



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 18TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.5372 OF 2011 (DEC/INJ)

BETWEEN:

SMT. NEELAVVA W/O. LATE BASAPPA GUBBI,
SINCE DEAD BY HER LRS.,
HALESHAPPA A/F BASAPPA GUBBI,
AGE: 40 YEARS, OCC. AGRICULTURE,
R/O. NAGAVAND VILLAGE, HIREKERUR TALUK,
HAVERI DISTRICT-581210.

...APPELLANT

(BY SRI.S.G. KADADAKATTI, ADVOCATE)

AND:

KUMAR FALSELY CALLING HIMSELF AS
ADOPTIVE S/O. LATE BASAPPA GUBBI,
AGED ABOUT 46 YEARS, OCC. AGRICULTURE,
NAGAVAND VILLAGE, HIREKERUR TALUK,
HAVERI DISTRICT-581210.

...RESPONDENT

(BY SRI. MAHESH SHIVAPUJI, ADVOCATE FOR C/R)

YASHAVANT
NARAYANKAR


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YASHAVANT
NARAYANKAR
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THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO
CALL FOR RECORDS AND SET ASIDE THE JUDGMENT AND DECREE DATED
11.02.2011, PASSED BY PRL. SENIOR CIVIL JUDGE AND ITERATE COURT,
HIREKERUR, IN R.A.NO.79/1991 AND THE JUDGMENT AND DECREE
DATED 29.06.1991 PASSED BY THE COURT OF MUNSIFF AND JMFC,
HIREKERUR, IN O.S.NO.154/1989 IS CONFIRMED AND TO ALLOW THE
APPEAL AND DECREE THE SUIT FILED BY THE PLAINTIFF IN
O.S.NO.154/1989 ON THE FILE OF THE LEARNED MUNSIFF AND JMFC,
HIREKERUR AND AWARD THE COSTS THROUGHOUT.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON
27.11.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY,
COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

The plaintiff in O.S.No.154/1989 who was non-suited by the judgment dated 29.06.1991 and whose appeal in R.A.No.79/1991 came to be dismissed by the judgment dated 11.02.2011 is before this Court in second appeal.

2. The factual matrix as is necessary for the purpose of this appeal is as below:

- a. Plaintiff is the wife of late Basappa. Defendant No.1 is the second wife of Basappa as contended by the plaintiff. Defendant No.2 claims himself to be the adopted son of Basappa under a adoption deed dated 19.04.1974.
- b. The suit schedule properties are the properties held by the deceased-Basappa comprising of two agricultural lands in R.S.No.26 and 253/2/2, and the house property situated at Nagavanda village in Hirekerur Taluk.



- c. The plaintiff contends that she is the wife of Basappa. The suit schedule properties were owned by the said Basappa. He died on 18.01.1978. The plaintiff claims that she is the only legal heir of the deceased Basappa and the alleged adoption claimed by defendant No.2 is non est and void, since the consent of the plaintiff was not taken by the said Basappa, as required under Section 7 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act').
- d. The plaintiff contends that the deceased-Basappa had executed a deed of maintenance in favour of the plaintiff on 15.07.1974 and he had given possession of 2 acres 20 guntas of land to the plaintiff to be enjoyed till her lifetime.
- e. After death of Basappa, plaintiff gave a varadi to the Village Accountant to enter her name in the revenue records pertaining to the suit property. A revenue dispute was raised and the appeal ended



in a finding that it would be subject to the final outcome of the present suit.

3. In response to the summons issued by the Trial Court, defendants No.1 and 2 appeared through their counsels and filed a joint written statement. Defendants No.1 and 2 contended that defendant No.1 is the second wife of Basappa and since she also did not bear any child, Basappa had adopted defendant No.2 as his son according to the customs prevailing in their community. It was contended that defendant No.2 was adopted under a registered adoption deed dated 19.04.1974 and after such adoption, there were differences between the plaintiff and the deceased Basappa. They contend that the adoption of defendant No.2 by Basappa is valid and legal and therefore, defendant No.2 is also entitled for share in the property as a legal heir of the deceased- Basappa.

4. On the basis of the above contentions, the following issues were framed by the Trial Court.



"ISSUES

1. *Whether the Plaintiff proves that she is the absolute owner of the suit schedule properties?*
2. *Whether defendant No.1 proves that she is legally wedded wife of deceased-Basappa?*
3. *Whether defts. prove that defendant No.2 is the legally adopted son of deceased-Basappa?*
4. *Whether Plff. proves that she is in lawful possession of all the suit schedule properties?*
5. *Whether the Plff. prove the cause of action for this suit?*
6. *What decree or order?*

Addl. Issue No.1:

Whether Plff. No.1(a) has got locus-standi to maintain and continue this suit?"

5. Plaintiff No.1 died during the pendency of the suit and the adopted son of the plaintiff (who was adopted subsequent to death of Basappa) has come on record as the legal representative of the plaintiff.

6. On behalf of plaintiff No.1(a), his brother deposed as PW.1 and examined eleven witnesses as PW.2 to PW.12. Exs.P.1



to P.13 were marked. Defendant No.1 was examined as DW.1 and six witnesses were examined as DW.2 to DW.7. Exs.D.1 to D.73 were marked.

7. After hearing the arguments by both sides, the Trial Court dismissed the suit by holding the issue No.1 in the **negative**, issue Nos.2, 3, 4 and 5 in the **affirmative** and additional issue in the **affirmative**.

8. Being aggrieved, the plaintiff approached the First Appellate Court in R.A.No.79/1991. After hearing the arguments, it framed the following points for consideration:

"POINTS"

1. *Whether the appellants prove that he is the absolute owner of the suit schedule property?*
2. *Whether the deft.1/respondent No.1 proves that she is the legally wedded wife of deceased Basappa?*
3. *Whether defendants/respondents prove that defendant No.2/R.2 is the legally adopted son of deceased Basappa?*
4. *Whether plaintiff/appellants proves that she is in actual and in lawful possession of all the suit properties as on the date of suit?*
5. *Whether plaintiff No.1a/appellant No.1a has got locus standi to maintain and continue the proceedings?*



6. *Whether it is necessary to interfere with the judgment and decree passed by the trial court?*

7. *What order?"*

9. The First Appellate Court also reiterated the reasoning of the Trial Court and it held the point Nos.1, 4, 5 in the **negative**, point Nos.2, 3 and 6 in the **affirmative** and dismissed the appeal. Being aggrieved, the plaintiff is before this Court in second appeal. This Court by Order dated 21.06.2012 has framed the following substantial question of law:

"Whether the Courts below are justified in holding the adoption of respondent is validly made?"

10. Heard the arguments by the learned counsel for the appellant. None appeared to argue the matter on behalf of the respondent, despite service of notice.

11. Learned counsel appearing for the appellant relying on the judgment of the Hon'ble Apex Court in the case of **Ghisalal V/s Dhapubai(D) by Lrs. & Ors¹** contend that the adoption essentially require an active participation and consent

¹ 2011 SAR (Civil) 161



of the wife. He submits that the adoption of defendant No.2 by the deceased-Basappa was obviously without the consent of the plaintiff and therefore, the validity of the adoption could not have been upheld by the Trial Court and the First Appellate Court. It is submitted that the differences between Basappa and the plaintiff were evident in the form of the maintenance deed and creation of charge in respect of the maintenance over one of the suit schedule property. Therefore, there was no such consent by the plaintiff to the adoption and hence, the Trial Court and the First Appellate Court fell in the error in holding that the plaintiff has failed to prove her case.

12. The plaintiff contended that the deceased Basappa died leaving behind the plaintiff as the only legal heir to succeed to his properties and the plaintiff was residing with the deceased-Basappa. It was contended that since the plaintiff did not bear any children, there was discontentment and Basappa fell into illicit relationship with defendant No.1. The plaintiff was residing in the suit house and due to the differences between the plaintiff and the said Basappa, maintenance deed was executed by him and charge was created in respect of one of the suit property



measuring 2 acres 20 guntas in Sy.No.26/1 which totally measures 6 acres 1 gunta.

13. Now the plaintiff is claiming that, since she alone is the legal heir of the deceased-Basappa, she is entitled for all the properties held by deceased Basappa and in addition to it, there being a charge over 2 acres 20 guntas as per the maintenance deed, it is evident that the plaintiff had not given consent to the adoption of defendant No.2 by the deceased- Basappa.

14. The learned counsel appearing for the appellant has also relied on the judgment in the case of ***Brajendra Singh vs. State of Madhya Pradesh and another***² where again it was held that Sections 7 and 8 of the Act are mandatory in nature and the conditions therein have to be complied. It is held that the capacity of a male Hindu or a female Hindu to take adoption is recognized and the consent of the spouse is a requirement.

15. Therefore, he contends that the impugned judgments of the Trial Court as well as the First Appellate Court are not sustainable in law.

² (2008) 13 SCC 161



16. The perusal of the judgment of the Trial Court shows that it has meticulously considered the issues framed by it.

17. The Trial Court, while deciding the issues framed by it in the light of the evidence on record, has held that defendant No.1 to be the legally wedded wife of deceased Basappa. The Trial Court is of the view that the evidence showed that marriage of the plaintiff and Basappa was prior to coming into force of the Hindu Marriage Act, 1955. The testimonies of the witnesses showed that the marriage had taken place in the year 1937. The marriage of defendant No.1 and the deceased Basappa was also in the year 1945. Therefore, it holds that there was no such prohibition to contract a second marriage and as such defendant No.1 is held to be the legally wedded wife of Basappa. The question whether defendant No.1 is the legally wedded wife of Basappa is redundant in view of the fact that the Act prescribe the conditions for a valid adoption. Section 7 of the Act reads as below:

"7. Capacity of a male Hindu to take in adoption

Any male Hindu who is of sound mind and is not a



minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.-

Explanation.- If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso."

18. It may be noted that as per the explanation, the consent of all the wives is essential for a valid adoption. Therefore, the question would be whether there was a valid adoption or not.

19. The Trial Court further observes that the plaintiff was present at the time of the adoption and therefore, she had given a tacit consent for the adoption of defendant No.2. This view of the Trial Court though may be flawed to some extent, in view of the fact that the plaintiff had not signed the adoption deed, which is produced at Ex.D.2 dated 19.04.1974. The said adoption deed shows that defendant No.1 was the second wife and the



first wife was Neelavva and Neelavva had not begotten any children. With the consent of the plaintiff, the deceased Basappa had entered into a marriage with defendant No.1. Ex.D.1 also states that the plaintiff had performed the marriage of her husband Basappa with defendant No.1. The adoption deed does not mention anything about the consent of the plaintiff. It may be noted that defendant No.1 had signed the said adoption deed.

20. Therefore, the requirement of Ex.D.1 that there was consent of the plaintiff cannot be deciphered from Ex.D.1. The Trial Court is of the view that the conduct of the plaintiff showed her consent for the said adoption.

21. Further, the Trial Court holds that plaintiff had the knowledge of adoption of defendant No.2 by Basappa and defendant No.1. The Trial Court relies on the registered maintenance deed at Ex.D.2 dated 15.07.1974. In other words about three months later to the adoption of defendant No.2 by Basappa and defendant No.1, the said Basappa had executed a maintenance deed as per Ex.D.2 and 2 Acres 20 Guntas of the land in Sy.No.26/1 was given to the plaintiff for her maintenance, till her lifetime. This deed also mentions that the



said Basappa had an adopted son and after the death of the plaintiff, the property would revert back either to Basappa or his adopted son i.e, defendant No.2. Though it does not mention the name of defendant No.2, it mentions that there is an adopted son.

22. Further, the Trial Court also notes that deceased Basappa had married defendant No.1 and they lived as husband and wife. The testimony of the witnesses examined on behalf of the defendant has been considered in length by the Trial Court and it holds that they lived as husband and wife to the knowledge of the public and it being an ancient marriage, it cannot be questioned after more than 50 years. Therefore, it repels the contention of the plaintiff that Basappa had an illicit relationship with defendant No.1 and she was a kept mistress. Therefore, the Trial Court holds that there being a tacit consent by the plaintiff for the adoption of defendant No.2 and since she had not questioned the said adoption within a period of three years from the knowledge, the plaintiff is not entitled for the relief sought by her.



23. The First Appellate Court in the impugned judgment reiterates the view of the Trial Court. Further it notices that the plaintiff has not entered the witness box to reiterate her case. It notes that it was the brother of plaintiff No.1(a), who is none else than the adopted son of the plaintiff i.e., Haleshappa has been examined in favour of the plaintiff. It notices that the said Haleshappa was adopted by the plaintiff under an adoption deed as per Ex.P.1 on 28.11.1982. The First Appellate Court also notices that Basappa had died in and around the year 1977 and as such the adoption of plaintiff No.1(a) was much later to the death of Basappa. It also notice that even plaintiff No.1(a) did not enter the witness box, but his brother had entered the witness box and deposed on behalf of the plaintiff. It also notices that there is no explanation as to why plaintiff No.1(a) has not been examined. It observes that there is absolutely no pleadings to say that plaintiff No.1(a) is the adopted son of the plaintiff under a deed of adoption. Therefore, the testimony of PW.1, who happens to be a brother of plaintiff No.1(a) does not come to the aid of plaintiff. The status of plaintiff No.1(a) was also not mentioned in the plaint and even after death of the plaintiff, no such averment has been made by amending the plaint.



24. Apart from that, the First Appellate Court notices that the explanation to Section 7 of the Act acts as a bar for valid adoption, if there are more than one wives. Thereafter, it goes on to notice that there was a consent that can be inferred from the conduct of the plaintiff and the adoption of defendant No.2 cannot be held to be invalid. In all other respects, it reiterates the reasoning of the Trial Court.

25. A perusal of the pleadings would show that plaintiff contends that she be declared as absolute owner of the suit schedule property, since she inherited the same from her husband Basappa and consequential injunction be granted. Conspicuously, the plaintiff has not sought any relief to invalidate the adoption of defendant No.2 as per Ex.D.1. The plaint is cleverly drafted and it seeks to ignore the adoption deed as per Ex.D.1. It is not that plaintiff was unaware of Ex.D.1 since reference to Ex.D.1 finds place in the maintenance deed executed by Basappa in favour of the plaintiff. Not only that, the plaintiff had received a sum of ₹1,250/- as maintenance on the same day when Ex.D.2 maintenance deed was executed by Basappa on 15.07.1974. It may be noted that in Ex.D.2, the said



Basappa narrates that the relationship between him and the plaintiff was not cordial and that she should not live in the house where he is residing. The said document also mentions that the plaintiff is given only life interest in about 2 Acres 20 Guntas of land in Sy.No.26/1. Thus, it is evident that the plaintiff cleverly seeks to ignore the adoption of defendant No.2 and claims her title to be declared in respect of the entire suit schedule property.

26. The question of limitation cannot be brought in and it cannot be said that the plaintiff could not seek her rights in the suit schedule property by ignoring the Ex.D.1, since she is not a party to it. If only the plaintiff was a party to Ex.D.1, it was essential for her to seek a cancellation of Ex.D.1. Since she is not a party to Ex.D.1, she is entitled to ignore Ex.D.1 in claiming her rights in the suit schedule property. Therefore, the question of limitation does not arise.

27. So far as the adoption of defendant No.2 is concerned, which is covered under issue No.3, the Trial Court notices the conduct of the plaintiff at length. In paragraph No.13, it holds that the adoption ceremony was properly held. It relies



on the testimony of DW.4 and DW.5, who stated that the adoption ceremony took place in the house of Basappa and the plaintiff was also present in the adoption ceremony. Even DW.6 and DW.7 also state that plaintiff-Neelavva was present in the adoption ceremony and took active part in it. Therefore, it concludes in following words.

"13.

vii) D.W.7 Basavanneppa also deposed that about 12 yrs. back Basappa and his wives Neelawwa and Parwatewwa took Kumar in adoption. Adoption ceremony took place at about 9 a.m. Number of persons had gathered in the house of Basappa. Basappa, Parwatewwa and Neelawwa were sitting Kumar was made to sit on their thighs. Nandeppa and Gourawwa consented to give their child Kumar in adoption. Basappa, Neelawwa and Parwatewwa took Kumar and declared that there after Kumar is their son. Since then Kumar is residing in the house of Basappa."

28. After observing as above, the Trial Court records that the consent of defendant No.1 was not obtained for the adoption of Haleshappa by the plaintiff Neelavva. It notices that as on the alleged date of adoption of plaintiff No.1(a), defendant No.2 who was adopted much earlier was alive. Therefore, it



notices that the condition laid down in Section 11 of the Act is breached. It may be noted that the question whether plaintiff No.1(a) was the adopted son of plaintiff-Neelavva is not a matter which requires any determination, since there is no pleading about the adoption of Haleshappa by Neelavva. Such adoption is not stated in the plaint and as such there is no averment in the written statement on this aspect also.

29. On the above ground, the Trial Court has come to the conclusion that there was a consent by the plaintiff for adoption of defendant No.2. Obviously, the relationship between plaintiff and Basappa soured after the said adoption and within three months from the date of adoption, there was a maintenance deed as per Ex.D.2.

30. This Court finds that the said conclusion of the Trial Court as well as the First Appellate Court by basing their finding on the testimony of the witnesses though at first blush, appears to be hit by the provisions of Section 7 of the Act if the testimony of the witnesses is examined, it appears that plaintiff- Neelavva had participated in the adoption ceremony of defendant No.2. The adoption deed was executed after about 20 days of the



adoption. The records also reveal that the adoption ceremony was held on an auspicious day of Ramanavami i.e., 01.04.1974. Therefore, the testimony of the witnesses that plaintiff- Neelavva was present at the ceremony has to be accepted. It may be noted that the plaintiff was not present and signed Ex.D.1 on 19.04.1974.

31. The learned counsel for the appellant places reliance on the judgment of the Hon'ble Apex Court in the case of ***Ghisalal (referred supra)***. In the said case the Hon'ble Apex Court has gone into provisions of the Act, and comes to the conclusion that Section 7 of the Act is clear in saying that the consent of the wife or if there are more than one wives, the consent of all the wives is necessary. In paragraph 20 of the said judgment, the Hon'ble Apex Court deals with the term 'consent' used in proviso to Section 7 of the Act and holds that the party supporting the adoption has to adduce evidence to prove that the adoption was done with the consent of the wife. It also clarifies that this can be done either by producing the document, evidencing her consent in writing, or by leading evidence to show that wife had actively participated in the ceremonies of adoption



with an affirmative mindset to support the action of the husband to take a son or a daughter in adoption. It also clarifies that a mere presence of the wife in the ceremonies cannot be treated as her consent.

32. It is pertinent to note that in the above decision, consent of the wife-Dhapubai was in question and when there was neither pleading nor any evidence to prove that the said Dhapubai was a signatory to the adoption deed or that she was present at the time of the execution and registration of the adoption deed, it cannot be assumed that she had consented for the adoption. In the case on hand, evidently the testimony of the witnesses clearly indicates that the plaintiff-Neelavva was not only present at the time of the adoption ceremony, which had taken place on Ramanavani i.e., on 01.04.1974 and that the defendant No.2 was made to sit on the laps of Neelava as well as the defendant No.1 in the presence of Basappa. It is evident that it is not only the mere presence of the plaintiff but also the active participation in the ceremonies was involved. After the adoption ceremony on 01.04.1974, the deed of adoption was executed on 19.04.1974 as per Ex.D.1. Thus, the evidence on



record in the form of the testimony of the witnesses clearly indicates that she had actively participated in the ceremonies.

33. The learned counsel for the appellant has also placed reliance on the judgment in the case of ***Brajendra Singh (referred supra)***, wherein the Apex Court has examined the applicability of Section 7 and 8 of the Act and it comes to the conclusion that they are mandatory. There cannot be any qualms about the applicability of Section 7 of the Act and the consent of the wife is a must. By relying on the judgment in the case of ***Amarendra Man Singh Bhramarbar v. Sanatan Singh***³, it holds that the wife's consent must be obtained prior to adoption and cannot be subsequent to such adoption. The facts of the said case are entirely different, where a crippled lady/Misrhi Bai was married to one Padam Singh and there was an adoption by Padam Singh.

34. In view of the above discussion, this Court is of the view that the judgment in the case of ***Ghisalal (referred supra)*** does not help the appellant in any way since there is oral testimony of the witnesses in the form of DW4, DW5 and DW6.

³ AIR 1933 PC 155



The testimony of DW6 clearly mentions that the defendant No.2 was made to sit on the lap of Basappa and the plaintiff, as well as the defendant No.1 had vowed to protect the defendant No.2. The testimonies of these witnesses have not been impeached in the cross-examination. The cross-examination substantially concerns with the execution of the adoption deed but not the ceremony of the adoption that had taken place on 01.04.1974.

35. In view of the above discussion, the substantial question of law regarding adoption is held in the affirmative and the additional question of law is held in the negative. Consequently, the appeal fails.

36. In view of the above discussion, the appeal is ***dismissed.***

37. In view of disposal of the appeal, pending interlocutory applications, if any, do not survive for consideration and are disposed of.

SD/-
(C M JOSHI)
JUDGE