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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6642-6643 OF 2010

KALINDI DAMODAR GARDE (D) BY LRS. .....APPELLANT(S)

VERSUS

MANOHAR LAXMAN KULKARNI (D) BY LRS. & ORS. ETC. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The present appeals arise out of an order passed by the learned Single Bench of the High Court of Judicature at Bombay on 11th December, 2006 deciding writ petition disputing the orders passed by the Revenue Authorities excluding the names of the sons of Laxman natural born son of Pandurang, on the ground that they have no right, title or interest in relation to suit property as they were born prior to the date of adoption of Laxman. The first appeal filed by the natural daughter of Laxman was dismissed along with the writ petition holding that the sons born to Laxman prior to adoption are the heirs of Laxman and are entitled to his estate along with the daughter born to Laxman after his adoption.

2. The facts are that Laxman was given in adoption to Saraswati on 2nd November, 1935. Laxman had three sons Gangadhar aged 4 years 5 months; Dattatraya aged 2 years 5 months and Manohar

aged 9 months at the time of his adoption. After adoption, Laxman and his wife Padmavati joined the family of Saraswati along with their 3 sons. It was in the year 1938, daughter Kalindi was born to Laxman and Padmavati. The natural father of Laxman, Pandurang effected partition in respect of his joint family property on 30th December, 1948 wherein Laxman was excluded from any share as he had gone in adoption to Saraswati.

3. Laxman died on 10th January, 1987. Saraswati had predeceased Laxman. After the death of Saraswati, Laxman inherited the property of Saraswati which is the subject matter of the present appeals. After the death of Laxman, his daughter Kalindi applied for effecting the change in the village revenue record for inclusion of her mother Padmavati and herself as owners. The mutation was entered on 11th March, 1987. The matter was taken at various stages thereafter. The revision filed by Manohar, son of Laxman, was dismissed on 8th September, 1992. Aggrieved, Manohar had filed the writ petition.

4. Padmavati, wife of Laxman, died on 10th October, 1992 leaving a registered Will dated 21st May, 1987 in which she had bequeathed her share to her 3 sons which were born prior to the date of adoption. On 20th October, 1996, Gangadhar, one of the sons of Laxman and Padmavati, died. Thereafter, Dattatraya, the second son filed a suit for partition, separate possession and mesne profit against forcible possession by Kalindi. This suit was decreed on 13th

November, 2004. The main contest of the parties was on the question as to whether the three sons of Laxman born before adoption in 1935, namely, Gangadhar, Dattatraya and Manohar are entitled to inherit the property in adoptive family of Laxman after his death.

5. In a suit by Kalindi, the daughter born to Laxman and Padmavati, she had taken a plea that the sons born before adoption have no right, title or interest in the properties left behind by Laxman and she being a daughter born to Laxman after his adoption would inherit the entire property along with Padmavati, her mother. Both the matters were taken up for hearing together wherein the learned Single Bench relying upon Section 8 of the Hindu Succession Act, 1956[1] held that the son born before adoption is entitled to succeed to the property of their father.

6. Before this Court, Mr. Venkataramani, learned senior counsel for the appellants relied upon judgment of Division Bench of Bombay High Court reported as ***Kalgavda Tavanappa Patil*** v. ***Somappa Tamangavda Patil & Anr.***[2] wherein it has been held as under:

> "The son, then, begotten by an adopted Hindu before adoption has vested rights in the ancestral property of the family of his birth. Rights of property once vested cannot be taken away except in the mode or modes prescribed by Hindu Law. They cease either by death, sale, gift, degradation, disqualification or by adoption. In the case of a son whose father has been given in adoption after his birth, if none of these modes for the extinction of his vested rights of property applies, there

1 for short, 'Act'
2 ILR (1909) 33 Bom 669

> must be the clear authority of some text for holding that the rights in question are extinguished because the father of the owner of those rights, having been given in adoption, has his rights in his natural family extinguished by the act of adoption."

7. The argument is that the wife of an adoptee passes with her husband to the adopted family but not the sons born to an adoptee before his adoption. They continue to be members in the family in which their father was naturally born. Mr. Venkataramani, learned senior counsel for the appellants vehemently argued that the codified Hindu Law has not provided that the children born to an adoptee before adoption will be entitled to inherit the property in the adopted family, therefore, keeping in view the interpretation of Hindu Law as interpreted in ***Kalgavda Tavanappa Patil***, the children born before adoption will not pass with the adoptee in the adopted family and are not entitled to the share in the estate of the adopted family.

8. Learned senior counsel for the appellants relied upon the following quote from the judgment in ***Kalgavda Tavanappa Patil***:

> "But it is argued that when a married man is given in adoption, his wife passes with him into the adoptive family—she, like him, acquires the new *gotra*; that what applies to the wife of the man adopted must apply to his son also, begotten before the adoption, because, both according to the Smriti writers and their commentators, a man's wife and sons go together. In support of this argument reliance is placed on a text of Narada cited by Vijnaneshvara in his chapter on "Resumption of Gifts" in the Mitakshara (p. 225, *Moghe's* 3rd Ed)." (page 687)

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> .....But the text does not say that the son of that man, born before his adoption, ceases to be his son and loses the right to offer funeral oblations to his soul in case of his death. For one thing, according to the Hindu *Shastras*, "by no means can you make your father cease to be" (*Jaimini, Bibliotheoa Indica Series*, Vol. I, p. 742). The mere fact that the father has gone into another family by adoption and ceased to be of his son's *gotra* or family cannot unmake what he naturally is—the son's father. The *gotras* of the two may differ in consequence of the adoption, but it is not always necessary for funeral ceremonies that the person performing them should be of the same *gotra* as the deceased. A sister's son and a son-in-law can perform those ceremonies and yet they are not of the same *gotra*. So a son begotten before the adoption of his father would be entitled to perform the latter's funeral ceremonies. All the *Smriti* says is that such ceremonies "shall be performed by a son." It does not make the obligation dependent upon the continuance of the father in the same *gotra* as the son." (Page 690)

9. The Full Bench of Bombay High Court in ***Martand Jiwajee Patil & Anr.*** v. ***Narayan Krishna Gumast-Patil & Anr.***[3] referred to the aforesaid judgment when considering a case as to whether the adoptee has a right to give his son, born prior to his adoption, in adoption. The Court held as under:

> "In *Raghuraj Chandra* v. *Subhadra Kunwar* [(1928) L.R. 55 I.A. 139 at p. 148, S.C. 30 Bom. L.R. 829.] their Lordships of the Privy Council after stating at p. 148 that though adoption is spoken of as "new birth" in many cases, a term sanctioned by the theory of Hindu law, yet "As has been more than once observed, the expressions 'civilly dead or as if he had never been born in the family' are not for all purposes correct or logically applicable, but they are complementary to the term 'new birth'." The inapplicability of the theory can be

3 AIR 1939 Bom 305

illustrated by concrete instances:—

(a) The tie of blood between the adopted son and the members of his natural family is not severed. He cannot marry in his natural family within the prohibited degrees, nor can he adopt from his natural family a boy whom he could not have adopted if he had remained in that family [*Moottia Moodelly* v. *Uppon Vencata Charry*]. [(1858) Mad. S.D. 117.]

xx xx xx

(c) The adoptive father cannot give his adopted son in adoption (Sarkar's Hindu Law of Adoption, pages 281-282).

xx xx xx

These instances show that an adopted son is not civilly dead in his natural family nor reborn in his adoptive family.

It is no doubt true that by giving away his son in adoption the adopted father indirectly meddles with the *riktha* or property of his natural family, since the effect of that adoption will be to extinguish the son's interest in that property. But thereby the father himself gains no interest in the property. All that Manu's text says is that he should not take for himself the *gotra* and *riktha* of his natural family, and does not prohibit him from doing any act which may affect the property of his natural family. Thus, for instance, if he has a brother in his natural family, he is not prohibited from giving his son born after his own adoption, in adoption to that brother, although thereby the different interests in the property of his natural family are affected.

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In the absence of any express text or judicial decision depriving an adopted son of his right to give away in adoption his son born before his adoption, we do not think that any useful purpose will be served by imposing such a restriction upon him. The modern trend of decisions is to take a more liberal view and to interpret the texts from a practical point of view as far as possible. This is particularly noticeable in the

> decisions of this Court on several questions of adoption, such as the adoption of an only son, the adoption of a married boy, the adoption of a boy whose mother the adopting father could not have legally married, and the adoption by a widow without the express consent of her husband. We do not see why a similar liberal view should not be taken in this case, having regard to the interests of the boy to be given in adoption. With his father actually living, it would be a hardship on the boy to treat him as an orphan, merely because the father has gone in adoption. Usually when the father is adopted, his preborn sons are still minors, and in practice they go with their father to live with him, though legally they are held to have remained in the natural family of their father. Though the father has gone in adoption, the ties of affinity and love for his preborn sons cannot be severed, and he is the proper man to look after their education and welfare. If a guardian is to be appointed for them, he will naturally be consulted. Having their interest at heart, he is the best person to decide whether one of them should be given in adoption and what is conducive to their benefit. By giving one of his sons in adoption he himself gains no benefit, and he may be safely trusted to exercise his discretion rightly for the good of his son, though born before his own adoption."

10. The Court held that the paternity of the father cannot be shaken off even though he may leave the family, as, according to Hindu Shastras, "By no means can you make your father cease to be,". The Court held as under:

> "It may be that in ancient and primitive society the son was regarded as hardly better than his father's slave, and the prominent idea involved in an adoption was the transfer of dominion or *patria potestas* to the person adopting. But when the times changed and the status of the son was raised, the father's power to give in adoption came to be founded on a different conception. The text of Vasishtha quoted in Dattaka Mimansa (sec. V, pl. 31), which is said to afford the foundation of the Hindu law of adoption, and which I have already referred to, recognizes the power of the father and the mother to "give or sell or abandon" their son as he is

> "produced from their virile seed and uterine blood." This paternity of the father cannot be shaken off even though he may leave the family, as, according to the Hindu Shastras "By no means can you make your father cease to be," (Jaimini, Bibliotheca Indica Series, Volume I, p. 742). The same thing is expressed by Chandavarkar, J. in *Kalgavda Tavanappa* v. *Somappa Tamangavda* as follows (p. 690):—
>
> > "The mere fact that the father has gone into another family by adoption and eased to be of his son's *gotra* or family cannot unmake what he naturally is—the son's father."

11. Though, the aforesaid judgment was in the context of the right of an adoptee to give his son born prior to his adoption, but the fact that the adoptee will remain the father of the son was recognised way back in 1939. Thus, the Judgment in ***Kalgavda Tavanappa Patil*** has not been accepted even under the Hindu Law.

12. However, the situation has undergone a complete change with the enactment of the Act. The said Act overrides all 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. Section 4 of the Act reads as under:

> "**4. Overriding effect of Act. -** Save as otherwise expressly provided in this Act,—
>
> (a) 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;.
>
> (b) any other law in force immediately before the commencement of this Act shall cease to have effect in

so far as it is inconsistent with any of the provisions contained in this Act."

13. Since the succession has opened after the death of Laxman on 10th January, 1987, therefore, succession has to be in accordance with the Act and not as per Hindu law as all text, rule or interpretation of Hindu law prior to commencement of the Act have ceased to have any effect unless expressly provided for in the said Act. This Court in a Judgment reported as ***Bhaiya Ramanuj Pratap Deo*** v. ***Lalu Maheshanuj Pratap Deo***[4] held that a bare perusal of Section 4 would indicate that any custom or usage as part of Hindu law in force will cease to have effect after the enforcement of Hindu Succession Act with respect to any matter for which provision is made in the Act.

14. The principle that the Act will be applicable on the date succession opens is well settled. Reference may be made to a judgment reported as ***Bhanwar Singh*** v. ***Puran & Ors.***[5], wherein this Court held that the Act brought about a sea of change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non- obstante provision in terms whereof 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 the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.

15. Since there is no provision of denying the rights of succession to

4 (1981) 4 SCC 613
5 (2008) 3 SCC 87

the natural born son of an adoptee father, therefore, the succession will be in terms of the provisions of the Act alone.

16. It may be noticed that the three sons and Kalindi are born to Laxman and his wife Padmavati. They are agnates and related by full blood in terms of Section 3(a) and 3(e) of the Act. As per the Schedule to the Act, the son and the daughter of a deceased Hindu male are class I heirs. Some of the relevant provisions of the Act read as under:

> "**3. Definitions and interpretation.-** (1) In this Act, unless the context otherwise requires,—
>
> (a)"agnate"—one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males;
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> xx xx xx
>
> (e) "full blood", "half blood" and "uterine blood"—
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> (i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but; by different wives;
>
> (ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;
>
> (f) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;
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> xx xx xx
>
> (j) "related" means related by legitimate kinship: Provided that illegitimate children shall be deemed to be related to their mothers and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be

construed accordingly.

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8. General rules of succession in the case of males.— The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) xxxxx"

17. The manner of inheritance under the Act, in the cases of adoption of married persons before the enactment of the Act, has come up for consideration before the Learned Single Bench of Bombay High Court in an unreported Judgment (***Dundyappa Laxman Karol*** v. ***Neelavva Chandrappa Jarali***)[6]. In the said case, the plaintiffs were children of Shivappa, from his wife Gouravva, born before the adoption of Shivappa. The claim was in the estate of Shivappa, who died on 17th March 1957 that is after the commencement of the Act. Gouravva also died on 6th August 1957. The stand of the defendant was that the plaintiffs being children of Shivappa before he went in adoption were not entitled to inherit the property of Gouravva, which she inherited from her husband. The learned Single Bench noticed that the adoption of Shivappa took place long before the enactment of Hindu Adoptions and Maintenance Act, 1956 and thus adoption would be governed by Hindu law as it

6 Second Appeal No. 556 of 1964 decided by Bombay High Court on 26th November, 1971.

existed prior to enactment. The Court held that an adopted child is to be deemed as a child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. One important result of the severance of the ties in the family of birth would be that the adoptee can no longer claim any right to succeed to the property of his natural father or mother or any of the relations in the family of birth. The question considered was whether the children born prior to date of adoption of Shivappa would be entitled to inherit the property on the death of Gouravva which took place after coming into force of the Act. It was held that the property inherited by a Hindu female howsoever acquired would be her absolute property. The Court held as under:

> "…Broadly speaking, the property possessed by a Hindu female after the coming into force of the said Act would no longer be her limited estate but will be regarded as her absolute property and the intestate succession to such property would be governed by sections 15 and 16 of the Hindu Succession Act.
>
> xx xx xx
>
> In my opinion, the fictional severance of ties with the natural family would not mean that her children would cease to be her children or can be considered to be not her children by means of a legal fiction. If by virtue of the definition in Section 3(j) even the illegitimate children of a Hindu female have been given a right to inherit her property, then it would not be permissible to say that her legitimate children should be excluded because they were born to her prior to the date of her husband's adoption. If, however, the Legislature had specifically provided for this, then effect must be given to such a provision and the wishes of the Legislature respected. Where, however, there is no such clear provision, such exclusion would appear to be against the plain language of the enactment and it would not be proper to come to any such conclusion."

18. It was found that the Privy Council decision reported as ***Tewari Raghuraj Chandra & Ors.*** v. ***Rani Subhadra Kunwar & Ors.***[7] does not afford any guidance to the question as to whether the legitimate children born prior to adoption would cease to be included in the category of her children.

19. The Division Bench of Bombay High Court in ***Kausalyabai W/o Jagdeorao*** v. ***Devkabai W/o Jaiwantrao Deshmukh***[8] while examining the right of a daughter born to an adoptee before his adoption, on the question as to whether she is entitled to inherit the estate of her father after the commencement of the Act, held as under:

> "33. Mr. Paranjpe fairly stated that he could not find any authority taking the view that such a daughter would cease to be the daughter of her father because of his adoption. As far as we are aware, there is no text of any Dharmashashtra, which lays down that a daughter ceases to be a daughter the moment her father is given in adoption.
> 34. The blood relation of the daughter and the father continued till the Hindu Succession Act came into force; and hence we are of the view that Mr. Deo's contention that the daughter, the defendant, was entitled to ⅝th share in the suit lands, having regard to the provisions contained in ss. 8 and 15(*b*) read with s. 10, R. 1, must be upheld. The decree must, therefore, follow in favour of the plaintiff; only to the extent of ⅜th share in the suit lands."

20. Similar view has been taken by the Division Bench of the Karnataka High Court in a judgment reported as ***Smt. Neelawwa*** v. ***Smt.***

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7 AIR 1928 PC 87
8 (1978) 16 Mh.L.J. 357

Shivawwa[9] wherein, the daughter of deceased Mallappa claimed half share in the suit property and the defendant claimed her right as a widow, being the step mother of the plaintiff. However, the defendant alleged that the plaintiff was born prior to the adoption. Mallappa was given in adoption in the year 1939 whereas the plaintiff was born in the year 1937. In this case, the Court held as under:

> "9.....In our view it means and includes moveable and immoveable property, whether separate or self acquired or an interest in a Mitakshara Coparcenary property provided he has left him surviving any of the female heir or a daughter's son mentioned in Class I of the Schedule to the Act. The fact that the deceased Mallappa had come to own and possess the suit land by reason of his adoption did not make any difference for the purpose of Section 8 of the Act as it was the property of Mallappa at the time of his death. Now we shall see whether the plaintiff cannot be considered to be an heir of her father merely because she was born before he was given in adoption. The expressions 'heir' and 'related' are also defined in Section 3(f) and (j) respectively of the Act. "Heir" means any person male or female who is entitled to succeed to the property of an intestate under the Act. "Related" means related by legitimate kinship. The proviso to this definition is not relevant for our purpose, because it is not in dispute that the plaintiff is the legitimate daughter of the deceased Mallappa born through his 1st wife. It is true, adoption had the effect of removing Mallappa from his natural family into the adoptive family, but did not and could not severe the tie of blood relationship between him and the plaintiff, or for that matter the members of his natural family. Therefore, the plaintiff irrespective of the adoption of her father continued to be the daughter of Mallappa. Thus the plaintiff being the daughter falls in the category of heirs specified in Class I of the Schedule to the Act....."

9 AIR 1989 Karnataka 45

21. In view of the provisions of the Act which do not make any distinction between the son born to a father prior or after adoption of his father and that there is no provision which bars the natural born son to inherit the property of his natural father, therefore, the High Court has rightly upheld the rights of the sons of Laxman. In fact, in the Full Bench judgment of Bombay High Court in ***Martand Jiwajee Patil***, it has been held that the natural father retains the right to give in adoption his son born before his own adoption. Therefore, if he has a right to give his son in adoption, such son has a right to inherit property by virtue of being an agnate. There was a full blood relationship between the three sons and the daughter who was born after adoption. All the children of Laxman are entitled to inherit the property of their natural father and mother in accordance with the provisions of the Act as succession has opened after the death of Laxman in 1987 and subsequently the mother in the year 1992.

22. In view thereof, we do not find any error in the judgment of the learned Single Bench of the Bombay High Court. Accordingly, the appeals are dismissed.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
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12 AIR 1939 Bom 305

illustrated by concrete instances:—

(a) The tie of blood between the adopted son and the members of his natural family is not severed. He cannot marry in his natural family within the prohibited degrees, nor can he adopt from his natural family a boy whom he could not have adopted if he had remained in that family [*Moottia Moodelly* v. *Uppon Vencata Charry*]. [(1858) Mad. S.D. 117.]

xx xx xx

(c) The adoptive father cannot give his adopted son in adoption (Sarkar's Hindu Law of Adoption, pages 281-282).

xx xx xx

These instances show that an adopted son is not civilly dead in his natural family nor reborn in his adoptive family.

It is no doubt true that by giving away his son in adoption the adopted father indirectly meddles with the *riktha* or property of his natural family, since the effect of that adoption will be to extinguish the son's interest in that property. But thereby the father himself gains no interest in the property. All that Manu's text says is that he should not take for himself the *gotra* and *riktha* of his natural family, and does not prohibit him from doing any act which may affect the property of his natural family. Thus, for instance, if he has a brother in his natural family, he is not prohibited from giving his son born after his own adoption, in adoption to that brother, although thereby the different interests in the property of his natural family are affected.

xx xx xx

In the absence of any express text or judicial decision depriving an adopted son of his right to give away in adoption his son born before his adoption, we do not think that any useful purpose will be served by imposing such a restriction upon him. The modern trend of decisions is to take a more liberal view and to interpret the texts from a practical point of view as far as possible. This is particularly noticeable in the

> decisions of this Court on several questions of adoption, such as the adoption of an only son, the adoption of a married boy, the adoption of a boy whose mother the adopting father could not have legally married, and the adoption by a widow without the express consent of her husband. We do not see why a similar liberal view should not be taken in this case, having regard to the interests of the boy to be given in adoption. With his father actually living, it would be a hardship on the boy to treat him as an orphan, merely because the father has gone in adoption. Usually when the father is adopted, his preborn sons are still minors, and in practice they go with their father to live with him, though legally they are held to have remained in the natural family of their father. Though the father has gone in adoption, the ties of affinity and love for his preborn sons cannot be severed, and he is the proper man to look after their education and welfare. If a guardian is to be appointed for them, he will naturally be consulted. Having their interest at heart, he is the best person to decide whether one of them should be given in adoption and what is conducive to their benefit. By giving one of his sons in adoption he himself gains no benefit, and he may be safely trusted to exercise his discretion rightly for the good of his son, though born before his own adoption."

10. The Court held that the paternity of the father cannot be shaken off even though he may leave the family, as, according to Hindu Shastras, "By no means can you make your father cease to be,". The Court held as under:

> "It may be that in ancient and primitive society the son was regarded as hardly better than his father's slave, and the prominent idea involved in an adoption was the transfer of dominion or *patria potestas* to the person adopting. But when the times changed and the status of the son was raised, the father's power to give in adoption came to be founded on a different conception. The text of Vasishtha quoted in Dattaka Mimansa (sec. V, pl. 31), which is said to afford the foundation of the Hindu law of adoption, and which I have already referred to, recognizes the power of the father and the mother to "give or sell or abandon" their son as he is

> "produced from their virile seed and uterine blood." This paternity of the father cannot be shaken off even though he may leave the family, as, according to the Hindu Shastras "By no means can you make your father cease to be," (Jaimini, Bibliotheca Indica Series, Volume I, p. 742). The same thing is expressed by Chandavarkar, J. in *Kalgavda Tavanappa* v. *Somappa Tamangavda* as follows (p. 690):—
>
> > "The mere fact that the father has gone into another family by adoption and eased to be of his son's *gotra* or family cannot unmake what he naturally is—the son's father."

11. Though, the aforesaid judgment was in the context of the right of an adoptee to give his son born prior to his adoption, but the fact that the adoptee will remain the father of the son was recognised way back in 1939. Thus, the Judgment in ***Kalgavda Tavanappa Patil*** has not been accepted even under the Hindu Law.

12. However, the situation has undergone a complete change with the enactment of the Act. The said Act overrides all 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. Section 4 of the Act reads as under:

> "**4. Overriding effect of Act. -** Save as otherwise expressly provided in this Act,—
>
> (a) 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;.
>
> (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions

contained in this Act."

13. Since the succession has opened after the death of Laxman on 10th January, 1987, therefore, succession has to be in accordance with the Act and not as per Hindu law as all text, rule or interpretation of Hindu law prior to commencement of the Act have ceased to have any effect unless expressly provided for in the said Act. This Court in a Judgment reported as ***Bhaiya Ramanuj Pratap Deo*** v. ***Lalu Maheshanuj Pratap Deo***[13] held that a bare perusal of Section 4 would indicate that any custom or usage as part of Hindu law in force will cease to have effect after the enforcement of Hindu Succession Act with respect to any matter for which provision is made in the Act.

14. The principle that the Act will be applicable on the date succession opens is well settled. Reference may be made to a judgment reported as ***Bhanwar Singh*** v. ***Puran & Ors.***[14], wherein this Court held that the Act brought about a sea of change in the matter of inheritance and succession amongst Hindus. Section 4 of the Act contains a non- obstante provision in terms whereof 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 the Act, ceased to have effect with respect to any matter for which provision is made therein save as otherwise expressly provided.

15. Since there is no provision of denying the rights of succession to the natural born son of an adoptee father, therefore, the

13 (1981) 4 SCC 613
14 (2008) 3 SCC 87

succession will be in terms of the provisions of the Act alone.

16. It may be noticed that the three sons and Kalindi are born to Laxman and his wife Padmavati. They are agnates and related by full blood in terms of Section 3(a) and 3(e) of the Act. As per the Schedule to the Act, the son and the daughter of a deceased Hindu male are class I heirs. Some of the relevant provisions of the Act read as under:

> "**3. Definitions and interpretation.-** (1) In this Act, unless the context otherwise requires,—
>
> (b) "agnate"—one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males;
>
> xx xx xx
>
> (e) "full blood", "half blood" and "uterine blood"—
>
> (i) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half blood when they are descended from a common ancestor but; by different wives;
>
> (ii) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;
>
> (f) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;
>
> xx xx xx
>
> (j) "related" means related by legitimate kinship: Provided that illegitimate children shall be deemed to be related to their mothers and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly.

xx xx xx

> 8. General rules of succession in the case of males.— The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—
>
> (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
>
> (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
>
> (c) xxxxx"

17. The manner of inheritance under the Act, in the cases of adoption of married persons before the enactment of the Act, has come up for consideration before the Learned Single Bench of Bombay High Court in an unreported Judgment (***Dundyappa Laxman Karol*** v. ***Neelavva Chandrappa Jarali***)[15]. In the said case, the plaintiffs were children of Shivappa, from his wife Gouravva, born before the adoption of Shivappa. The claim was in the estate of Shivappa, who died on 17th March 1957 that is after the commencement of the Act. Gouravva also died on 6th August 1957. The stand of the defendant was that the plaintiffs being children of Shivappa before he went in adoption were not entitled to inherit the property of Gouravva, which she inherited from her husband. The learned Single Bench noticed that the adoption of Shivappa took place long before the enactment of Hindu Adoptions and Maintenance Act, 1956 and thus adoption would be governed by Hindu law as it existed prior to enactment. The Court held that an adopted child is

15 Second Appeal No. 556 of 1964 decided by Bombay High Court on 26th November, 1971.

to be deemed as a child of his or her adoptive father or mother for all purposes with effect from the date of the adoption. One important result of the severance of the ties in the family of birth would be that the adoptee can no longer claim any right to succeed to the property of his natural father or mother or any of the relations in the family of birth. The question considered was whether the children born prior to date of adoption of Shivappa would be entitled to inherit the property on the death of Gouravva which took place after coming into force of the Act. It was held that the property inherited by a Hindu female howsoever acquired would be her absolute property. The Court held as under:

> "…Broadly speaking, the property possessed by a Hindu female after the coming into force of the said Act would no longer be her limited estate but will be regarded as her absolute property and the intestate succession to such property would be governed by sections 15 and 16 of the Hindu Succession Act.
>
> xx xx xx
>
> In my opinion, the fictional severance of ties with the natural family would not mean that her children would cease to be her children or can be considered to be not her children by means of a legal fiction. If by virtue of the definition in Section 3(j) even the illegitimate children of a Hindu female have been given a right to inherit her property, then it would not be permissible to say that her legitimate children should be excluded because they were born to her prior to the date of her husband's adoption. If, however, the Legislature had specifically provided for this, then effect must be given to such a provision and the wishes of the Legislature respected. Where, however, there is no such clear provision, such exclusion would appear to be against the plain language of the enactment and it would not be proper to come to any such conclusion."

18. It was found that the Privy Council decision reported as ***Tewari Raghuraj Chandra & Ors.*** v. ***Rani Subhadra Kunwar & Ors.***[16] does not afford any guidance to the question as to whether the legitimate children born prior to adoption would cease to be included in the category of her children.

19. The Division Bench of Bombay High Court in ***Kausalyabai W/o Jagdeorao*** v. ***Devkabai W/o Jaiwantrao Deshmukh***[17] while examining the right of a daughter born to an adoptee before his adoption, on the question as to whether she is entitled to inherit the estate of her father after the commencement of the Act, held as under:

> "33. Mr. Paranjpe fairly stated that he could not find any authority taking the view that such a daughter would cease to be the daughter of her father because of his adoption. As far as we are aware, there is no text of any Dharmashashtra, which lays down that a daughter ceases to be a daughter the moment her father is given in adoption.
> 34. The blood relation of the daughter and the father continued till the Hindu Succession Act came into force; and hence we are of the view that Mr. Deo's contention that the daughter, the defendant, was entitled to ⅝th share in the suit lands, having regard to the provisions contained in ss. 8 and 15(*b*) read with s. 10, R. 1, must be upheld. The decree must, therefore, follow in favour of the plaintiff; only to the extent of ⅜th share in the suit lands."

20. Similar view has been taken by the Division Bench of the Karnataka High Court in a judgment reported as ***Smt. Neelawwa*** v. ***Smt. Shivawwa***[18] wherein, the daughter of deceased Mallappa

16 AIR 1928 PC 87
17 (1978) 16 Mh.L.J. 357
18 AIR 1989 Karnataka 45

claimed half share in the suit property and the defendant claimed her right as a widow, being the step mother of the plaintiff. However, the defendant alleged that the plaintiff was born prior to the adoption. Mallappa was given in adoption in the year 1939 whereas the plaintiff was born in the year 1937. In this case, the Court held as under:

> "9……In our view it means and includes moveable and immoveable property, whether separate or self acquired or an interest in a Mitakshara Coparcenary property provided he has left him surviving any of the female heir or a daughter's son mentioned in Class I of the Schedule to the Act. The fact that the deceased Mallappa had come to own and possess the suit land by reason of his adoption did not make any difference for the purpose of Section 8 of the Act as it was the property of Mallappa at the time of his death. Now we shall see whether the plaintiff cannot be considered to be an heir of her father merely because she was born before he was given in adoption. The expressions 'heir' and 'related' are also defined in Section 3(f) and (j) respectively of the Act. "Heir" means any person male or female who is entitled to succeed to the property of an intestate under the Act. "Related" means related by legitimate kinship. The proviso to this definition is not relevant for our purpose, because it is not in dispute that the plaintiff is the legitimate daughter of the deceased Mallappa born through his 1st wife. It is true, adoption had the effect of removing Mallappa from his natural family into the adoptive family, but did not and could not severe the tie of blood relationship between him and the plaintiff, or for that matter the members of his natural family. Therefore, the plaintiff irrespective of the adoption of her father continued to be the daughter of Mallappa. Thus the plaintiff being the daughter falls in the category of heirs specified in Class I of the Schedule to the Act……."

21. In view of the provisions of the Act which do not make any distinction between the son born to a father prior or after adoption

of his father and that there is no provision which bars the natural born son to inherit the property of his natural father, therefore, the High Court has rightly upheld the rights of the sons of Laxman. In fact, in the Full Bench judgment of Bombay High Court in ***Martand Jiwajee Patil***, it has been held that the natural father retains the right to give in adoption his son born before his own adoption. Therefore, if he has a right to give his son in adoption, such son has a right to inherit property by virtue of being an agnate. There was a full blood relationship between the three sons and the daughter who was born after adoption. All the children of Laxman are entitled to inherit the property of their natural father and mother in accordance with the provisions of the Act as succession has opened after the death of Laxman in 1987 and subsequently the mother in the year 1992.

22. In view thereof, we do not find any error in the judgment of the learned Single Bench of the Bombay High Court. Accordingly, the appeals are dismissed.

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

NEW DELHI;
FEBRUARY 07, 2020.