(1964) 09 MP CK 0007

Madhya Pradesh High Court

Case No: S.A. No. 350 of 1961

Kaveribai		APPELLANT
	Vs	
Rewabai and Others		RESPONDENT

Date of Decision: Sept. 3, 1964

Acts Referred:

- Madhya Bharat Land Revenue and Tenancy Act, 1950 - Section 82

Citation: (1966) JLJ 279

Hon'ble Judges: H.R. Krishnan, J

Bench: Single Bench

Advocate: R.G. Waghmare, for the Appellant; S.D. Sanghi and G.B. Gaoshinde, for the Respondent

Final Decision: Dismissed

Judgement

H.R. Krishnan, J.

This is a second appeal by the contesting Defendant Kaveribai from the decision of the first appellate Court that she is not entitled to any share in the properties of one Rajaram because, though a sister by blood relationship, she had been born as found by the appellate Court after their father had been adopted into another family. Consequently, the entirety of the properties of Rajaram, who was admittedly born before his father''s adoption were declared by the appellate Court now to be the property of another Sister Rewabai admittedly also the "pre-adoption" daughter of their father. The decision turns on the finding of fact that while the Plaintiff Rewabai had been born to their father, Tejasingh before he had been adopted into another family, the Defendant-Appellant Kaverbai was born to him after that adoptions. The Appellant has made a feeble attempt to question this finding of fact but her case here is the thesis that the "sister" mentioned as Class (XIV) of Section 82 of the Madhya Bharat Land Revenue and Tenancy Act in the table of devolution of rights on the death of a male Pakka tenant should be understood as sister by blood relationship independently of whether or not the adoption of the father had

intervened. This question does not seem to have been raised in the lower Courts, the lower Courts have applied the doctrine, that the word "sister" in Section 82 should be understood as "sister" in accordance with the customs and the law applicable to the persons concerned" which in the instant case is the Hindu Mitakshara Law as interpreted by the Benaras School.

2. The facts that have given rise to the controversy are somewhat unusual and can be summarised as follows. In the village called Khamki Barud in the District Mandleshwar there used to live two persons called Arjunsingh and Punaji neighbours but not apparently interrelated. Arjunsingh''s son was Tejasingh who was adopted by Punaji''s widow in June 1939. The peculiarity of the adoption was that Tejasingh was at that time already married and had at least one son Rajaram and one daughter Rewabai. Whether he had also another daughter Kaveribai at the time of the adoption was in controversy in the lower Courts. These people call themselves Rajputs but it is nobody''s case that the adoption was invalid because of the adoptee being married and being himself a father; possibly, the law applicable to the twice-born among whom the Rajputs properly so called are included, does not apply to these people. Anyway, the question before us is not about the validity of the adoption by Punaji''s widow of Tejasingh, born as the son of Arjunsingh, as the son to her husband. The factum and the validity of the adoption are common ground.

3. As Tegasingh went into the family of Punaji, the properties of Arjunsingh vested in Rajaram and stood recorded in his name without anybody''s objection till 1958 when on 29th june of that year Rajaram also died. Now Tejasingh got active and took steps to see that the property was recorded in the revenue papers in the names of Fatehsingh and Sobhagsing. Tejasingh''s sons but born after his adoption. Upon this Rewabai the sister of Rajaram born before Tejasingh''s adoption, brought a suit for a declaration that the properties of Rajaram which had been enumerated in a schedule and about the indentity of which there is no controversy should be declared to be her property inherited by her as sister, there being no other relation upto Class (XIII) in the table in Section 82. Consequently, it was also prayed that there should be a direction for the correction of the entries in the revenue papers. At the first instance Kaveribai was not impleaded, and the suit being against Tejasingh himself and the two sons born after his adoption and actually recorded for these lands in the revenue papers. Tejasingh claimed the properties as those of the family of Punaji upon which basis the entry in the names of Fatehsingh and Sobhagsingh are correct. In addition, he pleaded that there was another daughter Kaveri Bai who occupied vis-a-vis Rajaram precisely the same position as the Plaintiff. Accordingly Kaveribai was now impleaded and claimed to be the sister of Rajaram born three weeks before their father''s adoption. The trial Court held that the properties belonged to Rajaram and his sisters born before Tejasingh''s adoption would inherit there being no others in any earlier class in the table; but finding that Kaveribai as well as Rewabai was born before Tejasingh''s adoption, it

declared that these two were entitled to equal shares in the property and accordingly made the direction for the correction of entries on that basis.

4. From this Rewabai went up in appeal. The appellate Court while following the same principles as the trial Court had done, found on the facts that Kaveribai was born after Tejasingh''s adoption. Accordingly it declares that only Rewabai was entitled to the properties and made the declaration accordingly. From this decision Kaveribai has come up in second appeal alleging on the facts that the appellate Court''s finding that she was born after her father had been adopted into Punaji''s family is a perverse one. Further, it is urged that even on the assumption that she was born after the adoption, still she is in blood relationship a sister of Rajaram and as such entitled to share in his property equal to that of the Plaintiff.

5. The attempt of the Appellant to challenge the finding of fact is bound to fail. Whether she was born as she averred three weeks before her father was adopted, or a few years later is a straight question of fact. A special case is sought to be made from the fact that the appellate Court has disbelieved inter-alia the assertions of Tejasingh. Other things being the same, a father''s statement as to the time of birth of his daughter is of course good evidence; but there is no law that the father''s evidence on such matters should always be accepted. That would depend upon the circumstances of each case. In the instant case the father''s conduct shows that he was anxious if possible to see that the property is retained by his sons impleaded here who were certainly born after the adoption, if that was not possible, he was ready to create difficulties for Rewabai Plaintiff, by pushing up Kaveribai being in fact solely responsible for the joinder of the latter, If in these circumstances the appellate Court was not prepared to accept the bona-fides of the father and to assume that he was equally well disposed to both the daughters, the second appellate Court cannot interfere. That disposes of the question of the fact.

6. Probably aware of this, a point of law has been raised though it had not been thought of at earlier stages. The basic assumption is that for the purpose of inheritance of these properties in the manner provided in Section 82 of the Madhya Bharat Land Revenue and Tenancy Act blood relationship should count in preference to any notional or juridical relationship. If this principle is really accepted, then Kaveribai or as for that matter Rewabai herself would be nowhere in the picture. Near than both there is the father who is still the father on blood relationship there are also the Defendants 1 and 2 who are certainly Rajaram''s brothers in blood relationship. The point to note is that for the limited purpose of prohibited degrees for marriages the blood relationship is completely washed out by adoption. If somebody born in the family of a A is adopted in the family of B, he is notionally dead for all purposes of the civil law in the first family, and is notionally reborn for the same purposes in the family of adoption. This is the intendment of all the texts of the Hindu Law and have been rigorously followed by High Court in our country and by the Privy Council as well. The parties have not placed before me any

ruling of the Supreme Court where this doctrine has been modified, which means that the principles laid by the High Courts and the Privy Council are still good law.

7. One of the earlier rulings cited before me in Nagindas v. Bachoo Hurkisson-das AIR 1915 PC 41:

According to Hindu Law an adopted son becomes for all purposes the son of the father by adoption. An adopted son succeeds not only lineally, but collaterally, to the inheritance of his relations by adoption, and also an adopted son occupies the same position in the family of the adopter as a natural born son, except in a few instance which are accurately defined both in the Dattake Chandrika and the Dattaka Mimansa. Those excepted instances relate to marriage and to competition between an adopted son and a subsequently born legitimate son to the same father.

The same problem has been discussed at some length in the Privy Council ruling in Tewari Raghuraj Chandra v. Rani Subhadra Kunwar AIR 1928 PC 87.

It is not true to say that by Hindu Law an adoptee only loses his consanguinity for purposes of succession. Adoption has been spoken of as ''new birth'' in many cases, a term sanctioned by the theory of Hindu Law. The theory itself involves the principle of a complete severance of the child adopted from the family in which he is born and complete substitution into the adoptive family, as if he were born in it.

The same principles are reiterated in the later Privy Council ruling in AIR 1937 242 (Privy Council) .

''Adoption does not sever the tie of physical blood relationship but it completely transfers adopted son to the adoptive family as regards legal relationship. Consequently a son who leaves his own family and enters by adoption into a different family ceases to be Sapinda of his former relations.

8. Among the High Courts also we have Manikbai Vishnudas Gujjar Vs. Gokuldas Ramdas Karadgi, , which applies these principles and decides -

Where a sole surviving co-parcener of a Hindu family is adopted into another family and has a daughter then living his estate in his natural family vests in his daughter on his adoption.

In AIR 1944 266 (Nagpur) , it was held-

After a married man has been adopted and he and his wife have gone into the new family and their natural son remains in the old family, the natural perents do not retain their right to give that son in adoption.

Apropos of this proposition the judgment discusses the caselaw and comes to the conclusion that the adoptee takes into the new family nothing more than his personality which of course includes his wife under the theory of Hindu Law; but nothing more of the relationship in the original family.

Similarly, in Babarao v. Baburao AIR 1956 Nagpur 98, it was held-

A Hindu, on his birth" (for example, Rajaram in the instant case), "acquires an interest in the joint family property of his grandfather and this right is not extinguished when his natural father is adopted by latter''s uncle as his son. The natural father''s personal status as his father''s son is completely destroyed, but that does not affects the status of his pre-adoption son, who continues to be the grandson of his grandfather.

9. On these principles we have to find the heirs to Rajaram''s property in his family, that is to say, the family in which he was born and out of which Tejasingh has gone. The only person found on the facts is his sister Rewabai. As for Kaveribai, according to the appellate Court, she was born to Tejasingh when he had notionally died in the family of Arjunsingh and reborn in the family of his adoptor. So Kaveribai is not a sister or as for that matter any other relation of Rajaram in the eyes of law.

10. It is suggested that the Madhya Bharat Land Revenne and Tenancy Act is general law applicable to all people and the table in sec-ion 82 is a special table of succession to a particular kind of property. Therefore, it is urged that the word "sister" should be read in its meaning of blood-relationship and not in the special juridical sunse of Hindu Law. I do not agree, "sister" means "sister for the purpose of inheritance" as understood in the law applicable to the persons concerned. This is clear enough and any doubt in this regard is removed by the pronouncement of the Privy Council in A. I. R. 1928 PC 87, Tewari Raghuraj Chandra v. Rani Subhadra Kunwar AIR 1928 PC 57 already referred to. There the law applicable was the Oudh Estates Act as it governed the inheritance to certain talukdaris. The talukdar for the time being need not be a Hindu and may be a Mohommadan, Sikh or Christian, Again, it was a law of succession not to property generally, but to talukdari estates specifically. Still, in finding out the relationship of the person that claims to be the heir to the original owner, it was held that the principles applicable for such legal relationship in accordance with the personal law should be applied:

Section 22 of the Act" (Oudh Estates Act)" lays down an order of succession which is in form the same for all but it uses words for the principal relationship which have a different sense according as they are used of one community of another. Words of relationship in connection with a law of inheritance differ in their significance and contain according as their context is, an inheritance in one community or an inheritance in another. Legitimacy, adoption and law wedlock all of which involve legal conceptions are terms which will vary in meaning according to the law of the community with which in the given case the Act is concerned.

Thus, the word, "sister" in Section 82 means the sister as understood in the class of the persons concerned for the purpose of inheritance

11. The result of the foregoing discussion is that the second appeal is found to be without substance and is dismissed with costs payable by the Appellant to the

Plaintiff Respondent and pleader fee according to rules.