

Basangouda Vs. Yellappagouda

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Court : Privy Council

Decided On : Nov-09-1949

Reported in : AIR1950PC24

Judge : Lord Simonds, Sir John Beaumont & Sir Lionel Leach

Appeal No. : Privy Council Appeal No. 11 of 1948 (From Bombay)

Appellant : Basangouda

Respondent : Yellappagouda

Advocate for Pet/Ap. : R.A. Parikh, for Appellant; J. Chinna Durai and B.K. Muleherjea, for Respondent. Solicitors for Appellant, Cassavetti Coustas and Co.; Solicitors for Respondent, Hy. S.L. Polak and Co.

Judgement :

LORD SIMONDS:

This appeal which is brought from a judgment and decree, dated 31st March 1938, of the High Court of Judicature at Bombay, raises a question which has become increasingly familiar to their Lordships in recent years; it is whether the appellant is entitled to a share in certain joint family property, in respect of which he claims to be entitled to a half share with the respondent.

2. The facts are not now in dispute. One, Jammangouda, had three sons, Danappagouda, Doddakallangouda and Sannakallangouda. The first of these sons, Danappagouda, who died in 1872 had a son, Shiddangouda, who died in 1878, having married one Neelavva. She adopted to her late husband Basangouda, who was the plaintiff in the suit and is the present appellant.

3. The second son, Doddakallangouda, died in 1899, and he drops out of the picture altogether.

4. The third son, Sannakallangouda, died in 1898. He had a son, Shankargouda, who died in 1918, having married one, Yamnavva. She adopted in the year 1922 one, Yullappagouda, who is the respondent in this appeal.

5. The single question which has been debated before their Lordships is whether Basangouda, who, as has, been said, was adopted in 1933, is entitled to a share of the joint family property with Yellappagouda, who was adopted in 1922.

6. A question was raised in the course of the proceedings as to the validity of the adoption of the appellant, but that question is not before their Lordships, for it has been conceded by the respondent that the adoption was valid.

7. The question which has been stated is, for their Lordships, determined by the recent decision in the case of *Anant Bhikappa Patil v. Shankar Ramchandra Patil*, reported in 70 IA 232 : (AIR (30) 1943 PC 196). It is right to state that when this case came before the Subordinate Judge of Dharwar, he decided it in favour of the present appellant upon the authority of certain cases which had then been decided in India. But when the matter came before the High Court the learned Judges of that Court rightly felt themselves bound by a later decision of the High Court of Bombay in the case of *Balu Sakharam v. Lahoo Sambhaji* reported in ILR (1937) Bom 508 : (AIR (24) 1937 Bom 279 FB), and reversed the order of the Subordinate Judge. But since that case was decided Anant's case, (70 IA 232 : AIR (80) 1943 PC 196) has been decided by their Lord-ships, and, as has been said, it is indistinguishable from the present case and must govern it.

8. Accordingly the appellant is entitled to succeed upon this appeal, the order of the learned Subordinate Judge must be restored, and that of the High Court of Bombay set aside, and their Lordships will humbly advise His Majesty accordingly.

9. The appeal to His Majesty in Council is brought in forma pauperis and the appellant will get the appropriate costs of his appeal. The respondent must pay the appellant's costs in the High Court.

Appeal allowed.

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