
(1921) 07 BOM CK 0032

Bombay High Court

Case No: First Appeal No. 184 of 1914

Parvatava Nemappa
Havaladar

APPELLANT

Vs

Fakirnaik Iranai Naikar

RESPONDENT

Date of Decision: July 18, 1921

Citation: (1921) 23 BOMLR 1075

Hon'ble Judges: Shah, J; Norman Macleod, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Norman Macleod, Kt., C.J.

One Parvatava filed Suit No. 180 of 1917 to recover possession of the suit property alleging that it belonged to Nemappa who died in 1917 leaving him surviving the plaintiff his senior widow, defendant No. 2, his junior widow, and defendant No. 4, Kalava, his mother; that defendant No. 2 the junior widow adopted defendant No. 3; and that that adoption was false and invalid. The alleged adopted son has file Suit No. 834 of 1918 asking for a perpetual injunction restraining Kalava, the mother of Nemappa, from obstructing him in the enjoyment of the plaint lands.

2. The learned Subordinate Judge has found that the marriage between Parvatava and Nemappa was not proved. Ho also held that the adoption of Adivappa was proved and valid. If the adoption of Adivappa is not valid, then the question regarding the marriage of Parwatava and Nemappa becomes of secondary importance, because Kalava, the person principally interested, has given evidence to the effect that the marriage did take place, and as a matter of fact the whole of the evidence with regard to that marriage is all one way.

3. Now it is admitted that Nilava, when she adopted Adivappa, was only twelve and a half years old at the most. The learned Judge has said: "I have given the best consideration to the point and have come to the conclusion that if our High Court has decided that a girl of

about fifteen years could validly adopt, it follows that one of twelve and a half years could also validly adopt; because between the two girls, capacity to understand such things cannot be substantially different."

4. I regret I cannot agree with the logic of that decision, The intelligence of a young person in ordinary circumstances will keep on growing year by year, and if the High Court laid down the limit of years of discretion as fifteen, it certainly would not follow that a girl of twelve and a half would have attained to the same degree of discretion as a girl of fifteen. If once you depart from the limit of fifteen, which of course is purely an arbitrary one, then it would be easy to go back to any extent which would be absurd. But certainly I should not be disposed to think, taking all the considerations and circumstances and conditions of people of this class into account, that a girl younger than fifteen could possibly exercise that volition of mind and that independence of judgment which would enable her to make a really valid adoption. A fortiori there would have to be very clear evidence to satisfy the Court that a girl of twelve or twelve and a half years could exercise her own independent judgment in the matter of an adoption.

5. In *Murgeppa v. Kalava* (1919) 22 Bom. L.R. 91. it was argued on the authority of *Mayne* that puberty was the test, and I said there "that a girl has attained to puberty may be one circumstance but in this country not necessarily the only one. The actual age of the widow may be another test and probably the most important one. In this case I think both the tender age of the widow, and the fact that she has not reached the age of puberty, make it perfectly clear that she was not competent to know what she was doing. If we were to hold that, such a person could adopt, we should open the door to all sorts of intrigue, so that the elder members of the family might be able to induce widows of tender age to make adoptions in the interest of those persons"; and Mr. Justice Heaton said : "Certainly no ordinary child of twelve years of age is capable of volition of the kind here required unless he or she is a very exceptional person."

6. It is not entirely a question of intelligence. A girl of twelve may be exceptionally intelligent, but it is more a question of her power to resist the influence which her elders will exercise, and must naturally exercise, over her actions. However intelligent she might be, she would not be likely to withstand the inducements put forward and the persuasion exercised in order that she should adopt a person according to the wishes of her elders. In this case it is quite obvious that the adoption of Adivappa, who was the brother of Nilava, could not possibly be considered as an adoption by Nilava, but, that it was brought about by the persuasion of others probably of Nilava's father. Adivappa's suit must fail.

7. Then it is not necessary to deal at length with the question of the marriage of Parvatava, because Kalava the mother has sworn that Parvatava was married, and, therefore, Parvatava's suit must succeed, and she must have a decree for possession of the suit property, and there will be an inquiry as to mesne profits from the date of suit. Although the plaintiff's suit was dismissed the Judge found that Kalava's maintenance

should be Rs. 180 a year, and that a portion of the house should be given to her for her residence. That was of course on the footing that the adopted son succeeded. Therefore we confirm that finding. At present Kalava and Parvatava seem to be living in harmony but if they separate, then Parvatava will have to provide for the maintenance and residence of her mother-in-law. The appeals are allowed. Suit No. 334 of 1918 is dismissed and Appeal No. 44 of 1921 is allowed with costs throughout. Suit No. 180 of 1917 is decreed with costs throughout against defendant No. 1 who has been fighting the matter.

Shah, J.

8. I agree. I desire to add a word with reference to the question as to whether the adoption by Nilava, who was about twelve years and six months old at the date of the adoption, is valid or not. Without attempting to lay down any general rule as to whether at that age a girl could ever make a valid adoption, it seems to me clear that in the absence of any clear evidence as to the special capacity of this girl to exercise an independent judgment at that age, I am not prepared to hold that she could exercise such judgment as is required in the case of adoption. The evidence in the case as to her capacity is meagre and does not go beyond this that she was an intelligent girl. I am unable to agree with the conclusion reached by the lower Court that because an adoption by a girl at the age of fifteen is upheld in one case an adoption by a girl at the age of twelve may also be upheld. I agree with the ratio decidendi in *Murgeppa v. Kalava* (1919) 22 Bom, L.R. 91. In the present case we have to decide the question in first appeal; and on the proved facts, I feel no difficulty in holding that the adoption by Nilava cannot be upheld.