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(1958) 08 BOM CK 0021

Bombay High Court

Case No: First Appeal No. 118 of 1953

Balgonda Appanna Patil and Others	APPELLANT
Vs	
Bhimgondq Appaya Patil and Others	RESPONDENT

Date of Decision: Aug. 30, 1958

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 12, 30, 4

Citation: AIR 1960 Bom 7

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

Bench: Division Bench

Advocate: R.G. Samant, for the Appellant; S.B. Bhasme, for B.M. Kalagate, for the Respondent

Judgement

Gokhale, J.

(1) In this appeal, Mr. Justice Shah and myself had, on the application of the appellants, heirs of original plaintiff, sent down an issue as to whether the adoption of the plaintiff had been duly sanctioned by a competent authority. The adoption of the plaintiff took place in 1900 and the trial Court has recorded a finding that Government have accorded ex post facto sanction to plaintiff"s adoption and the same is valid. Some objections were raised before the trial Court as to the procedure followed in obtaining this sanction from Government. Those objections were negatived and Mr. Bhasme, learned advocate appearing on behalf of respondent No. 1, has not raised these objections before us.

(2) But Mr. Bhasme has raised an interesting point of law as to whether the State Government was competent to accord ex post facto sanction to plaintiff"s adoption in view of the provisions of the Hindu Adoptions and Maintenance Act, 1956. Though this point was not taken before us before we sent down the case for a finding and though the

point was also not raised before the trial Court. We have allowed Mr. Bhasme to argue the point as it is a pure point of law. Mr. Bhasme"s contention is that the Hindu Adoptions and Maintenance Act, 1956, which will hereafter be called as the Adoptions Act, came into force on 21st December 1956. The sanction was given by Government on 26th June 1957. But Mr. Bhasme contends that on the date that the sanction was given government were incompetent to accord that sanction by virtue of the provisions of S. 4 of the Act.

(3) In order to examine Mr. Bhasme"s argument, we shall have to refer to the position of adoptions in the former Kolhapur State. Plaintiff"s adoption took place in 1900 and the Degest of Hindu Law in the Kolhapur State came into force in 1919, but that part of it which deals with adoptions by Hindus, known as Hindu Dattak Nabandh. came into force on 11th November 1920. S. 2(3) of this Nabandh saved the effect of the Vat Hukums passed by the Kolhapur Government in connection with adoptions. Under Political Agent Judi Niyam of Fasli 1281, published in Volume 2 of the Kolhapur Vat Hukums, at at page 317, there was a provision under which the Kolhapur Darbar could accord sanction to adoptions which affected Inam properties. It appears from this Vat Hukum that the kolhapur Government had power to accord ex post facto sanction to adoptions which were made without getting such a sanction. Then there is Sarsubhe Vat No. 18 of 1907 which dealt with the procedure which was to be followed in order to get the sanction of the Kolhapur Government in such matters. There are other Vat Hukums also to which Mr. Bhasme drew our attention in this connection, but it is not necessary to refer to them for the purpose of this case. Mr. Bhasme argues that as a result of S. 4 of the Adoptions Act, the Diegest of Hindu Law at Kolhapur as well as the Vat Hukums dealing with adoptions were repealed, and Mr. Bhasme contends that, if that be so, the Government had no power to accord ex post facto sanction to the present adoption on 26th June 1957.

(4) Now, S. 4 of the Adoptions Act runs as follows:

" Save as otherwise expressly provided in this Act,

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindu in so far as it is inconsistent with any of the provisions contained in this Act."

Mr. Bhasme contends that this section has a wider repealing power than Sec. 29 of the Adoptions Act which repeals the Hindu Married Women"s Right to Separate Residence and Maintenance Act, 1946, (19 of 1946) and sub-section (2) of section 30 of the Hindu Succession Act, 1956 (30 of 1956) . Under S. 4(a), according to Mr. Bhasme all textual law, rules or interpretations of Hindu Law or any custom or usage as part of that law which dealt with adoptions stand repealed and the contention, therefore, is that on the

date that Government gave ex post facto sanction on 26th June 1957 the Vat Hukums under which the sanction could be given had no longer any force. Then Mr. Bhasme further contends that even assuming that the relevant Vat Hukums o not fall under S. 4(a). They would fall under S. 4(b) and under that clause in so far as they are inconsistent with any other provisions contained in the Adoptions Act they will cease to apply to Hindus. In this connection, Mr. Bhasme refers us to the provisions of S. 12 of the Act which deals with effects of adoptions. Under S. 12 an adopted child is to be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. Under proviso (c) to this section, the adopted child shall not divest any person of any estate which vested lin him or her before the adoption. Mr. Bhasme''s argument is that since the ex post facto sanction given by Government would enable plaintiff to divest the defendant of the suit properties which are admittedly patilki Inam propitious, the provisions of the Vat Hukums are inconsistent with proviso (c) to S. 12 of the Adoption Act and therefore would not have any force, The argument of Mr. Bhasme is undoubtedly ingenious. But in our opinion, in view of S. 30 of the Adoptions Act, that argument cannot be accepted so far as the present adoption is concerned. Under S. 30,

''Nothing contained in the Act shall affect any adoption made before the commencement of this Act and the validity and effect of any such adoption shall be determined as if this Act had not been passed.''

Now , admittedly, the adoption of the plaintiff took place in 1900. The effect of that adoption would have been that plaintiff would be entitled to succeed even to Inam property, provided the requisite sanction of the Government was obtained. Under the Kolhapur Vat Hukums, the giving of ex post facto sanctions to adoptions was contemplated. This Court has in a number of decisions taken the view that sanction accorded ex post facto would be a valid sanction. As the adoption of the plaintiff took place long before this Act came into force, none of the provisions of this Act would affect that adoption and the validity and effect of such an adoption has to be determined as if the Adoptions Act had not been passed. In our view, therefore, Government would continue to have the power of according ex post facto sanction to adoptions which have taken place prior to 21st December 1956. The contention of Mr. Bhasme that ex post facto sanction to the present adoption could not be given after the coming into force of the Act must, therefore, be rejected. In that view of the matter, it is not necessary for us to consider whether the Kolhapur Vat Hukums which deal with according of sanctions to adoption are in any way inconsistent with this Act and will cease to apply under S. 4 of the Act.

(5) The result is that the finding of the learned trial Judge that the adoption of the plaintiff has been duly sanctioned by a competent authority must be upheld and we must also hold that the sanction given is a valid sanction. As the plaintiff''s suit was dismissed by the trial Court on the ground that his adoption was invalid, being without sanction, we must

allow this appeal, set aside the decree of the trial Court and award Plaintiff possession of the five suit lands from the defendants. There will be an inquiry into future mesne profits from the date of the suit till delivery of possession, under O. 20, R. 12 of the Civil Procedure Code.

(6) As regards plaintiff''s prayer in paragraph (I) of the prayer clause in the plaint regarding substitution of his name in the Record of Rights, the plaintiff will have of course to approach the authorities concerned.

(7) The plaintiff will be entitled to his costs throughout.

(8) Order accordingly.