NAGPUR HIGH COURT

Tukaram Raghoji

Vs

Gangi

Letters Patent Appeal No. 3 of 1950, in S.A. No. 237 of 1945

(Mudholkar and Tambe, JJ.)

07.02.1950. 14.04.1956

JUDGMENT

Tambe, JJ.

1. This is an appeal under Clause 10 of the Letters Patent against the judgment of Hidayatullah, J., (as he then was) in Second Appeal No. 237 of 1945, dated 7-2-1950.

2. The facts which are no longer in dispute may be stated thus: A joint Hindu family consisting of Pandu and his sons Ragho and Ramu owned certain fields, houses and house sites. Ragho died leaving a widow Kalavati on 19-12-1941, Ramu died leaving a widow Kashi on 20-1-42 and Pandu died on 17-2-1942. After the death of Pandu, the property passed into the possession of Kalavati and Kashi. By a deed executed on 22-4-1942 they surrendered their interest to the defendants 1-3, Gangi, soni and Chaturi, the daughters of Pandu. These persons are now in the possession of the property.

3. On 10-6-1942, Kalavati, the widow of Ragho, took the plaintiff Tukaram in adoption. Soon after the adoption he instituted a suit as a pauper for possession of the property left by Pandu. In his suit he also laid a claim to two fields which are in the possession of the defendant No. 5 Shriram. But we are not concerned with that claim in this appeal.

4. Tukaram's suit was resisted by the defendants 1-3 on the grounds that he was not taken in adoption, that in any case the adoption was not valid, that even if the adoption was valid, it could not affect the property left by Pandu as after his death Kalavati and Kashi, the widows of Ragho and Ramu, who had succeeded thereto had surrendered their interest to the defendants 1-3 and that at any rate the plaintiff was not entiled to more than h share in the property left by Pandu inasmuch as by virtue of the Hindu Women's Rights to Property Act, 1937, half the property went to Kashi and that Tukaram would have only a half share in the remaining half of the property which went to Kalavati.

5. The suit was decreed in the trial Court to the extent of 1/3rd interest in the entire property. The lower appellate Court however dismissed the entire suit and the decision of the lower appellate

Court was upheld by this Court.

6. The main ground on which the decision of the learned single Judge of this Court is based is that after a widow has surrendered the estate to the next reversioner an adoption by her of a son to her husband does not defeat the surrender. This view is based upon the decisions in *Rama Nana v. Dhondi Murari*[1], *Yeshwant v. Antu*[2], *Haribhai Nanaji v. Narayan Hari*[3], and Mulla's Hindu Law, 1946 Edition, page 216. The three decisions referred to above have however been over-ruled by a Full Bench in *Bahubali v. Gundappa*[4], In the circumstances Shri Mangalmurti, the learned counsel for the defendants-respondents, does not want to support the judgment of the learned single Judge on the ground stated by him. We may mention here that the factum of the adoption of Tukaram is no longer open to challenge as both the Courts below have decided the point in favour of Tukaram.

7. The questions which are raised before us are (a) whether the adoption is valid, (b) whether it can divest the daughters entirely or partially and (c) if the latter, to what extent.

8. On behalf of the defendants it is strenuously argued by Shri Mangalmurti that after the death of Pandu, there being no male member left in the family, Kalavati had no power to make the adoption, this argument is untenable in view of the decisions of the Privy Council which have met in so far as this matter is concerned with the approval of the Supreme Court. The first of the two decisions of the Privy Council is - *'Anant Bhikappa v. Shankar Ramchandra*[5]*',* In that case their Lordships held that the coparcenary must be held to subsist so long as there was in existence a widow of a coparcener capable of bringing a son into existence by adoption. Their Lordships reaffirmed this view in - *Neelamgouda Limbangouda v. Ujjan Gouda*[6]*,* In - '*Srinivas v. Narayan*[7]*',* while their Lordships difffered from one of the propositions laid down in 'Anant's case, they have approved the proposition set out above.

9. The next question is whether as a result of the adoption, the entire interest or any portion thereof which has passed to the defendants 1-3 can be divested. Relying on the Supreme Court decision to which we have just referred, the learned counsel for the defendants contends that being the daughters of Pandu, the last surviving coparcener, the defendants took the estate by inheritance and therefore they could not be divested by reason of subsequent adoption made by Kalavati.

10. In the first place, it has never been the case of defendants in their pleadings that they took the property by inheritance. Their case is that they took it as reversioners pursuant on the deed of surrender executed in their favour by Kalavati and Kashi. Apart from that, the effect of the Hindu Women's Rights to Property Act, 1937, is to place the widow of a deceased coparcener of a joint Hindu family in the same position a the coparcener himself, and, therefore, as long as such a widow is alive the
daughter cannot succeed to the entire property. No doubt, Pandu was the last male coparcener in the family and as such apart from the Hindu Women's Rights to Property Act he would have taken his deceased sons' interest by survivorship. That Act however creates in favor of the widows of the deceased coparceners the same interest in the property as the coparceners themselves had. The logical result flowing from these provisions would be to hold in abeyance the principle of survivorship in so far as the interest of the deceased coparceners is concerned. Whether after the death of Pandu his interest passed to Kalavati and Kashi is a question which we

will deal hereafter. It is sufficient at this stage to say that the estate could not pass to the daughters by inheritance after the death of Pandu.

11. We have no doubt that the decision of the Supreme Court in Srinivas' case instead of helping the defendants goes against them. The facts of the case may be briefly stated as follows: Siddopant and Krishnarao, both sons of Ramchandra, were members of a joint Hindu family owning some Watan lands. Krishnarao died in the year 1897, leaving a widow Rukmini. Siddopant died in the year 1898, leaving a son Gundo. Gundo died in the year 1901, leaving behind a widow Laxmibai. Soon after Gundo's death Laxmibai took in adoption Devji who died on 6-5-1935 leaving three sons. On 26-4-1944, Rukmini, the widow of Krishnarao, adopted Srinivasa. Siddopant purchased a house and some lands and constructed two substantial houses. His grandson Devji also built a house.

12. Swamirao, a collateral of Siddopant, died in the year 1903 leaving only a widow who also died shortly thereafter. His properties consequently devolved on Bevji as his nearest agnate. These properties were set out in Schedule C to the plaint, while the alleged acquisitions of Siddopant and Devji were set out in Schs. A and B which included field S. Nos. 639 and 640.

13. On 29-6-1954, Srinivasa instituted a suit in which he claimed possession of half share in the Watan lands and to the properties set out in Schs. A and B. In so far as the properties in Schs. A and B were concerned the trial Court held that the houses described in those Schedules were the self-acquisitions of Siddopant and Devji.
It however held that fields Nos. 639 and 640 described in the Schedules and the Watan lands being joint ancestral properties were liable to partition and that the plaintiff had half share in them. It also held that the property inherited by Devji from Swamirao which was described in Schedule C to the plaint was also liable to partition in accordance with the decision of the Privy Council in Anant's case.

14. The High Court however held that the two fields did not form part of the joint family property and as such were not liable to partition. It is held following a Full Bench decision of the Bombay High Court in *Jivaji Annaji v. Hanmant Ramchandra*[8], that the properties described in Schedule C belonged exclusively to Devji and as such were not liable to partition. In the result the High Court granted a decree in favour of the plaintiff for partition of the admitted joint family Watan lands and otherwise dismissed the suit.

15. The Supreme Court reversed the decision of the High Court in so far as fields
Nos. 639 and 640 were concerned; but in other respects, it affirmed the right of the plaintiff to claim partition of the ancestral joint family property, even though long before the adoption the property had passed into the possession of Siddopant's branch.
In doing so, their Lordships of the Supreme Court affirmed the proposition laid down in Anant's case and reaffirmed in AIR 1948 PC 165, that where an adoption is made by a widow of a deceased coparcener even after the death of the last male coparcener the rights of the adopted Eon would be the same as if he had been in existence at the time when his adoptive father died and that his title as coparcener would prevail as against the title of any person claiming as heir of the last coparcener. In the instant case, had the daughters taken by inheritance, the estate in their hands must in view of the decision of their Lordships be treated as impressed with the character of coparcenary property so long as there existed a widow who could make an adoption.

16. No doubt, with reference to the property inherited by Devji by succession to Swamirao their Lordships, differing from the decision of the Privy Council in the two cases referred to above, have held that the plaintiff had no right of succession because the doctrine of relation back cannot apply when the claim by an adopted son relates not to the estate of the adoptive father but to that inherited by a member of the family from a collateral. In the instant case, no part of the plaintiffs's claim relates to an estate of this kind. Thus, as we have already said, there is nothing in the decision of their Lordships which helps the defendants but, on the other hand, what their Lordships say with regard to the joint ancestral property helps the plaintiff.

17. We must now consider the extent to which the defendants can be divested. Under the Hindu Women's Rights to Property Act at his death Ragho had 1/3rd interest in the property. Consequently, after his death the interest of Kalavati would be to the extent of 1/3rd in the property. Similarly, the interest of Kashi in the property would also be 1/3rd. The remaining 1/3rd interest was with Pandu. The question then is whether after his death his interest passed to them, or in other words, whether the interest of these persons could be augmented by reason of Pandu's death.

18. As has been held by a Division Bench of this Court in *Hanuman v. Tulsabai*[9], the interest held by a widow in a joint family property by virtue of the provisions of the Hindu Women's Rights to Property Act, 1937, is a fluctuating one and is liable to increase or decrease according as there are additions to or deaths in the members of the family. On Pandu's death therefore his interest passed by survivorship to the two widows and not to his daughters. That would mean that after Pandu's death each of the widows got half interest in the property. The widows surrendered their respective interests in the property to the defendants 1-3.

19. The question then is what is the effect of the surrender. As has been stated by Chagla, C.J., in *Bahubali v. Gundappa (cit. sup)*, a widow stands between her husband's estate and her husband's heir and by an act of self-effacement or of civil death she destroys her own life estate, removes the obstacle that exists between her husband's estate and her husband's heirs, accelerates the succession, and makes it possible for her husband's heir to succeed to her estate. As soon as the widow effaces herself and destroys her life interest by surrendering it, the next reversioners succeed
to the husband's estate. The title therefore vests in the next reversioners by inheritance and not by a conveyance or a transfer executed by the widow. As we have already pointed out, a subsequent adoption by a widow has retrospective effect in the sense that in the eye of law he must be deemed to be in existence at the death of the husband of the adoptive widow. That being so, the adopted son can divest the entire estate which has passed to the reversioners by inheritance consequent on the self-effacement by the widow by executing a deed of surrender. We realize that this is rather a curious result because had the widows in this case not surrendered their interest the plaintiff could as a combined result of the Hindu Law and the Hindu Women's Rights to Property Act have succeeded to only h of the estate and not as now to the entire estate. We are bound to give the fullest effect to the results which logically flow from the surrender. Doing so we hold that the plaintiff is entitled to succeed to the entire family property.

20. In this view, we reverse the judgment of the learned single Judge and of the lower appellate Court and instead pass a decree for possession of the property described in Schedule 1 to the

plaint except the two fields which are in the possession of the defendant-respondent no. 5 Shriram.

21. No argument was addressed to us on the question of mesne profits and therefore no question of awarding any arises.

22. Costs throughout shall be borne by the defendants 1-3.
Appeal allowed.
[1] ILR 47 Bom 678
[2] ILR 58 Bom 521
[3] AIR 1938 Bom 438
[4] AIR 1954 Bom 451
[5] AIR 1943 PC 196
[6] AIR 1948 PC 165
[7] AIR 1954 SC 379
[8] AIR 1950 Bom 360
[9] 1956 Nag LJ 194 : AIR 1956 Nag 63