

Mst. Pratapi and ors. Vs. Balkishan and anr.

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Court : Madhya Pradesh

Decided On : Feb-09-1987

Reported in : AIR1988MP125

Judge : T.N. Singh, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 4, 6, 9, 10, 11 and 16

Appeal No. : Second Appeal No. 190 of 1970

Appellant : Mst. Pratapi and ors.

Respondent : Balkishan and anr.

Advocate for Def. : Shri. Arun Mishra

Disposition : Appeal dismissed

Judgement :

T.N. Singh, J.

1. This is defendant's appeal, who has lost in two Courts below. I have heard extensively counsel for both sides in this matter because I wanted to be sure both on facts and on law to consider appellants' grievance that Courts below have erroneously decreed the suit.

2. It is not disputed that the suit land belonged originally to one Dulichand, who died in 1949. His widow Shyamkunwar and two daughters, Parvatibai and Rambati bai, survived him. It has come in evidence that Shyamkunwar died in the year 1959 and during her lifetime she adopted Parvatibai's son Balkishan, the plaintiff-respondent. Indeed, the transaction is evidenced by a registered deed dated 31-3-1958, proved as Ex.P. 1 in the suit. The position in law is also that the Hindu Succession Act was made applicable in Madhya Pradesh in the year 1961 and any devolution of interest in agricultural land prior to 1961, as in the instant case, could take place only in accordance with the provisions of Revenue Laws such as Madhya Bharat Land Revenue and Tenancy Act and M. P. Land Revenue Code.

3. On these facts, therefore, the sole question to be considered is, whether the Courts below rightly held that adoption by Shyamkunwar of the plaintiff in 1958 was a valid adoption and by that adoption after Shyamkunwar's death all right, title and interest in the suit land devolved on the plaintiff.

4. Shri Arun Mishra, learned counsel for the defendant, has challenged the conclusions of the Court below on two grounds. It is his contention that in the registered deed, evidencing the adoption, there is no mention of the fact that the adoption was made with the consent of the natural mother of Balkishan and there was no independent evidence also in that regard and that the Court below, ignoring the provisions of Section 9(3) of the [Hindu Adoptions and Maintenance Act, 1956](#) (for short, the Act), erroneously held valid the adoption of Balkishan. His second contention is that there was variance in evidence as to actual factum of adoption in that oral evidence was to the effect that adoption took place earlier while the registered deed was to the effect that it was a contemporaneous record of the event.

5. However, the twin contentions advanced by Shri Arun Mishra must fail, as rightly submitted by respondents' counsel, Shri H.D. Gupta, because the main burden of the contention is statutorily rebutted effectively, by Section 16 of the Act. I have no hesitation at all to say that the presumption contemplated under Section 16 has a very wide sweep in that it mandates the Court to presume validity of an adoption in all respects, envisaging that the adoption shall be deemed to have

been 'made in compliance with the provisions of this Act'. The provision evidently places a burden on one who challenges adoption and the burden is not only heavy but is inexorable in so far as it concerns the contender. The only question to be considered by me is whether in the instant case the defendant has at all discharged the burden statutorily placed on him.

6. The defendants have not examined the natural mother of Balkishan to prove that she had not given her consent to the adoption. The next answer to the second part of counsel's contention is provided by Section 16 also in that the presumption contemplated thereunder excludes all evidence to the contrary affecting the factum of the adoption. Indeed, the statutory presumption attaches ipse jure to the factum of adoption and the question when, in point of time, the adoption actually took place would not be germane to the validity of the adoption. Section 16 explicitly envisages that the document has 'to record an adoption made' and that too 'in compliance with the provisions of this Act'. There can be no doubt, therefore, that unless the oral evidence is to the effect that adoption had taken place prior to the enforcement of the Act any variance in evidence (the oral evidence not supporting the date and time of adoption recorded in the registered document) would not affect validity of the adoption. The plea of variance between oral and documentary evidence in such a case, in my opinion, is also effectively and forcefully repelled by Section 16 itself. It is only when a registered document purporting to 'record' an adoption suffers any infirmity in terms of Section 16 itself that the factum and validity of such an adoption can be challenged. The language as also the purport of Section 16 and indeed of the Act itself supports this view.

7. What I would further like to add is that registration and production of 'registered' instrument in proof of adoption is meant to dispense with other modes of proof of factum of adoption and that it is also meant to preempt frivolous challenges to the validity of the adoption. Of the legislative intent in this regard the language of Section 16 is adequately vocal as is manifested in the use of the words 'in compliance with the provisions of this Act'. True it is that when a document is not 'registered' in accordance with law, because Section 16 will not operate it will be open in such a case to the party contesting adoption to show that there was infringement of any of the relevant statutory provision in respect of the process of

'registration'. It is equally true that the statutory presumption contemplated under Section 16 is evidently nothing more than a 'presumption' of existence of facts as respects which the presumption is contemplated and are mentioned in Section 16 and contrary evidence would be admissible and can be given. Indeed, it can be 'disproved' that the adoption had been made 'in compliance with the provisions of the Act' and also that the document was not signed by the executants and that there was factually no giving and taking of the child in respect of whom the document purported to evidence as adoption.

8. However, Shri Arun Mishra has come with a new plea in this Court, not taken in two Courts below. Being a pure question of law I have entertained the plea and I have heard him on the contention agitated. Counsel has placed reliance on a single Bench decision of this Court in Tilokchand. 1979 MPLJ 375 which exercise, according to me, is evidently misconceived. In that case, what was in issue was an adoption made in 1950-51, prior to the enforcement of the Act. There could, evidently, be no scope for consideration by the Court of the provisions of the Act and indeed such a consideration is also not manifested in the decision which was expressly rendered on the pre-existing law. Because Apex Court's decision in Abhiraj Kuer, AIR 1962 SC 351 was considered in that case, Shri Arun Mishra has pressed in service that decision also, placing reliance on what appears in para 12 of the report. However, according to me, this enterprise would also not avail learned counsel. True it is that the decision of their Lordships is replete with discussion of the pre-existing law and it deals also with the question as to who can be taken in adoption, but that question cannot arise in the instant case. Relying on Abhiraj Kuer (supra), Shri Arun Mishra has submitted that Balkishan, the plaintiff, could not have been adopted by Shyamkunwar who was his maternal grandmother because there could not be a valid union of marriage between his mother Parvatibai (who was her daughter and also daughter of her husband) and deceased Dulichand. In other words, marriage between grandfather and granddaughter being incestuous and forbidden by law the adoption must be deemed to be invalid being barred by Shastric law the Viruddha Sambandha Rule.

9. However, the contention being raised relying on the decision, in the context also of Section 4(b) of the Act, it is necessary to say a few words also in that regard. To

manifest the fallacy of the argument the best I can do is to quote the provision in extenso : --

'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 apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.'

10. The purport of Clause (b) deals merely with a case of casus omissus in the codified Hindu Law, and does nothing more. What is contemplated under clause (b), according to me, is only that it saves other general preexisting law (other than pre-existing Hindu Law), only to the extent as it is not inconsistent with any of the provisions of the Act. On the other hand, what is contemplated clearly and explicitly under Clause (a) is that the express provisions of the Act in the fields covered, have an 'overriding effect' on the pre-existing Hindu Law. Indeed, Section 4 as a whole makes invalid and ineffective any provision of any pre-existing law (including Shastric Law) which is in conflict with any of the express provision of the Act operating in the same field. Section 10 of the Act makes express provision to deal with the question of the person who may be validly adopted while Section 6 postulates the requisites of a valid adoption and the residuary provision. Section 11 exhaustively contemplates such other conditions of a valid adoption as are not mentioned in Section 6. I have, therefore, no hesitation to take the view that the Act having made expressly the provision in Section 10 regarding persons, who 'shall be capable of being taken in adoption', the pre-existing law including the Shastric Law, in respect of the same matter, must be deemed to have ceased to be valid in virtue of Section 4 of the Act. Indeed, I do not read in the provisions of Sections 6, 10 and 11 of the Act any legal bar against adoption by a maternal grandfather or grandmother of his or her grandson. Therefore, the contention that plaintiff Balkishan could not be validly adopted in 1958 by his maternal grandmother, Shyamkunwar, must fail.

11. Because reliance was placed by Shri Arun Mishra on the decision in Priyanath v. Indumati, AIR 1971 Orissa 211 it is indeed necessary to mention merely the fact that in that case as well the adoption in issue being of 1950 reliance on the decision would be of no avail. However, I may still say that the view I have taken finds support in a Bench decision of this Court in the case of Naresh v. Ichrajbai, 1979 MPLJ 591 to which my attention was drawn by Shri H.D. Gupta. Although the purport of Section 4 of the Act did not come up for consideration of this court in that case it was still generally observed in para 9 of the report that the entire field covered by uncodified Hindu Law regarding adoption is now covered by the Act.

12. For the reasons aforesaid I have no hesitation to say that there is no merit in this appeal. Accordingly, it is dismissed. But there shall be no order as to costs.

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