RAJASTHAN HIGH COURT

Heera Lal

Vs.

Board of Revenue

Civil Spl. Appeal No. 459 of 1984

(Dr. Ar. Lakshmanan, C.J. and Himmat Ram Panwar, J.)

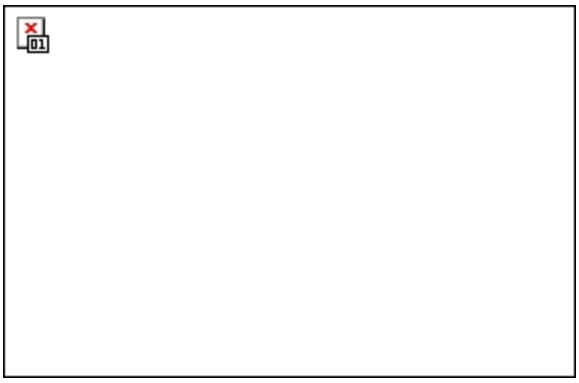
05.02.2001

JUDGEMENT

Dr. A.R. Lakshmanan, C. J.

1. The unsuccessful petitioner in the writ petition is the appellant in this appeal. The a ppellant filed the writ petition to quash the judgment of the Board of Revenue dated 2 8-6-74 (Annex. 5), and to restore the judgment of the Sub-
Divisional Officer, Udaipur dated 18-12-
1968 (Annex. 3) and to dismiss the suit of the respondent No. 4 Shanker Lal (Plaintiff) .

2. The dispute in this appeal lies in a very narrow compass. The facts found by the Co urts below have not been disputed before us. Before proceeding further to deal with th e facts of this case it is better to refer to the family tree.



It is seen from the above family tree that Ganga Ram had three sons Prithvi Raj, Girdh ari and Bhagwan. Prithvi Raj's son is Dev Kishan who is petitioner No. 1 -
Defendant No. 1 in the writ petition. Girdhari had two sons, Heera Lal (petitioner No. 2 in the writ petition) and Gulab (respondent No. 3 in the writ petition). Bhagwan, the third son of Ganga Ram died in the year 1910 leaving behind his widow Champa. On

12-12-1959, Champa adopted Shanker Lal, the fourth respondent herein-plaintiff in the suit.

3. Shanker Lal filed the suit for division of holding on the allegation that the suit land originally belonged to their ancestor Ganga Ram and it has devolved on the parties wh o were co-
tenants. However, after the death of Bhagwan his two brothers got the land in dispute entered in their own names and during the life time of Smt. Champa widow of Bhagw an they continued to put her off on the pretext that she was a widow and whenever she made adoption Bhagwan's 1/3rd share would be got entered in the name of the adopte d son. However, even after his adoption Prithvi Raj and Girdhari put Shanker Dal Lal and his mother off on the pretext that they would give possession of their 1/3rd share when Shanker Lal and his mother off on the pretext that they would give possession of their 1/3rd share when Shanker Lal comes up of age but when they did not do so even after Shanker Lal attained majority it compelled Shanker Lal to file this suit for divisi on of holding. The defendants Nos. 1 and 2 i.e. the petitioners contested the suit. How ever the defendant No. 3 admitted the plaintiff's claim.

4. The trial Court found that Shanker Lal's adoption was proved but as the adoption to ok place in 1959 after the Hindu Adoption and Maintenance Act had come into force S hanker Lal could not divest the property which had already vested in the other two cop erceners i.e. Prithvi Raj and Girdhari on the death of Bhagwan in 1910 A.D. The trial Court held that under Section 12(c) of the Hindu Adoption and Maintenance Act the a dopted son Shanker Lal was debarred from divesting the property which had already v ested in the other two coparceners. The suit was, therefore, dismissed. The dismissal was upheld by the Revenue Appellate Authority by judgment dated 9-7-
1969. Shanker Lal filed a second appeal before the Board of Revenue. The Board of R evenue held that even though the number of male coparceners is reduced to one the pr operty which was jointly owned by the coparceners at the time of death of one or more of them will still continue to be a joint family property and that the property jointly be longed to Prithvi Raj, Girdhari and Bhagwan and, therefore, on the death of Bhagwan the character of the property in the hands of Prithvi Raj, Girdhari along with the wido w of Bhagwan was still that of joint family property. The Board of Revenue also answ ered the further question whether on his adoption Shanker Lal became coparcener with the successors of Prithvi Raj and Girdhari. The Board of Revenue held that on the ado ption by Smt. Champa, Shanker Lal became the son of Bhagwan and, therefore, a cop arcener with the heirs of Prithvi Raj and Girdhari and being a coparcener Shanker Lal

becomes co-
tenant and was therefore entitled to ask for a division of holding under Section 53 of th e Rajasthan Tenancy Act. In this context the Board of Revenue has placed relied on fe w judgments of the Hon'ble Supreme Court. In the result the Board of Revenue had ac cepted the appeal filed by Shanker Lal and set aside the judgment and decrees of the Courts below and passed a preliminary decree in favor of the fourth respondent Shank er Lal against the defendants declaring that Shanker Lal will have 1/3rd share in the pr operty described in Schedule 'A' appended to the plaint.

5. Being aggrieved, the legal representatives of Prithvi Raj and Girdhari filed Writ Peti tion No. 3140/74 and urged that the joint family property in question had already veste d in the remaining coparceners Prithvi Raj and Girdhari on the death of Bhagwan in 1 910 and, therefore, heirs of Prithvi Raj and Girdhari could not be divested of the said p roperty on account of adoption of Shanker Lal by the widow of Bhagwan in view of th e provisions of clause (c) of proviso to Section 12 of the Act. Before the learned single Judge following judgments were cited and relied on by the parties - *Sawan Ram v. Mst. Kalawanti, 1 Sita Bai v. Ramchandra, 2 Anant Bhikkappa Patil v. Shanker Ramchandra Patil, 3 Shriniwas Krishnarao Kango v. Narayan Devji Kango, 4 Krishnamurthi Vasudeorao Deshpande v. Dhruwaraj,5 Shripad Gajanan Suthankar v. Dattaram Kashinath Suthankar, 6 Gowli Buddanna v. Commr. of Income-tax, Mysore, 7 Attorney General of Ceylon v. Arunachalam Chettiar, 8 Moti Lal v. Sar darmal, 9 Y. K. Nalavade v. Ananda G. Chavan, 10 Krishnabai Shivram Patil v. Anan da Shivram Patil, 11 Yarlagadda Nayudamma v. The Government of Andhra Pradesh, 12 Shrishailappa v. Muttawwa, 13* and *Dunichand etc. v. Paras Ram etc.,14* The learn ed single Judge after considering the rival submissions made by both parties and after analysing various judgments cited before him on the principles laid down therein cam e to the conclusion that there is no question of divesting of any coparcener of the prop erty vested in him would arise in this case and so long as the property retains the chara cter of a joint family property each coparcener has only fluctuating interest in such pro perty which is liable to increase or decrease by addition or diminution in the joint fami ly. Construing Section 12(c) the learned Judge held that clause (c) of the proviso to Se ction 12 does not refer to increase and diminution in the value of the interest of a copa rcener in the Hindu joint family property and it only prohibits divesting of any person from the estate vested in him before the adoption of a child and if a fluctuating interest has vested in a member of the joint Hindu family, the same would be crystallized only upon partition and separation of the shares of the members of the Joint Hindu family. The learned Judge has further observed that so long as joint family continues to exist a

nd the disputed property retains the character of joint family property on the date when the widow of the deceased coparcener adopted a son to herself and her deceased-husband, then the adopted son acquires his interest in the joint family property and do es not divest the surviving coparceners of any estate vested in them, inasmuch as, thei r fluctuating interest in the joint family property is still retained and continues to vest i n them. The learned Judge upheld the order of the Board of Revenue in holding that S hanker Lal could maintain a suit for partition and had 1/3rd share in the Joint family pr operties which he could get separated by partition. The writ petition was accordingly d ismissed.

6. Aggrieved by the order dated 29-7-1983 passed in the writ petition the above special appeal was filed in the year 1984 wh ich was now listed for final hearing before us.

7. We heard Mr. M.C. Bhoot for the appellant and Mr. Dinesh Maheshwari for the con testing 4th respondent. Mr. M.C. Bhoot after stating the facts of the' case raised' a poin t of law as to whether the 4th respondent Shanker Lal can divest the property vested in two brothers of late Bhagwan as back as in 1910 when he was alleged to be adopted o n 12-12-1959. He has also cited the following five decisions before us :

1. *Anant Bhikkappa Patil v. Shanker Ramchandra Patil, 15*
2. *Krishnamurthi Vasudeorao Deshpande v. Dhruwaraj, 16*
3. *Sawan Ram v. Mst. Kalawanti, 17*
4. *Sita Bal v. Ramchandra, 18*
5. *Dina Ji v. Daddi, 19*

Mr. Bhoot, learned counsel for the appellant urged that the joint family property in que stion had already vested in the remaining coparceners Prithvi Raj and Girdhari on the death of Bhagwan in the year 1910 and now the dependents of Prithvi Raj and (Sirdhd ri could not be divested of the said property on account of adoption of Shanker Lal, 4t h respondent by the widow of Bhagwan in view of the provisions of clause (c) of the p roviso to Section 12 of the Act.

8. Per contra. It was urged by Mr. Dinesh Maheshwari that so long as the property in d ispute continues to be a joint family property there was no question of divesting the pa rties from their interest in the joint family property but the 4th respondent-plaintiff as a member of the Joint family was entitled to seek a division of the Joint fa

mily property including the agricultural land in question and seek separate possession of his share.

9. Section 12 of the Hindu Adoptions and Maintenance Act, 1956 runs as follows:-

> "12. Effect of Adoption.-
> An adopted child shall be deemed to be the child of his or her adoptive father o r mother for all purposes with effect from the date of the adoption and from suc h date all the ties of the child in the family of his or her birth shall be deemed to be served and replaced by those created by the adoption in the adoptive family.
> Provided that-
> (A) The child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;
> (B) Any property which vested in the adopted child before the adoption shall co ntinue to vest in such person subject to the obligations, if any, attaching to the o wnership of such property. Including the obligation to maintain relatives in the f amily of his or her birth;
> (c) The adopted child shall not divest any person of any estate which vested in h im or her before the adoption."

This section, in its one aspect, confirms the pre-
Act position that on adoption a child for all intents and purposes becomes the child of not merely of adopters or adopter but also of the adoptive family and all his ties with t he natural family come to an end from the date of adoption. Thus adoption will have th e following effects:

> (a) The adopted child for all purposes be deemed to be the child of its ado ptive parent or parents;
> (b) All the ties of the child in the natural family will stand terminated fro m the date of adoption, except the ties of blood for the purposes of marria ge;
> (c) All the ties of the child will come into existence in the adoptive family from the date of adoption.

The adopted child is deemed to be the child of the adopter for all purposes and his pos ition for all intents and purposes is that of a natural born son. He has the same right, pr ivilege and the same obligation in the adoptive family as held by the High Court of Bo

mbay in *Kesharbai v. State of Maharashtra,20* In the instant case the adoption was ma de by the widow of Bhagwan who is also a coparcener with others. It is a well establis hed proposition of law that when a coparcener dies his individual interest devolves on surviving coparceners by survivorship. Moment the widow of a coparcener adopts a so n, the adopted son becomes a coparcener with the surviving coparceners of the adoptiv e father and consequently acquires the same interest which his adoptive father would h ave in the property had he been living. This was on account of the doctrine of relating back. The child adopted by the widow of the coparcener became the child of the decea sed coparcener from the date of the death of the coparcener. Mr. Bhoot relied on certai n passages in *Anant Bhikkappa Patil v. Shankar Ramchandra Patil, 21* In the above ca se the position of a son adopted by a Hindu widow under the Shastric Hindu Law, with respect to his rights in the joint family properties of the adoptive father, was explained by the Privy Council. The Privy Council held that the power of a Hindu widow to ado pt a son does not come to an end on the death of the sole surviving coparcener. It does not depend upon vesting or divesting of the estate nor the right to adopt is defeated by partition between the coparceners. The Privy Council also held that on the death of a s ole surviving coparcener a Hindu Joint Family cannot be finally brought to an end whi le it is possible in nature or law to add a male member to it. The joint family cannot co me to an end while there is still potential mother and that mother can by nature or by l aw can bring a new male member in the joint family. The fact that the property had ve sted in the meantime in the heir of the sole surviving coparceners would not itself affe ct the right of the adopted son and the adoption of a son by a widow of the deceased co parcener would have the effect of divesting the surviving coparceners and vesting the property in the adopted son to the extent of his adoptive father's share in the joint famil y property. Thus in our view the adoption by the widow Champa will divest the other c oparceners and their legal representatives of the interest of her husband Bhagwan in th e joint family property notwithstanding a partition amongst the surviving coparceners after the death other husband. However, the aforesaid Privy Council judgment was not followed by the Supreme Court in *Srinivas Krishnarao Kango v. Narayan Devji Kang o, AIR 1954 SC 379* (supra). Mr. Bhoot also relied on the judgment in *Krishnamurthi Vasudeorao Deshpande v. Dhruwaraj,22* The Supreme Court in this judgment has su mmarised the principles deducible from its decision in *Srinivas Krishnarao Kango v. Narayan Deyji Kanto, 23* as under:-

> "(i) An adopted son is held entitled to take in defeasance of the rights acquired p rior to his adoption relates back, by a legal fiction, to the date of the death of his adoptive father, he being put in the position of a posthumous son.

(ii) As a preferential heir, an adopted son (a) divests his mother of the estate of his adoptive father; (b) divests his adoptive mother of the estate she gets as an h eir of her son who died after the death of her husband;
(iii) A coparcenary continues to subsist so long as there is in existence a widow of a coparcener capable of bringing a son, into existence by adoption; and if the widow made an adoption, the rights of the adopted son are the same as if he had been in existence at the time when his adoptive father died and that his title as coparcener prevailed as against the title of any, person claiming as heir to the la st coparcener.
(iv) The principle of relation back applies only when the claim made by the ado pted son relates to the estate of his adoptive father. The estate may be definite a nd ascertained, as when he is the sole and absolute owner of the properties, or it may be fluctuating as when he is a member of a joint Hindu family in which th e interest of the coparceners is liable to increase by death or decrease by birth. I n either case. It is the interest of the adoptive father which the adopted son is de clared entitled to take as on the date of his death. This principle of relation back cannot be applied when the claim made by the adopted son relates not to the est ate of his adoptive father but to that of a collateral. With reference to the claim with respect to the estate of a collateral, the governing principle is that inheritan ce can never be in abeyance, and that once it devolves on a person who is the ne arest heir under the law, it is thereafter not liable to be divested when succession to the properties of a person other than an adoptive father is involved. The prin ciple applicable is not the rule of relation back but the rule that inheritance once vested could not be divested."

10. The principle of relation back was further considered by the Supreme Court in *Shri pad GaJanan Suthankar v. Dattaram Kashinath Suthankar, 24* Mr. Bhoot next cited th e decision of the Supreme Court in *Sawan Ram v. Smt. Kalawanti,* wherein it was held that on adoption by a widow the adopted son must be deemed to be a member of the f amily of the deceased husband of the widow moreso because he loses all his rights in t he family of his birth and the rights are replaced by the rights created by adoption in th e adoptive family. The adopted son obtains the right to succeed to the property in the a doptive family in his capacity as the adopted son of the deceased-
husband of the widow and thereby becomes a member of the family. Mr. Bhoot furthe r relied upon the observations made. In para 9 of the above judgment (Sayan Ram's ca se) wherein the Supreme Court explained the effect of Section 12(c) of the Act by mak ing the following observations:

"It appears that by making such a provision the Act has narrowed down the righ ts of a child born posthumously. Under the Shastric Law, if a child was adopted by; a widow, he was treated as a natural-
born child and, consequently, he could, divest other members of the family of ri ghts vested in them prior to his adoption. It was only with the limited object of a voiding any such consequence on the adoption of a child by a Hindu widow that these provisions in CL (c) of the proviso to Section 12 and Section 13 of the Ac t were incorporated. In that respect, the rights of the adopted child were restricte d. It is to be noted that this restriction was placed on the rights of a child adopte d by either a male Hindu or a female Hindu and not merely in a case of adoptio n by a female Hindu."

Mr. Bhoot next relied upon a decision in *Sita Bai v. Ramchandra, 26* In this case the p rovisions of Section 12 of the Act were again considered by the Supreme Court. In the said case the facts were that the properties consisting of agricultural lands and a house was jointly held by one Bhagirath and his brother Dutichand. Bhagirath died sometime in the year 1930 leaving his widow Sita Bai and after the death of Bhagirath, Duticha nd became the sole surviving coparcener of the joint family. Sita Bal adopted Suresh C handra on 4-3-
1958 after coming into force of the Act. The Supreme Court noted the fact that at the ti me Suresh Chandra was adopted the joint family still continued to exist and the disput ed properties retained their character of coparcenary property. Relying upon *Gowi Bud danna v. Commissioner of Income-
tax, 27* the Supreme Court observed that under the Hindu system of law a joint family may consist of a single male member and widows of deceased male members and that the property of a joint family did not cease to belong to the Joint family merely becaus e the family in represented by a single coparcener who possesses rights which an abso lute owner of the property may possess. A judgment of the Supreme Court in *Dina Ji v . Daddi. 28* was also cited by the learned counsel for the appellant. In that case one Di naji filed a suit for injunction and possession on the basis of registered sale deed execu ted by one Yashoda Bai In his favor with respect to immovable property including agri cultural land and houses. The property originally belonged to Yashoda Bai's husband a nd after his death she got it as limited owner and by influx of time and by coming into force of the Hindu Succession Act, she acquired the rights of an absolute owner. On 24 -2-
1963, she adopted respondent Nain Singh as her son and executed an adoption docum

ent which was not registered. The trial Court admitted the same in evidence in proof of adoption. In the adoption deed it is stated that the adopted son will be entitled to the w hole property including movable and immovable and adoptive mother will have ho rig ht to alienate any part of the property after the deed of adoption. The trial Court decree d the suit. The Appellate Court dismissed the suit setting aside the decree passed by th e trial Court. The learned single Judge of the High Court considering the impact of Se ction 12 of the Act held that the adopted son in view of the proviso (c) to Section 12 of the Act will only be entitled to property after the death of the adoptive mother. But the learned Judge felt that the further covenant in the adoption deed deprived her of that r ight and conferred that right on the adopted son. On this basis the High Court came to the conclusion that the widow after executing this deed of adoption had no right left in the property and, therefore, a transfer executed by her will not confer any title on the p laintiff. It is on this basis that the High Court maintained the judgment of the lower Ap pellate Court dismissing the suit of the plaintiff-
appellant. By special leave the appeal was taken to the Supreme Court. The Supreme Court construed Section 12(c) of the Act and held that this proviso departs from the Hi ndu General Law and makes it clear that the adopted child shall not divest any person of the estate which has vested in him or her before the adoption. Construing the facts a nd circumstances of the said case, the Supreme Court held that in the said case Yashod a Bai who was the limited owner of the property after the death of her husband and aft er the Hindu Succession Act came into force, has become an absolute owner and, there fore, the property of her husband vested in her and, therefore, merely by adopting a ch ild she could not be deprived of any other rights in the property and the adoption woul d come into play and the adopted child could get the rights for which he is entitled afte r her death as is clear from the scheme of Section 12 Proviso (c). The Supreme Court i n this ease after construing Section 12 of the Act and Section 17(1)(b) of the Registrati on Act set aside the judgments of the High Court-
and of the lower Appellate Court and restored the judgment of the trial Court. This jud gment, in our opinion, is distinguishable on facts and law with the case on hand.

11. Mr. Dinesh Maheshwari, learned counsel for the fourth respondent took us through the pleadings and the Judgments rendered by the Courts below and of the learned sing le Judge and submitted that the question involved in this case now stands conclusively answered by the Supreme Court in the two decisions in *Vasant v. Dattu,29* and *Dharm a Shamrao Agalawe v. Pandurang Miragu Agalawe, AIR 1988 SC 845.* In *Vasant v. D attu, 30* the Supreme Court was considering the scope of the joint family and the effect of the adoption of a child. The Supreme Court held that the shares of other members o

f family get decreased because of the adoption and that they are, however, not diveste d of any estate vested in them. It is also held that provision (c) to Section 12 does not preclude the adopted child from claiming his share in joint family properties. Paras 4 a nd 5 of the said judgment can be usefully reproduced hereunder:

> "We are concerned with proviso (c) to Section 12. The introduction of a member into a joint family, by birth or adoption, may have the effect of decreasing the s hare of the rest of the members of the joint family, but it certainly does not invol ve any question of divesting any person of any estate vested in him. The Joint fa mily continues to hold the estate, but, with more members, than before. There is no fresh vesting or divesting of the estate in anyone.
> 5. The learned counsel for the appellants have urged that on the death of a mem ber of a joint family the property must be considered to have vested in the remai ning members by survivorship. It is not possible to agree with this argument. Th e property, no doubt passes by survivorship, but there is no question of any vesti ng or divesting in the sense contemplated by Section 12 of the Act. To interpret Section 12 to include cases of devolution by survivorship on the death of a mem ber of the joint family would be to deny any practical effect to the adoption mad e by the widow of a member of the joint family. We do not think that such a resu lt was in the contemplation of Parliament at all."

12. In *Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe,31* the Supreme Cou rt was considering the question whether a person adopted by Hindu widow after comin g into force of the Hindu Adoptions and Maintenance Act, 1956 can claim a share in t he property which had devolved on sole surviving coparcener on the death of the husb and of the widow who took him in adoption. In this case one Shamrao died leaving be hind him two sons Dharma and Miragu. Miragu died issueless in the year 1928 leavin g behind him his widow Champabai. The properties owned by the joint family of Dhar ma and Miragu passed on to the hands of Dharma who: was the sole surviving coparce ner on the death of Miragu: Under the law as it stood then, Champabai had only a righ t of maintenance in the joint family property. The Act came into force on 21st Dec., 19 56. On 9-8-
1968 Champabai took one Pandurang in adoption and immediately thereafter a suit wa s filed by Pandurang and Champabai for partition and separate possession of one-
half share in the properties of the joint family of which Dharma and Miragu were copa rceners. The suit was resisted by Dharma on the ground that Pandurang was not entitle d to claim any share in the properties which originally belonged to the joint family in v

iew of clause (c) of the proviso to Section 12 of the Act and the properties which had b
een sold by him in favor of third parties could not in any event be the subject-
matter of the partition suit. The trial Court dismissed the suit. The appeal filed by the
widow and the adopted son before the District Judge was allowed and the preliminary
decree for partition in favor of Pandurang and Champabai and separate possession of o
ne-
half share of the joint family properties except the two fields which had been sold earli
er in favor of the parties-
Aggrieved by the decree of the District Judge, an appeal was filed before the High Co
urt which affirmed the decree passed by the District Court following the decision in *Y.
K. Nalavade v. Ananda G. Chavan,32* in which it was observed that clause (c) of the p
roviso to Section 12 of the Act was not a bar to such a suit for partition. An appeal by s
pecial leave was filed by the appellant against the Judgment of the High Court of Bom
bay before the Supreme Court. Before the Supreme Court the appellant urged only the
question that the suit for partition should have been dismissed by the High Court as th
e adopted child Pandurang could not divest Dharma of any part of the estate which hal
f been vested in him before the adoption in view of the clause (e) of proviso to Section
12 of the Act. The Supreme Court in this judgment approved the decisions in *Y.K. Nal
avade v. Ananda G. Chavan, 33* and *Vasant v. Dattu, 34* and relied on *Sita' Bai v. Ram
Chandra, 35*

13. In this case, it was argued before the Supreme Court that Pandurang became the ch
ild of adoptive mother for all purposes with effect from the date of adoption and only f
rom that date all the ties of Pandurang in the family of his birth should be deemed to h
ave been severed and replaced by those created by the adoption in the adoptive family
and, therefore, Pandurang, the adopted son could not claim a share in the Joint family
properties which had devolved on the appellant by survivorship on the death of Mirag
u. In support of this contention, the Judgment in Sawan Ram's case, AIR 1967 SC 176
1 was relied upon. The Supreme Court after analysing the facts involved in Sawan Ra
m's case (supra) and the facts and circumstances of the decision of the Andhra Pradesh
High Court in *Narra Hanumantha Rao v. Narra Hanumyya, 36* which was cited befor
e the Supreme Court was of the opinion that the observations at page 1765 of Sawan R
am's case (supra) appear to support the case of the appellant. But however the Court w
as of the view that these observations were not necessary for deciding the case which
was before the Court and, therefore, they have to be held obiter dicta. As already notic
ed the Supreme Court In this case has approved the decision in *Vasant v. Dattu, 37* wh
erein the effect of Section 12 of the Act was considered. The Supreme Court in that ca

se interpreting clause (c) of proviso to Section 12 of the Act observed that a case of thi s nature where the joint family property passed on to the hands of the remaining memb ers of the coparcenary on the death of one of the coparceners, no vesting of property a ctually took place in the remaining coparceners while their share in the joint family pr operty may have increased on the death of one of the coparceners which was bound to decrease on the introduction of one more member into the family either by birth or by adoption.

14. Before us Mr. M.C. Bhoot, counsel for the appellant urged that on the death of a m ember of joint family the property must be considered to have vested in the remaining members by survivorship. Similar argument was advanced by the learned counsel for t he appellant in *Dharma Shamrao Agalawe v. Pandurang Miragu Agalawe, 38* also. Th e Supreme Court rejected the said contention. It was held that property no doubt passe s by survivorship but there is no question of any vesting or divesting in the sense conte mplated' by Section 12 of the Act. To interpret Section 12 to include cases of devolutio n by survivorship on the death of a member of the Joint family would be to deny any p ractical effect to the adoption made by the widow of a member of the joint family. The Supreme Court was of the view that such result was not in the contemplation of the P arliament at all. The Supreme Court in *Dharma Shamrao Agalawe v. Pandurang Mira gu Agalawe,39* had agreed with the observations of the Supreme Court in Vasant's cas e, AIR 1987 SC 398 and had observed that the joint family property does not cease to be joint family property when it passes to the hands of sole surviving coparceners. The Supreme Court also approved the decision in Y.K. Nalavade's case, AIR 1981 Born 1 09 (supra). The Supreme Court had agreed with the reasons given by the High Court o f Bombay in that decision in taking the view that clause (c) of proviso to Section 12 of the Act would not be attracted to a case of this nature since as observed by the Supre me Court in Vasant's case, AIR 1987 SC 398 (supra) no vesting of joint family propert y in Dharma the appellant took place on the death of Miragu and no divesting of prope rty took place when Pandurang was adopted. In this view of the matter the Supreme C ourt has overruled the decision of the Andhra Pradesh High Court in Narra Hanumanth a Rao's case (1964) 1 Andh WR 156 which takes a contrary view.

15. Thus as rightly pointed out by Mr. Dinesh Maheshwari the question involved in thi s case now stands conclusively answered by the Hon'ble Supreme Court in the two dec isions in *Vasant v. Dattu,40* and *Dharma Shamrao Agalawe v. Pandurang Miragu Aga lawe, 41*

16. It cannot be lost sight of that the undivided interest of a deceased coparcener passes to other coparceners by survivorship and not by succession. Clause (c) of the proviso to Section 12 lays down in express and explicit terms that the adoption of a son or daughter by a male or female Hindu would not have the effect of divesting of any estate vested in any person prior to the adoption. In our view, the undivided Interest in the surviving coparceners of a Joint Hindu family is not divested on the Introduction of an adopted son in the joint Hindu family but only the extent of his interest therein is affected by such adoption. It can, therefore, be legitimately held that if on the date of adoption the family still continues to be joint and owns joint family property, the adoptive child would acquire an interest in the joint family property and the same would not have the effect of divesting the surviving coparceners.

17. In the result the appeal falls and the suit filed by the plaintiff Shanker Lal, the 4th respondent herein stands decreed and the order of the Board of Revenue as affirmed by the learned single Judge in his Judgment dated 29-7-
1983 in Writ Petition No.3140/74 are confirmed and we declare that a preliminary decree be passed in favor of the 4th respondent-
plaintiff Shanker Lal against the defendants that he will have 1/3rd share in the property described in Schedule 'A' appended to the plaint. The appeal is dismissed. In our view because of refusal to give the due share to the 4th respondent Shanker Lal he was compelled to approach the Civil Court on 7-2-
1966 and was litigating in Court up till now nearly for 35 years to get his lawful share in the property as the adopted son. In our opinion, it is an eminently fit case for awarding exemplary costs. We, therefore, dismiss the appeal by awarding costs of Rs. 5000/-
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Appeal dismissed

Cases Referred.

1. AIR 1967 SC 1761
2. AIR 1970 SC 343
3. AIR 1943 PC 196
4. AIR 1954 SC 379
5. AIR 1962 SC 59
6. AIR 1974 SC 878
7. AIR 1966 SC 1523
8. (1957) AC 540

9. AIR 1976 Raj 40
10. AIR 1981 Bom 109
11. AIR 1981 Bom 240
12. AIR 1981 Andh Pra 19
13. (1982) 1 Kant LJ 9
14. AIR 1970 Delhi 202.
15. AIR 1943 PC 196
16. AIR 1962 SC 59
17. Air-1967 SC 1761
18. AIR 1970 @C 343
19. AIR 1990 SC 1153
20. AIR 1981 Bom 115 (FB)
21. AIR 1943 PC 196
22. AIR 1962 SC 59
23. AIR 1954 SC 379
24. AIR 1974 SC 878
25. AIR 1967 SC 1761
26. AIR 1970 SC 343
27. AIR 1966 SC 1523
28. AIR 1990 SC 1153
29. AIR 1987 SC 398
30. AIR 1987 SC 398
31. AIR 1988 SC 845
32. AIR 1981 Bom 109
33. AIR 1981 Bom 109
34. AIR 1987 SC 398
35. AIR 1970 SC 343
36. (1964) 1 Andh WR 156: ILR (1966) Andh Pra 140
37. AIR 1987 SC 398
38. AIR 1988 SC845
39. AIR 1988 SC 845
40. AIR 1987 SC 398
41. AIR 1988 SC 845