

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 3rd day of August, 1998

BEFORE

THE HON'BLE MR. JUSTICE T.N. VALLINAYAGAM

R.S.A.NO: 105 OF 1995

BETWEEN:

1. Smt. Neelavva, W/o.
Sanaganabasappa Jiral,
Age: Major, Occ: House-
hold work, Resident of
Bevoor, Tq. Bagalkot,
Bijapur District.
 2. Smt. Maliavva, W/o.
Channabasappa,
Turendagi, Age: Major,
Occ: Household work,
Residing of Bevoor,
Taluk Bagalkot,
Bijapur District.
- : APPELLANTS

(By Sri. Nagaraj, D. Advocate)

AND:

Sri. Maliappa,
S/o. Sanganabasappa Jiral,
Age: Major, Occ: Agricul-
turst, Resident of Bevoor,
Taluk Bagalkot,
Bijapur District.

: RESPONDENT

(By Sri. D.S. Hosmath, Advocate)

This Regular Second Appeal filed U/S. 100 of
CPC against the Judgment and decree dated.11-11-1994,
passed by the 1st Additional Civil Judge, Bagalkot,
in R.A.NO: 40/1994, partly confirming the Judgment
and decree dated.18-2-1994, passed by the 1st
Additional Munsiff, Bagalkot, in O.S.NO: 307/1990.

R.S.A.NO: 105/1995

TNVJ:

3-8-1998

This second appeal, having been reserved for Judgment, coming on for pronouncement of Judgment this day, the Court delivered the following:-

J U D G M E N T

The defendants are appellants. The suit by way of declaration that the plaintiff is the adopted son is entitled to 3/4th share as against the widow and daughter of the adopted father was decreed granting $\frac{1}{2}$ share to the plaintiff by the first appellate Court. The widow challenges the decree before this Court.

2. The claim of the plaintiff was that he was adopted son 4-2-1977. There is an agreement between the adopted parents and natural parents which created the life interest of the adopted son of the plaintiff in the suit properties. It also provided with half share of the suit house should go to the 2nd defendant, after the death of the adoptive parents of the plaintiff. This agreement was attacked as void *ab initio* by the adopted son on the ground that it is entered into *during* his minority and he claimed that he is entitled to 3/4th share.

3. The first defendant contended that the plaintiff cannot ask for grant of half share and her husband already given half portion of the

suit house to the 2nd defendant during his life time. The 2nd defendant consented the case of the 1st defendant by adopting the written statement filed by the defendant-1. The 2nd defendant is daughter of 1st defendant's elder sister.

4. Affirming the validity of the agreement, the Courts below considered Exhibit.P.6, a registered deed of adoption which incidentally created life interest in favour of the adopted parents and also provided for giving southern $\frac{1}{2}$ portion of the suit house to the 2nd defendant who is the daughter of elder sister of the 1st defendant. Dividing the agreement as three parts (i) creating adoption, (ii) another creating life interest in favour of the adoptive parents and (iii) giving half portion of the suit house to the 2nd defendant, the Courts below found that the 3rd part is not valid and denied the right of the 2nd defendant.

5. The question of law that is raised is the interpretation of the contents of Exhibit.P.6 while granting the relief sought for by the plaintiff and with reference has been made to Hindu Adoption and Maintenance Act.

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6. Apart from the above points, a new point is sought to be raised by the counsel for the appellant is of application of Section 14(i) & (ii) of the Hindu Succession Act which was a point not raised either before the Lower Appellate Court or before the Trial Court or even before this Court. ^{in the memo of Appeal grounds.} Firstly, he is not entitled to raise such a question as it is not pure question of law but it is a pure question of facts. Secondly it cannot be construed that creation of life interest jointly by the husband is ^{not} in pursuance of pre-existing right of maintenance. It is nobody's case that the adoptive mother had a pre-existing right of maintenance over the property and that was result of Exhibit.P.6. Without having any basic factual allegation or averments, a sudden question of law is raised before this Court. It is also significant to note that even the substantial question of law is not to that effect.

7. The facts are simple at the time of adoption naturally, the natural parents wanted to know the benefit of their son may get by virtue of that adoption before embarking such an exercise of adoption; both the natural parents and the adoptive parents agreed to a particular way of enjoyment of the property that is exhibited

and incorporated in Exhibit.P.6. It is also significant to note that in the written statement, the averments made in the plain~~ing~~ regarding the agreement has not been specifically denied by the 1st defendant-widow. She simply maintain~~s~~ that she is ~~the~~ sole heir of her husband under the Hindu Succession Act. It is also to be noted that the natural father of the plaintiff is the brother of the defendant-1 and the very adoption theory was not dis-approved by the widow right from 1971 till 1982. Though the D.W.1 wants to attack the very adoption as her evidence was contradic~~ted~~ to the statement filed, it was rightly rejected as point out above. She never claimed that she had pre-existing right over the property. On the other hand her claim was that the adoption was not true so she is ~~the~~ sole heir of her husband, entitled to all the properties. Though a slig~~h~~ argument made before the Trial Court regarding the pre-existing nature of maintainance, it was rightly rejected for want of pleading. When the parties are govern~~d~~ by the Hindu Adoption and Mainte~~n~~ance Act, they cannot ignore the same and right to claim more than what they are entitled to. The Trial Court holding that the agreement regarding disposition being invalid, ~~is~~ held that the plaintiff and defendant held to be known as close heirs and

secondly held that each are entitled to half share and denied right of the 2nd defendant.

8. On the question of the validity of the agreement, as to whether an adoption deed can be construed to be an agreement of disposal of the property and whether it is construed to be a Will, the learned Counsel for the appellant submitted that there can be deposition in adoption deed in favour of the 2nd defendant as well.

9. Whatever nomenclature that ^{is} given to the particular document, as pointed by the first Appellate Court, ~~which is a~~ ^{the} document ^{should be} construed on three points, (i) the adoption, (ii) creation of the life interest in favour of the adoptive parents jointly and (iii) the intention of the owner over the disposal of the property after his life time.

10. If the documents were to be taken as adoption deed, and then, the adoption taken place on the day of which the father was alive. Therefore by such adoption, the son gets half share in the property. Therefore, if at all there is a disposition, the one way of looking is that the ^{the} son gets $\frac{1}{2}$ share in the property and in the

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other half, the 2nd defendant gets a portion and the wife gets other $\frac{1}{2}$. Viewed from another angle if the intention of the adoptive parents to be respected, then the son should be given $\frac{1}{2}$ share and he shall get another $\frac{1}{2}$ share after the life time of the mother, ~~has to be~~ ^{am} disposition of a portion of the property to the 2nd defendant. Even if Section 14(ii) is to be applied, a wife will be entitled to ~~become~~ ^{an} $\frac{1}{2}$ share of the property which shall become her absolute property. This is ^{the} second way of the looking of the problem. The third and final equitable way is to confirm~~ing~~ the decree with a small modification that the plaintiff shall get half share, the widow shall get another half share and the 2nd defendant shall get what was given to her under the adoption deed. In my opinion, the ~~th~~ ³rd disposition is just and proper and equitable and that will be respecting the intention of the ~~deceased~~ soul of Sangabasappa.

11. In the ~~above~~ circumstances, while confirming the decree of the Courts below, the second defendant is also granted what has been given under the Exhibit.P.6. In the result, the plaintiff will get half share, 1st and 2nd defendants ^{me} will get remaining half share subject to the

second defendant getting the property already allotted to her under the deed. The second appeal is therefore partly allowed.

/Nge/-

Sd/-
Judge