courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 10/01/2026

(1958) 09 BOM CK 0028

Bombay High Court

Case No: Appeal No. 47 of 1955

Sugandhabai Shivaram Hede and Another		APPELLANT
	Vs	
Sundari Aba Mande and Another		RESPONDENT

Date of Decision: Sept. 15, 1958

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 33
- Hindu Succession Act, 1956 - Section 14, 15, 16
- Specific Relief Act, 1877 - Section 15(1), 42

Citation: AIR 1960 Bom 32 : (1959) 61 BOMLR 560

Hon'ble Judges: Patel, J; Gokhale, J

Bench: Division Bench

Advocate: V.B. Rege, for the Appellant; S.G. Patwardhan, for the Respondent

Judgement

Gokhale, J.

(1) This is an appeal by original defendants Nos. 1 and 2 against the decree passed by the Court of the Civil Judge, Senior Division, at Sholapur, in favour of the plaintiff and dependant No. 3, who are the respondents in this appeal, declaring that the adoption of appellant No. 2 (defendant No. 2) was invalid and not binding on the respondents. The present suit came to be filed by plaintiff Sundrabai in the following circumstances.

(2) plaintiff''s father Shivram died in 1918 leaving behind his widow Sugandhabai (defendant No. 1) and two daughters Nagarbai and Sundrabai (plaintiff). Defendant No. 1adopted to her husband one Bhanudas on 25-4-1937, Bhanudas being the nephew of Shivram. According to the plaintiff Bhanudas died in 1949, leaving his wodow Girjabai and it appears that a few months after Bhanudas'' death Girjabai remarried. On 20-7-1950, Sugandhabai (defendant No. 1) adopted the second appellant Keshav and executed and got registered an adoption deed in that behalf.

It is the plaintiff''s case that inasmuch as Bhanudas was survived by his widow Girjabai defendant No. 1''s right to adopt was extinguished and the same could not be revived despite Girjabai''s remarriage. It is, therefore, the plaintiff''s case that she and her sister defendant No. 3 are the reversionary heirs to their father Shivram and their right is subject only to defendant No. 1''s interest in the property left by her father. That was why plaintiff filed the present suit on 18-11-1952 asking for a declaration that the adoption of defendant No. 2 Keshav was invalid and not binding on plaintiff and defendant No. 3.

(3) The suit was raised by defendants Nos. 1 and 2 on the basis that there was no marriage between Bhanudas and Girjabai and, therefore, Bhanudas was not survived by any widow. On that ground it was contended that defendant No. 2''s adoption was good. This was the principal ground on which the suit came to be resisted.

(4) The trial Court held that plaintiff was entitled to file a suit for declaration as claimed by her. It also held that Bhanudas as his legal heir and consequently defendant No. 1''s right to adopt was extinguished. It appears that plaintiff had originally denied even the factum of adoption of defendant No. 2 but that was admitted by her during the hearing by a purshis (Exhibit 48). She only challenged the validity of defendant No. 2 ''s adoption on the ground that defendant No. 1 was not comptent to adopt, as her power to adopt had been extinguished. The trial Court, therefore came to the conclusion that the factum of adoption was proved but the adoption was not valid because defendant No. 1 had the right to adopt defendant No. 2, since her right had been extinguished as alleged by the plaintiff. That is why the declaration prayed for by plaintiff was granted by the trial Court. Against this decree defendants Nos. 1 and 2 have filed the present appeal.

(5) Mr. Rege, learned adovate apearing on behalf of the appellants has raised two points. He sa;ys in the first instance that the Trial Court''s view that Girjabai was Bhanuda''s wife and survived him as his widow is not correct on the basis of the evidence on the record. Now, on this point it has to be remembered that defendant No. 1 Sugandhabai, who herself adopted Bhanudas and should have known whether Bhanudas had married or not, has not cared to give any evidence. She has not stepped into the witness-box abd keshave, who is adopted by her has denied knowledge as to whether Bhanduas was married. He has slated that he had never heard about Bhanudas marrying Girajbai or any other woman. Incidenatlly , it may be mentioned that defendant No. 2 is the step-brother of defendant No. 1. plaintiff Sundrabai has stated in her evidence that Girjabai is Bhanudas'' widow and she is alive, that 8 or 9 months after Bhanudas'' dealth Girja contracted remarriage with a man from Shidhache Wadgaon and that man''s name was Manohar. She deposed to the fact tha she had attended Bhanudas''s marriage with Girja and parlook of the marriage dinner. According to her Bhanudas was married to Girja 7 or 8 years after his adoption which would mean that the marriage took place some time in 1945.

She stated that Girja''s mother was one Parwati and she admitted that Parwati was her cousin-sister. She further stated that both Parwati and her husband were dead. She also deposed that Bhanudas died 4 years after his marriage and the Girja was 10 years old at the time of her marriage with Bhanudas and that she got no child by Bhanudas. Girja was also examined on behalf of the plaintiff. She stated that she was married to Bhanudas 9 years ago and she was 13 years of age at that time. After her marriage, she said she lived with Bhanudas. She denied that Bhanudas died unmarried. The evidence of these two withnesses has been believed by the learned trial Judge.

1950 Bom. D. F. /3

(6) Mr. Rege, however, contends that Girja is a relative of the plaintiff and was interested in supporting plaintiff. he also contends that according to plaintiff''s evidence Girja was only 10 years old at the time of her marriage and, thereofre, her marriage with Bhanudas would contravene the provisions of the Child Marriage Restraint Act, 1929. We are not impressed by this argument. Girja herself has a stated that she was 13 when she married Bhanudas and even if jthe marriage was in contravention of the Child Marriage Restraint Act, the marriage could not be invalid. In our opinion, the evidence led on behalf of plaintiff, which has been accepted by the learned trial Judge, shows that Bhanudas died leaving Girja his widow and a few months after Bhanudas''s death Girja remarried and therefore became civilly dead so far as Bhanudas''s family is concerned. Though on Girja''s remarriage Sugandha would inherit Bhanudas''s property as the mother of Bhanudas, Sugandha would not be competent to adopt a son to her husband because her right to do so would be extinguished, her son having himself left a widow competent to continue his line by adoption. See Gurunath alias Bhimaji Vs. Kamalabai, Kom Kenchangauda Nadgaudar and Others, . Mr. Rege has not disputed this legal position.

(7) But then Mr. Rege has raised a new point of law on the basis of the provisions of the Hindu Succession Act, 1956, which came into force on 17-6-1956. Mr. Rege contends that plaintiff claimed a declaration that defendant No. 2 was not validly adopted by defendant No. 1 on the ground that she and defendant No. 3 were the next reversionary heirs of Bhanudas and Mr. Rege argues that under S. 14 of the Hindu Succession Act the property wich has been inherited by Bhanudas would be held by defendant No. 1 Sugandha as full owner and not as a limited owner. If that be so, then according to Mr. Rege, there is no question of there being any reversionary heirs of Bhanudas. Mr. Rege concedes that on the date that the suit was filed, that is to say on 18-11-1952. both plaintiff Sundrabai and defendant No.3 Nagarbai would be the next reversionary heirs, if defendant No. 2''s adoption was invalid. But, according to Mr. Rege, S. 14 of the Hindu Succession Act has been made expressly retrospective and therefore pending suits would be also affected. Now, Mr. Rege, in our opinion, is right in his contention that S. 14 is retrospective. In Kamala Devi Vs. Bachu Lal Gupta, , it has been held that by reason of the use of the

expression "whether acquired before or after the commencement of this Act", S. 14 of the Hindu Succession Act is undoubtedly retrospective, though in that case their Lordships did not consider the question of the effect of the that section in the circumstances of the case. Mr. Rege contends that an appellate Court is entitled to take into consideration subsequent changes in legislation with a view to moulding its decree in the light of the changed circumstances. That undoubtedly is so and the question in this case is whether we should accede to Mr. Rege''s contention that plaintiffs suit should be dismissed on the ground that the plaintiff claimed a declaration about the invalidity of the adoption of defendant No. 3 when plaintiff was a reversionary heir under the Hindu Law as it was then prevailing but is no longer a reversionary heir by virtue of S. 14 of the Hindu Succession Act.

(8) In support of his argumnt, Mr. Rege has referred us to some decisions. In Ram Ayodhya Missir and Others Vs. Raghunath Missir and Others, , it was held that the effect of Ss. 14 and 15 of the Hindu Succession Act was that a reversioner recognised as such under the Hindu Law was no more a reversioner as any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, is not limited estate but an absolute one; after the coming into force of the Act, there is neither a right of reversion nor any kind of spes successionnis. In that case, a widow had executed a sale deed in favour of the father of some of the defendants. These properties under the sale deed were subsequently mortgaged in favour of her daughter. The plaintiff as a reversioner brought a suit for a declaration that the sale deed executed by the widow was without consideration and without legal necessity and was not binding on him. All the lower Courts had decreed the plaintiff''s claim and the matter was pending in an appeal under the letters patent before the Patna High Court when the Hindu Succession Act came into force, and it was held by that Court in view of the change in law brought about by the Hindu Succession Act, the plaintiff''s lost his right as reversioner in respect of the property held by the widow and, therefore, plaintiff''s suit must be dismissed as not maintainable; and in doing so the Patna High Court followed the well-established rule that an appellate Court was entitled to take into consideration legislative changes which have supervened since the decision under appeal was given. Now, this case is distinguishable from the present case, because in that case an alienation by widow in respect of property was challenged by the reversioner and it was held that his right to do so no longer survived he himself having ceased to be a reversioner because of the coming into force of the Hindu Succession Act. In the Patna case the learned Judges do not seem to have considered the question as to whether a property that was alienated by a widow by a sale could be said to be property possessed by her and could be said to be held by her as a full owner and not as a limited owner. The question was considered in a decision of the Allahabad High Court to which our attention was invited by Mr. Rege, B. Hanuman Prasad and Others Vs. Mst. Indrawati and Others, , where it was held that if a widow had alienated the prperty without legal necessity, the alienation that was invalid

according to the customary Hindu Law remained invalid and its invalidity was not affected at all by the provisions of S. 14 of the Hindu Succession Act; but, though the alienation made by a Hindu widow before the passing of the Act was vulnerable and challengable on the ground of want of leagal necessity jas if the Act had not been passed, the widow continues to be estopped from challenging the validity on the ground of want of legal necessity and since the reversioners have completely disappeared by the virtue of the provisions of the Hindu Succession Act, nobody can get a decree as a reversioner; and even those persons who could have obtained a decree before the passing of the Act that an alienation made before the passing of the Act was invalid, cannot now get a declaration to that effect because they have lost the status by virtue of which they could have got it. That case again was the case of an alienation and the reversioners had asked for a declaration that the said alienation made by the vidow was void beyond her lifetime and was not binding against the reversioners who claimed to be entitled after the death of the widow to the possession of he property of her deceased husband.

(9) Mr. Rege has then relied on a ruling of the Calcutta High Court in Bhabani Prosad Saha Vs. Sm. Sarat Sundari Choudhurani, , in which it was held that S. 14 of the Hindu Succession Act made no reservation in favour of pending litigations. In that case a reversioner had filed suit claiming a decaration that the widow was entitled to enjoy the husband''s property during her lifetime only and a further declaration that the plaintiff was a reversioner in respect of the said property and the widow was bound and liable to invest in Government securities the money that would be payable by the Government on account of an award made by the Collector fixing Rs. 75000/- as compensation for properties acquired by Government for extension of the Dum Dum Air Field. It was held in that case that the suit must fail because by virtue of the provisions of S. 14 of the Hindu Succession Act, the widow had become the full and absolute owner of her husband''s property. That case again is a case where the reversioner wanted a declaration of his right as a reversioner and certain directions in respect of the property which was in the possession of the widow so as to limit her right of enjoyment of that property during her life-time, alone, and such a declaration, it was held by the Calcutta High Court, could not be granted in view of the change of law on account of the enactment of the Hindu Succession Act. Mr. Rege has also relied on decision of the Orissa High Court in Laxmi Debi Vs. Surendra Kumar Panda and Others, , where it was held that the right of a reversioner as one of the heirs under S. 42 of the Specific Relief Act is limited to the question of preserving the estate of a limited owner for the benefit of the entire body of reversioners, but as against a full owner the reversioner has no such right at all. There the suit was brought by a sister of the last male holder and the property was in the possession of his widows and it was held that the sister of the last male holder has got, under the Hindu Succession Act, neither any legal character nor any interest in present as she was included in the second class of heirs and was completely excluded by the widow who comes in as heir in class 1 in the Schedule to

the Act. The result is that after the Hindu Succession Act, when the property of the last male holder is in possession of his widows a suit by a full sister of the last of the last male holder for a mer dclaration of her reversionery right was not maintainable. In that case, the plaintiff had also challenged the validity of adoption made by the widow; and Mr. Rege strongly relies on this case in support of his argument that the present suit has become incompetent by virtue of the provisions of the Hindu Succession Act. That case again is distinguishable on the ground that there the declaration that was asked for by the plaintiff, the sister of the last male holders, was of the reversionary right in respect of the property left by her eceased brother, and as she had ceased to have the status of a reversioner, declaration of her right as a reversionary heir could not have been granted.

(10) In the present case, it is undoubtedly true that the plaintiff has referred to the fact that she and her sister, defendant No. 3, are reversionary heirs; but the declaration that she claims is a declaration not about her reversionary right or about the property of the deceased Bhanudas but a declaration that defendant No. 2 is not the validly adopted son of defendant No. 1 and that his adoption was not binding on the plaintiff and defendant No. 3. Under S. 42 of the Specific Relief Act, in so far as it is material, any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that be is so entitled. Now, Mr. Rege says that by virtue of S. 14 of the Hindu Succession Act the plaintiff has no right to Bhanudas''s property because the mother Sugandha has now become the full owner of his property, with the result that there are now no reversionary heirs of Bhanudas, Mr. Rege further contends that plaintiff has no legal character which defendants Nos. 1 and 2 denying or are interested to deny, and on this ground Mr. Rege says that a suit under S. 42 of the Specific Relief Act would not also lie. Mr. Patwardhan, learned advocate appearing on behalf of the respondent, plaintiff, on the other hand, contends that this is a new point which Mr. Rege has taken and he has no objection if the declaration granted by the trial Court is modified so as to delete the description of plaintiff and defendant No. 3 as reversionary heirs. Now, the adoption of defendant No. 2 is undoubtedly invalid in law and that is not disputed by Mr. Rege. Under S. 15 of the Hindu Succession Act, both plaintiff as well as defendant No. 3, the daughters of defendant No. 1 would be her heirs and to that extent they would be interested in asserting that they alone would be the heirs of sugandha, in case she dies intestate, and not defendant No. 2 who would also be entitled to rank as an heir along with them, in case his adoption is a valid adoption. Therefore it cannot be denied that plaintiff and defendant No. 3 are interested in asserting their legal character as sole heirs of defendant No. 1, whereas defendant No. 1 and defendant No. 2 are interested in denying that character. The matter may also be looked at from another point of view. Under S. 15(1)(d) of the Hindu Succession Act, until the status of defendant No. 2 as an adopted son is dislodged, he himself would be entitled to be

one of the heirs of plaintiff herself. It is, therefore, contended, and with some force, that though plaintiff and defendant No. 3 have ceased to be reversionary heirs of Bhanudas and though Sugandha would be the absolute owner of Bhanudas''s property by virtue of S. 14 of the Hindu Succession Act, plaintiff''s right of suit to challenge the validity of the adoption of defendant No. 2 cannot be said to have come to an end.

(11) The effect of the provisions of the Hindu Succession Act, 1956, on the legal rights of a Hindu female possessed of property and those of the reversionary heirs of the last male holder may be stated thus:

(1) A female Hindu would now become the full owner of the property of which she is possessed, whether she acquired the property before or after the commencement of the Act.

(2) As she would now hold the property of the last male holder as a full and not a limited owner, the other heirs of the last male holder can no longer be called reversionary heirs.

(3) The provisions of S. 14 of the Act being retrospective in operation would affect suits filed before the commencement of the Act, i.e., 17th June 1956, so that any such suit in which the reversionary heir claims a declaration about his or her reversionary right regarding the property of the last male holder or any relief that would, in any manner, be inconsistent with the full proprietary rights conferred on the female Hindu by S. 14 of the Act, would become incompetent by reason of the fact that the heir has ceased to be a reversionary heir.

(12) In the present case, however, the plaintiff has not claimed any relief with regard to the property left by Bhanudas, her brother, but she claims a declaration that the adoption of defendant No. 2 is invalid under Hindu Law and is not binding on her and her sister, defendant No. 3. The competence of such a suit must be judged by the provisions of S. 42 of the Specific Relief Act. The Hindu Succession Act prescribes how the property of a female dying intestate is to be inherited and under S. 15(1)(a) read with S. 16 of this Act, the sons and daughters (including the children of a deceased son or daughter) and the husband would be entitled to inherit her property simultaneously. In our view, therefore, a daughter would be entitled to challenge the validity of any adoption made by her widowed mother and its binding character in so far as it affects her leagal status as the heir of her mother inasmuch as, by virtue of the adoption, the adopted buy would be introduced as an heir to the mother, in respect of property held by her, if she were to die intestate.

(13) But Mr. Rege has further contended that the plaintiff filled the present suit as a reversionary heir and claimed a declaration that the adoption of defendant No. 2 by defendant No. 1 was invalid and not binding on her and defendant No. 3 on that basis. Since she has ceased to be areversionary heir by virtue of the Hindu Succession Act, Mr. Rege says, this Court cannot grant her relief on a different basis

without an amendament of the plaint. We are not prepared to accept this argument. Mr. Rege''s client now seeks to defeat plaintiff''s suit by reasons of the provisions of the Hindu Succession Act. But, while the Court is entitled to take linto consideration these provisions, it cannot ignore also the rights which have been conferred on the plaintiff by the same Act. The present suit was filled on 12-11-1952 and decided by the trial Court on 7-8-1954 and this appeal was admitted and notice ordered to issue on 24-2-1955. Even after the coming into force of the Hindu Succession Act on 17-6-1956, no attempt was made by the defendants-appellants to get the hearing of the appeal expedited. In our judgment, therefore, it would not be fair to refuse plaintiff the relief claimed by her in the suit on the ground that she would not be entitled to it unless she amends the plaint deleting all references to her own and defendant No.3''s status as reversionary heirs.

(14) The result is that appeal fails, but paragraph 1 of the decretal order passed by the trial Court will be modified by deleting the words "who are the reversionary heirs". Subject to this modification, the rest of the decree of the trial Court will be confirmed. The appellants will pay the costs of the respondents.

(15) Appeal dismissed.