam were impartible and were to devolve only upon the eldest son and that private partition of Inam lands will not be recognised by the State Government. By this Vat Hukum all lands held in Inam, whatever may be the nature of the Inam, were regarded as impartible and devolved upon the eldest son. By an earlier Vat Hukum No. 12 of 13th July 1873, it was declared by clause 7 that in the absence of male descendants, the government may, so long as the widow of a male member of the family is alive, allow the estate to continue in her possession after taking service. Pursuant to this Vat Hukum, Annapurnabai was recognised as the Inamdar by the Kolhapur State, on the death of Bala Maharaja leaving no male lineal descendant : and the plaintiff was also entitled to recognition as Inamdar on Annapurnabai's death.

10. It is true that by Section 5 of the Hindu Succession Act, any estate which descends to a single heir by the terms of any enactment passed before the commencement of this Act is excluded from its operation. By the Vat Hukum of the former Kolhapur State, Inam property devolves upon a single heir; and the Vat-Hukums issued by that State whatever informality may appear in the promulgation thereof, are enactments within the meaning of Section 5 of the Hindu Succession Act. But we do not think it necessary to enter upon a detailed examination of Mr. Paranjpe's argument because the property in dispute which was originally held in Inam, had by the operation of Bombay Act XXII of 1955, acquired the character of Rayatawa property before the date on which the Hindu Succession Act was enacted and had accordingly ceased to be an estate which by the terms of any enactment devolved upon a single heir.

11. Mr. Paranjpe then contended that on the day on which the first defendant was adopted, there was in operation no law under which sanction of the authorities of the Kolhapur State was required to give him title to the Inam properties. On the 1st of March 1949, the State of Kolhapur was merged with the Province of Bombay as it then was, and all the laws in operation in the Kolhapur State were repealed. This it appears, was a drastic provision made in a hurry and the rule-making authority under the Extra Provincial Jurisdiction Act intervened and amended the Application of Kolhapur Laws Order on the 23rd March 1949 whereby the operation of several

statutes and the Vat Hukums was restored retrospectively as from the 1st March 1949. This Court, has in Special Civil Application No. 2463 of 1954 decided on the 14th December 1954, held that the effect of the amendment made on the 23rd March 1949 was not merely to revive the Kolhapur enactments with retrospective effect, but by legal fiction to keep them alive in the interregnum. Chagla, C. J. in considering the effect of the amendment dated 23rd March 1949 in that case observed :-

"In other words, in the eye of the law the order of the 1st March 1949 always was as amended by the Order of the 23rd March 1949. In other words, on the 1st March 1949 there was no repeal of the Kolhapur enactments except those to which we have referred as falling within the amended paragraph 5. Therefore, this is not a case of repeal and a revival. It is a case where the Legislature by a legal fiction retrospectively amends an earlier enactment and provides that the earlier enactment shall always be deemed to have been enacted as amended subsequently".

That observation, in our judgment, is sufficient to repel the argument advanced by Mr. Paranjpe that on the date on which the first defendant was adopted by Annapurnabai, he acquired title to the Inam property of Bala Maharaj. There is no dispute that before the first defendant was adopted, sanction of the Kolhapur State was not obtained. Even after the adoption and before the suit was filed, no application requesting sanction to the adoption of the first defendant was made. In view of the amendment which by legal fiction kept alive the Vat-Hukums since the first of March 1949 we are unable to agree with Mr. Paranjpe that on the date on which the adoption was made, there was no authority competent to sanction the adoption of the first defendant, and consequently the condition requiring the adoption of the first defendant was invalid.

12. Mr. Paranjpe also contended that under the Bombay Merged Territories Miscellaneous Inams Abolition Act 22 of 1955, the first defendant became on the 3rd June 1955 because of the extinction of the Inam entitled to the lands in dispute. Under Bombay Act XXII of 1955 by Section 4 it was provided that :-

"Notwithstanding anything contained in any usage, settlement, grant, agreement, sanad, order, rule, notification, or Vat-Hukum or any decree or order of a court, or any law for the time being applicable to any alienation in the merged territories with effect from and on the appointed date (i) all alienations shall be deemed to have been abolished; and (ii) expressly by or under this Act all rights legally subsisting on the said date in respect of such alienations and all other incidents of such alienations shall be deemed to have been extinguished."

Evidently, the Inam i.e. the alienation in favour of the family of the plaintiff was abolished on the application of Act XXII of 1955, and the property became subject to the provisions of the Act, such as payment of the assessment and other incidental obligations. But because the property

which was, till the date on which the Act was applied, Inam property became Rayatawa property by the extinction of the Inam, the first defendant was not invested with title to the property which he, till the date on which the Act was applied, did not possess. The right of the first defendant to the Inam property could only be recognized if his adoption was sanctioned by a competent authority. But at the date of his adoption, the first defendant did not acquire title to the Inami estate, because his adoption was not sanctioned by the State authorities, and he could not acquire title to the estate which was substituted in place of the Inami estate by alteration of the tenure. The title of the first defendant to that estate must if at all depend upon the sanction of the State and not upon the alteration of the tenure. In our judgment, by the operation of the Bombay Merged Territories Miscellaneous Alienation Abolition Act, 1955, the plaintiff became the owner of the property held by her and not the first defendant. It is a question of some nicety whether since the abolition of the Inams, it was possible for the State Government to accord sanction ex post facto to the adoption of the first defendant. In terms the Act provides that on the date on which the Act comes into operation in respect of the alienation and all other incidents of such alienations of rights legally subsisting shall be deemed to have been extinguished; and if the right of a person to be recognized ex post facto as an adopted son in respect of the property is regarded as one of the rights contemplated by section 4, prima facie such a right may be deemed to be extinguished. But on this part of the case we have not heard a full argument and we do not propose to express any considered opinion thereon.

13. Mr. Paranjpe also contended that at the date when the Act No. XXX of 1956 was brought into operation, the plaintiff did not possess the lands in dispute and she could not have acquired title as full owner thereof by virtue of Section 14 of the Act. The property in dispute in this case had devolved upon the plaintiff and the first defendant had acquired by his adoption no title thereto. In that premise we fail to appreciate how the first defendant can resist the claim of the plaintiff for a declaration of her title and the injunction claimed by her. We may also observe that the possession contemplated by Section 14 is legal possession and property in the wrongful occupation of a trespasser either directly or through his tenants is none the less possessed by a Hindu female within the meaning of section 14.

14. Finally, Mr. Paranjpe contended that the suit by the plaintiff for declaratory relief and for injunction was not maintainable. It is true that in this case the plaintiff has claimed a declaration of her title to the Inam properties and has claimed a declaration that the first defendant be restrained by an injunction from collecting the rents and profits thereof. Such a suit, contends Mr. Paranjpe, is one purely for a declaratory relief and the Court is debarred from granting that relief on a claim made by the plaintiff in circumstances existing in the present case. But in *Farshram Ratanram v. Bhimbhai Kirparam*³, it was held by a Division Bench of this Court that :-

"Where defendants are in constructive possession through tenants, and plaintiff desires to have constructive possession only, the utmost that the plaintiff can ask for, or obtain, against the defendants is a declaration of rights, binding the defendants, coupled with an

injunction preventing them from interfering with such rights." It was further held that :-
"The plaintiff is not bound to ask for actual physical possession from the tenants, and that there is no rule of law to compel a man to seek for all the relief that he is entitled to or might obtain if he desired it."

In our view the suit was properly framed. On the view taken by us, the decree passed by the trial Court will be confirmed and both the appeals will be dismissed with costs.

Appeals dismissed.

³⁵ Bom. LR 195