

**Sheshrao and ors. Vs. Sheshrao and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/504114](http://sooperkanoon.com/504114)

**Court :** Madhya Pradesh

**Decided On :** Mar-21-1957

**Reported in :** AIR1958MP411

**Judge :** B.K. Choudhuri, J.

**Acts :** Hindu Law

**Appeal No. :** Second Appeal No. 885 of 1951

**Appellant :** Sheshrao and ors.

**Respondent :** Sheshrao and ors.

**Advocate for Def. :** Y.S. Dharmadhikari, Adv.

**Advocate for Pet/Ap. :** P.K. Tare, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**B.K. Choudhuri, J.**

1. This appeal is filed by the plaintiffs against a decree passed by the Additional District Judge, Betul in Civil Appeal No. 6-A of 1951 reversing the decree of the trial court in civil suit No. 13-A of 1949 in the court of the Civil Judge Class II Multai.

2. The suit giving rise to this appeal was filed by the appellants for possession of A house measuring 100 cubits by 60 cubits at Multai. The case of the plaintiffs is that this house was the property of one Bapuji who died issueless on 2-4-1917. His widow Radhabai died on 18-12-36. Plaintiff No. 1 is the son of Diwakarrao, brother of Bapuji. He claimed to have been adopted on 6-1-1937 by Sumitra Bai, widow of Diwakarrao. After Bapuji's death his widow remained in possession of his estate during her life time.

After her death plaintiff No. 1 as nearest successor claimed to be the owner of the house in suit. The defendants are alleged to be in possession of the house in suit without any right and in spite of a demand made by plaintiff No. 1 they refused to vacate. Plaintiffs 2 and 3 have been joined in this suit as sagotras of Bapuji and, if on account of any reason plaintiff No. 1's adoption is declared to be illegal then the plaintiffs as the nearest sagotra sapindas within seven degrees of Bapuji are entitled to get possession of the house.

3. The defendants merely admitted that they were in possession of the house and disputed all other averments made by the plaintiffs. According to them Bapuji and Diwakarrao were governed by the Benares School of Hindu law and the adoption, if any, was invalid because Diwakarrao gave no authority in that behalf to his widow. The defendants claimed that they and their father, Tuka Ram, were in adverse possession of the house and had thereby perfected their title to it. They also alleged that in 1925 Radhabai by means of a Samkalp on the bank of Tapti on the Kartik Purnima had gifted the house to Tuka Ram, a very small portion of the property in her possession. They thus denied the plaintiffs' claim.

3a. The trial court found that Bapuji and Diwakarrao were Malvi brahmins governed by the Benares School of Hindu law and though Sumitra Bai took plaintiff No. 1 in adoption the same was invalid and ineffective for the reason that the plaintiffs failed to prove that Diwakarrao had given authority to his widow to adopt.

4. The plea of adverse possession and gift raised by defendants were negatived by the trial court. The plaintiffs' claim for possession was decreed on the ground that they were reversioners and entitled to inherit Bapuji on the death of his widow.

5. The defendants went up in appeal against the decree of the trial court. The Additional District Judge concurred with the finding of the trial court that the plaintiffs are Malvi Brahmins and are governed by the Benares School of Hindu Law and that the adoption of plaintiff No. 1 was invalid for want of authority to adopt. The lower appellate court also held that there was no gift or the property in suit by Radha Bai in favour of Tuka Ram. The lower appellate court also though concurring with the finding of the trial court that the plaintiffs 2 and 3 are sapindas of Bapuji within 7 degrees dismissed the plaintiffs' suit on the ground that they failed to discharge the burden that lay on them of proving that there were no nearer reversioners. The plaintiffs have therefore filed a second appeal.

6. It was contended on behalf of the appellants that they were governed by the Bombay School of Hindu Law and as no authority to adopt is necessary under the said School the adoption of plaintiff No. 1 was valid and he was entitled to succeed. It was further urged that when the plaintiffs have proved that they were the reversioners the burden lay on the defendants to prove that there were nearer reversioners than the plaintiffs. The defendants have failed to discharge this burden. Nor did they allege that there were nearer reversioners.

They have resisted the plaintiffs' claim only on the ground of adverse possession and in the alternative on a gift which has been held by both the courts as not proved. Under the circumstances plaintiffs' claim ought to be decreed. As against this it was contended on behalf of the respondents that plaintiffs must establish that they are the nearest reversioners and as they failed to establish it their suit was rightly dismissed. Reliance was placed on *Kunwar Rani Jagannath v. Raja Bhawani Singh*, AIR 1955 Madh B 99 (A) in which it was held as follows:

'Plaintiff must establish that he is next immediate reversioner -- Remoter reversioner can bring such a suit if those nearer in succession are in collusion with the widow or have precluded themselves from interfering'.

7. It is not disputed that the plaintiffs and the defendants are Malvi Brahmins. Laxmi Kant (P.W. 1) and Visheshar Rao (P.W. 5) were unable to say from which part of India their predecessors came to reside at Multai. Laxmi Kant (P.W. 1) calls himself a Malvi Brahmin because he was resident of Madhya Pradesh.

Yashwantrao (P.W. 2), Laxmanrao (P.W. 3), Sheshrao s/o. Tukaram (D.W. 1). Dewakarrao (D.W. 2) and Bhaorao (D.W. 3) are all agreed that they are Malvi Brahmins and follow Marathi customs, worship Mahalaxmi and also speak in Marathi language.

But they could not give a single instance about the marriage relations between the Malvis and Maharashtra Brahmins. Sheshrao defendant No. 1 as D.W. 1 stated that he. is a Malvi Brahmin like the plaintiffs. They all came from Malva and their Tirath places are Kashi, Gaya etc. Their God is Shankarji. He denied that they were Maharashtra Brahmins. Dewakarrao (D.W. 2) and Bhaorao (D.W. 3) both stated that their ancestors migrated from Malwa and Ujjain.

8. At page 64 of the Central Provinces District Gazetteer, Betul, Russel has made the following observations :

'The most ancient families belong to the Malvi subcaste and came to the District about the 13th century, being invited by the Raja of Kherda to perform sacrifices for him. The Deshmukh family of Barkhed in the Multai tahsil is the most important of these and the local head of the Malvi Brahmins. Many of these Brahmins are patwaris and Jqshis or village priests and astrologers, and they also do cultivation.

Their dress and style of living resemble those of Maratha Brahmans, though they are generally supposed, as their home is north of Nerbudda, to belong to the Panch Gaur or five northern divisions; and Maratha Brahm'ans will taks food cooked without water from them, though they do not admit that achara or mode of living of the Malvi Brahmans is quite orthodox, and the latter arc sometimes said to have been descended from the union of a Brahman with, a Mallah or Kewat woman. The Malvi Brahmans intermarry with members of their own subcaste in the Central Provinces and Berar, but not in Malwa.'

The description of Malvi Brahmins is also found atpage 65 of Chhindwara District Gazetteer. Thedescription given therein applies to the members ofthe community to which the parties belong. In viewof the evidence on record and the observationsmade by Russel I hold that Malvi Brahmins are notMaharashtra Brahmins and that they are governedby the Benares School of Hindu Law.

9. There is concurrent finding of fact that the plaintiffs 2 and 3 are sapindas of Bapuji within 7 degrees. In Pandu v. Abdul Kadar, AIR 1922 Nag 109 (B), Pradeaux A.J.C relying on the decision in Rama Row v. Kuttiva Goundan, ILR 40 Mad 654 : (AIR 1917 Mad 872) (C) held as follows :

'It is incumbent on a plaintiff seeking to succeed to property as a reversioner affirmatively to establish the particular relationship which he puts forward and he is bound to satisfy the Court that to the best of his knowledge there are no nearer heirs, but he cannot be expected to do any thing more and it is for those, who claim that their kinship is nearer, to prove that relationship.'

10. The view taken by the lower appellate Court that the plaintiffs should have also proved that they were preferentially entitled to the property is not applicable to the facts of the present case.

The decision in AIR 1955 Madh-B 99 (A) does not apply to the facts here. In the instant case the plaintiffs having proved that they are sapindas of Bapuji within 7 degrees must be given the relief of possession of the property in suit vis a vis the defendants who do not claim to be nearer heirs, nor have they pleaded that there are any such heirs, they resisted the plaintiffs' claim only on the ground of adverse possession and a gift both of which have been negated by both the courts below.

11. In result the appeal succeeds. The decree of the lower appellate court is set aside and that of the trial court is restored. The defendants shall bear the costs throughout.