Privy Council Appeal No. 17 of 1946

Neelangouda, adoptive father,
Limbangouda Patil - - - - - - - - *Appellant*

v.

Ujjangouda, adoptive father,
Shankargouda Patil and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 20TH APRIL, 1948

Present at the Hearing:

LORD SIMONDS
LORD NORMAND
LORD MACDERMOTT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal by the plaintiff from a judgment and decree of the High Court of Judicature at Bombay dated 12th November, 1942, affirming a judgment and decree of the Subordinate Judge at Dharwar dated 26th June, 1940.

The appeal arises out of a suit brought by the appellant for a declaration inter alia that he is the validly adopted son of one Limbangouda deceased, and has thereby acquired the right to recover possession of one half share in the suit properties which are in the possession of defendant-respondent No. 1. The factum of adoption though raised in the issues was abandoned at an early stage, and does not arise for decision.

Only two questions remain for decision before the Board, these being:—

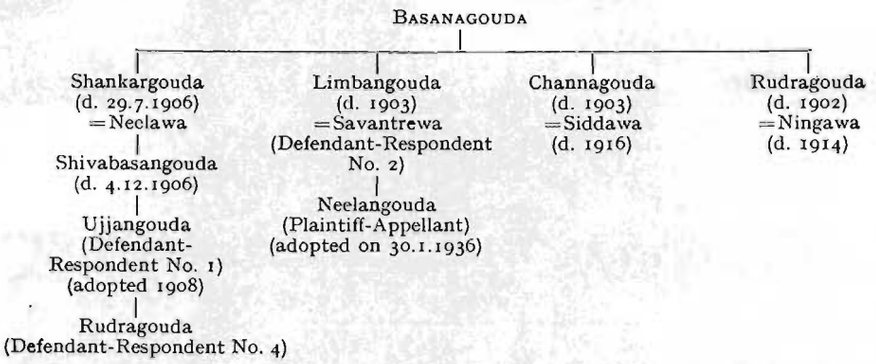
(1) Has the appellant by virtue of his adoption acquired the right to recover possession of one half share in the suit properties?

(2) Had defendant-respondent No. 2, the adoptive mother of the appellant, lost her right to adopt to her husband in view of the maintenance deed executed in her favour by defendant-respondent No. 1?

Question No. 1, was answered by the learned Judges of the Courts in India against the appellant on the strength of the Full Bench decision of the Bombay High Court in *Balu Sakharam* v. *Lahoo Sambhaji* [1937] Bom 508, and of another decision in *Rudrappa* v. *Mallappa* (1939 41 Bom. L.R. 1277) which followed it. The decision of the Full Bench has since been overruled by the Privy Council in *Anant Bhikappa Patil (Minor)* v. *Shankar Ramchandra Patil* (1942-3 L.R. 70 I.A. p. 232).

Question No 2, was answered in favour of the appellant by the Trial Court, but was not considered by the High Court.

The facts of the case may be stated briefly. The relationship of the parties to the suit appears from the following pedigree:—



Shankargouda, Limbangouda, Channagouda and Rudragouda who were four brothers formed members of an undivided Hindu family governed by the Mitakshara School of Hindu law. Of these, Rudragouda died in 1902, and Channagouda died in 1903, leaving behind them their widows who died issueless in 1914 and 1916 respectively. Limbangouda died in 1903, leaving behind him his widow Savantrewa (defendant-respondent No. 2). Shankargouda died on 29th July, 1906, leaving behind him his infant son, Shivabasangouda and his widow Neelawa. Shivabasangouda died on the 4th December, 1906, leaving behind him his mother, Neelawa, who succeeded to the inheritance, and she, in 1908, adopted Ujjangouda (defendant-respondent No. 1), who is in possession of the suit properties. Rudragouda (defendant-respondent No. 4) is his minor son. C. H. Patil (defendant-respondent No. 3), is the father-in-law of Ujjangouda, and is added as a party as the alienee of the suit property shewn in schedule " C ".

In February, 1908, defendant-respondent No. 1 executed in favour of the appellant's adoptive mother (defendant-respondent No. 2) a maintenance deed, Exhibit 145.

On 30th January, 1936, the widow of Limbangouda (Savantrewa) adopted the appellant to her deceased husband. As stated before, the factum of this adoption is not now in question.

Defendant-respondent No. 1 pleaded that the adoption would not confer any right to the appellant to the estate in his possession, and that the right of defendant-respondent No. 2 to adopt, was extinguished in view of the maintenance deed.

On behalf of the appellant, it is contended that since the Full Bench decision of the Bombay High Court on which the decision in this case was based has been reversed by the Privy Council, he is entitled to succeed in this appeal. Whether this is so, or not, is the first question for the Board to decide.

It will appear from the facts stated above, that at the time of the adoption of Ujjangouda (defendant-respondent No. 1) there were only two living members of the family, these being the two widows of the two deceased coparceners, viz.: Neelawa, adoptive mother of defendant-respondent No. 1 and the appellant's adoptive mother, Savantrewa. Neelawa had succeeded to the estate of the last surviving coparcener, her son. It was after the property thus became vested in Neelawa, that the appellant was adopted by his adoptive mother, Savantrewa. The question of an adoption by a widow after the death of the last surviving coparcener came up for decision before a Full Bench of three learned Judges in the Bombay High Court in *Balu Sakharam* v. *Lahoo Sambhaji* (*supra*). In that decision it was held by a majority of the learned Judges that the adoption in such cases was valid for spiritual purposes only, and could not affect the property vested in the next reversioner. In that case, the estate of the last surviving coparcener had upon the remarriage of his

widow passed to his sister, and the contest was between a purchaser from the latter, and a son adopted by a widow of another deceased coparcener before the widow of the last surviving coparcener had remarried. One of the propositions laid down in that case was that,

> " Where the adoption takes place after the termination of the coparcenary by the death, actually or fictionally, of the last surviving coparcener, the adoption by a widow of a pre-deceased coparcener has not the effect of reviving the coparcenary, and does not divest property from the heir of the last surviving coparcener (other than the widow) or those claiming through him or her ".

Commenting on this, Sir George Rankin delivering the judgment of the Board in *Anant Bhikappa Patil (Minor)* v. *Shankar Ramchandra Patil (supra)* observed as follows:—

> " If, then, the appellant's adoption was valid, can it be held that it does not take effect on the property which had belonged to the joint family because there was no coparcenary in existence at the date of the adoption? On this point their Lordships, differing from the majority decision in *Balu Sakharam's* case (*supra*), hold that the adoption being valid cannot be refused effect. That the property had vested in the meantime in the heir of Keshav is not of itself a reason, on the principles laid down in *Amarendra's* case, (L.R. 60 I.A. 242) why it should not divest and pass to the appellant."

For the purpose of the present appeal it is not necessary to refer further to the detailed reasons given in the judgment of the Board.

In their Lordships' view the present case falls within the principles of the decision by the Board in *Anant Bhikappa Patil (Minor)* v. *Shankar Ramchandra Patil (supra)*. The learned Counsel for the respondents after some argument expressed his inability—in their Lordships' opinion rightly —to distinguish the decision of the Board on the facts from the present case. Their Lordships therefore hold, differing from the Courts below, that the appellant is entitled to claim a half share in the suit properties.

The next question is whether the appellant's adoptive mother has lost her right to adopt in view of the maintenance deed executed by defendant-respondent No. 1, in her favour. The deed is styled Potgi-patra (Maintenance Deed). It is Exhibit 145 in the suit. It runs as follows:—

> " On . . . 10th day of February 1908 A.D. maintenance deed is passed in favour of Sawantrewwa, widow of Nimbangouda Patil, by Ujjangouda . . . as follows:—" You are the wife of the younger brother of my adoptive father, Shankargouda. You have no issue. Your husband Nimbangouda died before my father, Shankargouda died. Up till now, we have been living together in a joint family. As you do not agree now to live in union, the immoveable properties of my ownership and in my management situate at the village of Haveri, . . . are given to you for your maintenance during your life-time."
>
> . . . . . .
>
> I have given properties as above for your maintenance during your life-time and have this day handed over possession thereof to you. You should live in the said house and maintain yourself from the income derived from the said lands. As these (lands) have been given to you only for your maintenance during your life-time, you are not entitled to alienate the said properties in any manner whatever, nor am I entitled to do so. After your death, I alone shall be the absolute owner thereof. I myself shall pay the Government assessment of the said lands and the municipal taxes of the house. Deed of maintenance is duly given in writing as above of my free will. . . ."

The deed is called a maintenance deed, pure and simple. There is nothing in it to show that it is anything more than a mere arrangement by which provision has been made for the maintenance of the appellant's

mother by Ujjangouda, the head of the family. The appellant's mother as a widow of the undivided Hinda family is entitled to be maintained from the family properties. The deed says that as she does not agree " to live in union " with the other members of the family, the properties mentioned in it are allotted to her for her maintenance during her life-time. The properties are not given to her absolutely; she is not entitled to alienate them in any manner; after her death they will revert to the family.

Their Lordships are unable to find in the document any reference to the appellant's mother's right to make an adoption, or abandonment by her of such a right. It was stated by the learned Junior Counsel for the respondents that the expression " as you do not agree now to live in union " impliedly shows that she has left the family, giving up all her rights, including the right to adopt, for the properties stated expressly as given to her for her maintenance. Their Lordships are unable to draw this inference from the deed. It is not stated that the translation of the document is incorrect. If there was any implied reference to abandonment by the appellant's mother of her right to adopt indicated in the Kannada language in which the document is written, the learned Subordinate Judge who knew the language, would certainly have referred to it. The question whether it is open to the appellant's mother to give up by agreement her right to adopt, does not arise for decision in this case, as the document in question does not refer to abandonment of any such right. Agreeing with the Subordinate Judge, their Lordships hold that the appellant's adoptive mother's right to adopt was not extinguished by Exhibit 145.

For the above reasons, the decrees of the Courts in India should be set aside and the appeal should be allowed with costs throughout, which should be paid by respondents 1, 3 and 4. Their Lordships will humbly advise His Majesty accordingly.

(59914) Wt. 8062—31 180 5/48 D.L G. 338

In the Privy Council

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LIMBANGOUDA PATIL

v.

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SHANKARGOUDA PATIL AND OTHERS

DELIVERED BY SIR MADHAVAN NAIR

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