



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S. INDIRESH

REGULAR SECOND APPEAL NO.896 OF 2014 (DEC/INJ)

BETWEEN:

1. SUBBAMMA @ SHARADAMMA
SINCE DECEASED, BY LRS.
APPELLANT NOS.2 TO 7.
2. SMT. PREMA
D/O PUTTAPPA SHETTY,
W/O KANTHARAJU,
AGED ABOUT 52 YEARS,
AGRICULTURIST.
3. SRI. MANJUNATHA
S/O PUTTAPPA SHETTY,
AGED ABOUT 43 YEARS,
AGRICULTURIST.
4. SRI. LOKESHA
S/O PUTTAPPA SHETTY,
AGED ABOUT 35 YEARS,
AGRICULTURIST.
5. SMT. SUDHA
D/O PUTTAPPA SHETTY,
AGED ABOUT 41 YEARS,
AGRICULTURIST.
6. SMT. SHANTHAMMA
D/O PUTTAPPA SHETTY,
AGED ABOUT 41 YEARS,
AGRICULTURIST.
7. SMT. SHYAMALA
D/O PUTTAPPA SHETTY,



AGED ABOUT 48 YEARS,
AGRICULTURIST.

ALL ARE RESIDING AT:
R/AT BYLAKUPPE VILLAGE,
HARANAHALLI HOBLI,
PERIYAPPATNA TALUK,
MYSURU DISTRICT - 571 104.

...APPELLANTS

(BY SRI. ASHOK HARANAHALLI, SENIOR COUNSEL FOR
SRI. R. SUBRAMANYA, ADVOCATE;
V/O DATED 27.02.2026, APPELLANTS 2 TO 7 ARE
TREATED AS LRS OF DECEASED APPELLANT NO.1)

AND:

J. SHEKHARA
ADOPTED SON OF
RAMAPPAJI SHETTY,
AGED ABOUT 36 YEARS,
R/AT B.M. ROAD, BYLAKUPPE VILLAGE,
HARANAHALLI HOBLI,
PERIYAPATNA TALUK,
MYSURU DISTRICT - 571 104.

...RESPONDENT

(BY SRI. K.N. NITISH, ADVOCATE FOR
SRI.K.V. NARASIMHAN, ADVOCATE)

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF THE CODE OF CIVIL PROCEDURE AGAINST
THE JUDGMENT AND DECREE DATED 12TH APRIL, 2014 PASSED
IN REGULAR APPEAL NO.197 OF 2013 ON THE FILE OF THE
PRESIDING OFFICER, FAST TRACK COURT, HUNSUR,
ALLOWING THE APPEAL AND SETTING ASIDE THE JUDGMENT
AND DECREE DATED 28TH MARCH, 2012 PASSED IN ORIGINAL
SUIT NO.27 OF 2009 ON THE FILE OF THE ADDITIONAL
SENIOR CIVIL JUDGE AND JMFC., HUNSUR.

THIS APPEAL COMING ON FOR FURTHER HEARING, THIS
DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE E.S. INDIRESH



ORAL JUDGMENT

This appeal is preferred by the legal representatives of defendant challenging the judgment and decree dated 12th April, 2014 passed in Regular Appeal No.197 of 2013 on the file of the Presiding Officer, Fast Track Court at Hunasur (for short, hereinafter referred to as '*First Appellate Court*') allowing the appeal and setting aside the judgment and decree dated 28th March, 2012 passed in Original Suit No.27 of 2009 on the file of the Additional Senior Civil Judge and JMFC., Hunsur (for short, hereinafter referred to as '*Trial Court*'), wherein the suit of the plaintiff came to be dismissed.

2. For the sake of convenience, the parties in this appeal are referred to as per their ranking before the Trial Court.

3. The brief facts of the case are that the plaintiff claims to be the adopted son of Puttamma W/o Ramappaji Shetty filed the instant suit bearing Original Suit No.27 of 2009, seeking relief of declaration with consequential relief of injunction against the defendant-Puttappa Shetty in respect of suit schedule property. It is stated that, the said Ramappaji Shetty and Puttappa Shetty are brothers and they are the



children of Appanna Shetty. Ramappaji Shetty died on 16th May, 1973 leaving behind his wife Puttamma as his sole legal representative. After the death of Ramappaji Shetty, his wife Puttamma succeeded to the estate belongs to her husband. It is also stated that, one Javarappa Shetty and Sannamma were the natural parents of the plaintiff. The said Sannamma and Puttamma are sisters. After the death of Ramappaji Shetty, his wife Puttamma adopted the plaintiff, who was aged about four years at the time of adoption. It is averred in the plaint that the adoption ceremony in respect of adopting the plaintiff by Puttamma was held on 28th October, 1974 at Kanagalu Village and thereafter, same was reduced into the document. It is also stated that, pursuant to the Adoption Deed dated 28th October, 1974, the plaintiff is residing with his adopted mother Puttamma and was under care and custody accordingly. The said Puttamma died on 19th November, 2002 and plaintiff performed all funeral obsequies of Puttamma and became sole legal representative to succeed to the estate of deceased Puttamma. It is the grievance of the plaintiff that the defendant without the knowledge and consent of Puttamma, got transferred the revenue records in respect of suit schedule



property into the name of the defendant and as such, the plaintiff has filed the instant suit.

4. After the service of notice, defendant entered appearance and filed detailed written statement denying the averments made in the plaint. The defendant admits the relationship with Puttamma and Ramappaji Shetty. It is the specific case of defendant that the suit schedule items 1 to 4 are not the self acquired properties of Ramappaji Shetty and item No.5 is not acquired by Puttamma from the income derived from item Nos.1 to 4. It is further contended that the plaintiff is son of Javarappa Shetty and Sannamma and accordingly, disputes the adoption said to have been held on 28th October, 1974.

5. It is further stated in the written statement that, after the death of Puttamma and her husband Ramappaji Shetty, the defendant being the brother of Ramappaji Shetty succeed to the estate of the deceased Puttamma and Ramappaji Shetty. Therefore, the defendant sought for dismissal of the suit.



6. The Trial Court, based on the pleadings on record, formulated the issues for its consideration.

7. In order to establish their case, plaintiff examined 5 witnesses as PW1 to PW5 and got marked 31 documents as Exhibits P1 to P31. On the other hand, defendants examined 6 witnesses as DW1 to DW6 and got marked 66 documents as Exhibits D1 to D66.

8. The Trial Court, after considering the material on record, by its judgment and decree dated 28th March, 2012, dismissed the suit of the plaintiff and being aggrieved by the same, the plaintiff preferred Regular Appeal No.197 of 2013 before the First Appellate Court. The said appeal was contested by legal representatives of the defendant. The First Appellate Court, after re-appreciating the material on record, by its judgment and decree dated 12th April, 2014, allowed the appeal and set-aside the judgment and decree passed by the Trial Court in Original Suit No.27 of 2009. Being aggrieved by the same, legal representatives of defendant preferred this appeal.



9. This Court, by order dated 08th July, 2014 admitted the appeal to consider the following substantial questions of law:

- i) Whether the judgment of the appellate court is sustainable in the absence of a specific finding as to how merely on the basis of unregistered documents, the plaintiff could be considered as entitled to the property in question?*
- ii) Whether lower appellate court is justified in holding that the plaintiff is the adopted son of Puttamma even though all his school records and certificates show the name of his natural father?*
- iii) Whether the appellate court is right in its conclusion that there was a partition under joint family and a suit schedule property has fallen to the share of Ramappaji Shetty when such a case is not supported by any ocular or documentary evidence?*

10. Heard Sri. Ashok Haranahalli, learned Senior Counsel on behalf of Sri. R. Subramanya, appearing for appellants and Sri. K.N. Nitish, learned counsel on behalf of Sri. K.V. Narasimhan, appearing for the respondent.

11. Sri. Ashok Haranahalli, learned Senior Counsel appearing for appellants contended that the Trial Court, after considering the material on record, has rightly dismissed the



suit of the plaintiff, however, the First Appellate Court, erroneously re-appreciated the material on record and allowed the appeal. Therefore, learned Senior Counsel sought for interference of this Court in the present appeal.

12. It is the specific contention of learned Senior Counsel appearing for the appellants that the unregistered Adoption Deed dated 28th October, 1974 is prepared to knock-off the property of the defendant. It is also argued that the plaintiff has failed to prove the authenticity of the Adoption Deed and there is no corroborative evidence as to genuineness of the Adoption Deed and therefore, the First Appellate Court ought to have confirmed the judgment and decree passed by the Trial Court by dismissing the appeal.

13. Learned Senior Counsel appearing for appellants, by referring to the deposition of DW2 (plaintiff) and his mother Sannamma (DW6) contended that the DW6 herself admitted that she is not aware about the Adoption Deed and she further deposed that there was no adoption ceremony performed as to adopt the plaintiff and the said aspect of the matter was



ignored by the First Appellate Court. Accordingly, learned Senior Counsel sought for interference of this Court.

14. It is also argued by learned Senior Counsel appearing for the appellants that the crucial documents as to Exhibit D43 and D45 have not been re-appreciated in a manner known to law and surrounding circumstances as to Adoption Deed was not properly considered by the First Appellate Court. By referring to Exhibits D11-Ration Card and D8-Voter list, learned Senior Counsel appearing for appellants argued that, in the said Ration Card and Voter list, the name of the father of plaintiff was shown as Javarappa Shetty and the said aspect has been ignored by the First Appellate Court. By referring to mutation entries as per Exhibits D9 and D10, learned Senior Counsel contended that, the said Puttamma herself has given a Vardhi to change mutation in favour of the defendant, which would makes it clear that, there was no adoption by Smt. Puttamma. Accordingly, learned Senior Counsel sought for interference of this Court.

15. Lastly, it is contended by learned Senior Counsel Sri. Ashok Haranahalli, appearing for appellants that, Exhibits D43 and D45 have not been proved before the Trial Court and



witnesses to those documents have not been examined to prove the contents of the documents and therefore, the finding recorded by the First Appellate Court requires interference in the present appeal.

16. In order to buttress his arguments, learned Senior Counsel Sri. Ashok Haranahalli, appearing for the appellants places reliance on the judgment of Hon'ble Supreme Court in the case of **PARAM PAL SINGH THRU FATHER vs. NATIONAL INSURANCE COMPANY AND ANOTHER** reported in (2013) 3 SCC 409 and argued that, there must be a giving and taking ceremony to prove the adoption; and in the absence of the same, the proof of adoption cannot be accepted. Learned Senior Counsel appearing for the appellants also places reliance on the judgment of Hon'ble Supreme Court in the case of **M. VANAJA vs. M. SARLA DEVI (DEAD)** reported in (2020) 5 SCC 307 and argued that the proof of ceremony of actual giving and taking in adoption on a particular day is important. Learned Senior Counsel appearing for appellants further places reliance on the judgment of Hon'ble Supreme Court in the case of **JAI SINGH vs. SHAKUNTALA** reported in (2002) 3 SCC 634 and contended that the contemporaneous documents have



to be considered to prove the adoption. In the backdrop of these aspects, learned Senior Counsel contended that the First Appellate Court has erroneously interfered with the finding of fact made by the Trial Court, which requires interference in this appeal.

17. Per contra, Sri K.N. Nitish, learned counsel appearing for the respondent by referring to the Exhibits D43 and D45 submitted that, the actual adoption of the plaintiff had taken place followed by giving and taking ritual was held between the families. It is contended by learned counsel that the First Appellate Court, after considering the entire material on record has re-appreciated the same and therefore no interference be called for in this appeal. By referring to the evidence of DW3-Head Master of the Higher Primary School at Bylukuppe as to Exhibit D65-Insurance Policy, learned counsel appearing for the respondent submits that, late Puttamma herself had admitted that the plaintiff has adopted son and therefore in all practical purposes the plaintiff has been taken in adoption by late Puttamma.



18. Learned counsel appearing for the respondent further referred to Exhibits D42-Death Certificate of Puttamma, D44-Sale Deed and D45-Adoption Deed and submitted that, the said documents are in custody of the plaintiff. Learned counsel appearing for the respondent contended that the Sale Deed at Exhibit D44 is in respect of item No.2 of the suit schedule property being purchased by Ramappaji Shetty and since the original documents particularly the Sale Deed which is in custody of the plaintiff, clearly establish that the adoption had taken place as per Exhibits D43 and D45. It is also argued by learned counsel appearing for respondent that, late Puttamma had taken Insurance Policy marked at Exhibit D65 wherein, the name of plaintiff has been shown as nominee to the said insurance policy and therefore, if the plaintiff has not been taken in adoption by said Puttamma, she would not have made the plaintiff-J.Shekhara as the nominee in the Insurance Policy.

19. By referring to Adoption Deeds at Exhibits D43 and D45, learned counsel appearing for the respondent submits that the averments made in the aforementioned documents makes it clear that the adoption was taken place and the plaintiff was given in adoption by his natural parents *viz.*,



Sannamma and Javarappa Shetty and the same was accepted by late Puttamma. Therefore learned counsel appearing for the respondent contended that the arguments advanced by learned Senior counsel appearing for the appellants cannot be accepted.

20. Learned counsel appearing for the respondent also refers to evidence of DW4, who is the Scribe to Exhibits D43 and D45 and submitted that, as deposed by DW4, both the plaintiff and defendants were known to him and in a categorical version, it is deposed as to occurrence of adoption. Learned counsel appearing for the respondent further contended that, the natural parents of the plaintiff were residents of Kanagalu village and since, the plaintiff was given in adoption to Puttamma, he was residing with his adopted mother Puttamma at Bylakuppe for a considerable period, however, the said aspect of the matter was not considered by the Trial Court, and same was set right by the First Appellate Court

21. Sri K.N. Nitish, learned counsel appearing for the respondent by referring to the evidence of witnesses to Exhibits D43 and D45, particularly PW4 and contended that the plaintiff has proved Exhibits D43 and D45 by examining the Scribe to



the Adoption Deeds. He further submits that, since the witness is no more, the plaintiff has proved the adoption and the formalities related to adoption that have been taken place as to the giving and taking ceremony of the plaintiff between the natural parents and the adopted mother Puttamma.

22. By referring to evidence of natural mother of the plaintiff viz., Sannamma-DW6, it is argued by the learned counsel appearing for the respondent that the DW-6 being a biological mother could not have given her son in adoption to her sister Puttamma unless there is an intention of giving her child to the adoptive mother. Therefore, it is contended by the learned counsel appearing for the respondent that the First Appellate Court after re-appreciating the entire material on record, rightly interfered with the judgment and decree passed by the Trial Court.

23. Insofar as Exhibit D9-Mutation order is concerned, it is submitted by learned counsel appearing for the respondent that the said document is not a basis to arrive at a conclusion that there is no adoption, even though the plaintiff was residing with his adopted mother Puttamma since from the age of four years. Accordingly by referring to the finding recorded by the



First Appellate Court at paragraph 34 as to interference with regard to Issue No.2, learned counsel appearing for the respondent submitted that, no interference be called for in this appeal under Section 100 of the Code of Civil Procedure.

24. In order to buttress his arguments, learned counsel appearing for the respondent refers to paragraph 8 of the judgment of Hon'ble Supreme Court in the case of **L. DEBI PRASAD (DEAD) BY L.RS vs. SMT. TRIBENI DEVI AND OTHERS** reported in (1970) 1 SCC 677 and contended that the only formality required to prove adoption is only giving and taking of the adoptee and therefore happening of performance of a particular ceremony is not required as far as adoption is concerned. It is also contended by the learned counsel appearing for the respondent that, there is no predetermined way of proving any fact as to adoption is concerned and even that the performance of Dattaka Homa is not compulsory under the provisions of Section 11 and 12 of the Hindu Adoptions and Maintenance Act, 1956. In this regard, learned counsel appearing for the respondent places reliance on the judgment of Hon'ble Supreme Court in the case of **KARTAR**



SINGH (MINOR) THROUGH GUARDIAN BACHAN SINGH vs. SURJAN SINGH reported in (1974) 2 SCC 559.

25. Learned counsel appearing for the respondent further refers to the judgment of this Court in the case of ***MUNIVENKATAPPA vs. DODDAMUNIYAPPA AND OTHERS*** reported in 2008(1) KCCR 488, particularly to paragraph 13, argued that the long recognition of adoption raises a strong presumption of adoption and as the plaintiff was residing with Puttamma since the age of four years and even after her demise, it makes it clear that the adoption has been recognized. Therefore sought for dismissal of the appeal.

26. Finally, it is argued by the learned counsel appearing for the respondent that, if the First Appellate Court has properly re-appreciated the material on record in a manner known to law and reversed the erroneous finding of fact arrived by the Trial Court, under such circumstances, this Court is having a limited jurisdiction and even otherwise, no acceptable reasons have been made out by the defendants to interfere with the finding recorded by the First Appellate Court. Accordingly, learned counsel appearing for the respondent sought for dismissal of appeal.



27. In the light of the submissions made by the learned counsel for the parties, I have carefully examined the finding recorded by both the Courts below and perused the record.

28. It is to be noted that the plaintiff-J. Shekara has filed Original Suit No.27 of 2009 seeking declaration with consequential relief of permanent injunction in respect of the suit schedule properties based on two documents particularly Exhibits D43 and D45, wherein the natural parents of the plaintiff viz., Sannamma and Javarappa Shetty had given the plaintiff in adoption to Puttamma. It is forthcoming from the genealogical tree produced by the parties that, the suit schedule property is the joint family property of Appanna Shetty, who had two children namely Ramappaji Shetty and Puttappa Shetty. The said Ramappaji Shetty died on 16th May, 1973 and his wife Puttamma died on 19th November, 2002. It is also forthcoming from the plaint that, till the execution of alleged Adoption dated 28th October, 1974 (Exhibits D43 and D45), Ramappaji Shetty and his wife Puttamma had no issues. It is also to be noted that the witnesses to the said documents were no more and accordingly, the plaintiff examined the children of witnesses to the aforementioned documents.



29. The core question to be answered in this appeal is as to whether Puttamma had taken the plaintiff in adoption from the natural parents viz., Sannamma and Javarappa Shetty. In this regard, a perusal of the document particularly Exhibit D9- Mutation order, the same would indicate that the Vardi has been given by Puttamma w/o Ramappaji Shetty to enter the name of Puttappa Shetty (defendant) in respect of the suit schedule property. It is also forthcoming from the aforementioned document that there is no issue or a legal heirs to succeed to the estate of late Ramappaji Shetty. The above said document at Exhibit D9 was made by the revenue authorities on 05th January, 1975. Further it is forthcoming from the voters list produced at Exhibit D8 that, the name of the plaintiff found place at Sl.No.279 and the name of the father was shown as Javarappa Shetty. In addition to this, in the evidence of DW3-Head Master of Higher Primary School at Bylukuppe, it is deposed as follows:

"ಶೇಖರ ಎನ್ನುವ ವಿದ್ಯಾರ್ಥಿ ನಮ್ಮ ಶಾಲೆಗೆ ದಾಖಲಾಗುವ ಕಾಲಕ್ಕೆ ನಾನು ಶಾಲೆಯಲ್ಲಿ ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರಲಿಲ್ಲ. ನಿಡಿ 66 ರ 6ನೆ ಕಾಲದಲ್ಲಿ ಶೇಖರನ ತಂದೆಯ ಹೆಸರು ಜವರಪ್ಪಶೆಟ್ಟಿ ಮತ್ತು ಅವರ ಕಸುಬು ವ್ಯವಸಾಯ ಎಂದು ಸುಮಾರು ನಮೂದು ಆಗಿದೆ ಎಂದರೆ ಸರಿ. ಪೋಷಕರೇ ಬೇರೆ ಮತ್ತು ತಂದೆ ತಾಯಿಯವರೇ ಬೇರೆ ಎಂದರೆ ನಿಜ ವಿದ್ಯಾರ್ಥಿಯು ಪುಟ್ಟಮ್ಮ ಎನ್ನುವವರ



ಮನೆಯಲ್ಲಿದ್ದ ಕಾರಣ ಆ ವಿದ್ಯಾರ್ಥಿಯ ಖಾಯ ವಿಳಾಸಕೋಸ್ತರ ಪುಟ್ಟಮ್ಮಳ
ಹೆಸರನ್ನು ಪೋಷಕರು ಎಂದು ಆ ದಾಖಲಾತಿಯ ವಹಿಯಲ್ಲಿ ನಮೂದಿಸಲಾಗಿದೆ."

(emphasis supplied)

30. A perusal of evidence of DW3 makes it clear that the plaintiff was admitted to school by Puttamma. However, the name of father has been shown as Javarappa Shetty. The said fact reveals the fact that, there is no adoption as alleged by the plaintiff as per Exhibits D43 and D45.

31. In the evidence of DW6-Sannamma (biological mother of the plaintiff), it is deposed as follows:

"ನನ್ನ ಜಾತಿಯಲ್ಲಿ ದತ್ತಕ ತೆಗೆದುಕೊಳ್ಳುವ ಕಾಲಕ್ಕೆ ಹೋಮ ಮಾಡುವ ಸಂಪ್ರದಾಯ ಇದೆ. ಆದರೆ ಶೇಖರನನ್ನು ದತ್ತಕ ಕೊಡುವ ಕಾಲಕ್ಕೆ ಯಾವುದೇ ಹೋಮ ಮಾಡಿಸಿರಲಿಲ್ಲ. ಶೇಖರನನ್ನು ದತ್ತಕಕ್ಕೆ ಕೊಡುವ ಕಾಲಕ್ಕೆ ನನ್ನ ಅಣ್ಣ ಅತ್ತಿಗೆ ಇದ್ದು ಬೇರೆ ಹಾಜರಿದ್ದವರ ಹೆಸರು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಯಾವುದೇ ಹೋಮ ನನ್ನ ಅಣ್ಣ ಅತ್ತಿಗೆ ಇದ್ದು ಬೇರೆ ಹಾಜರಿದ್ದವರ ಹೆಸರು ನನಗೆ ಗೊತ್ತಿಲ್ಲ." ದತ್ತಕ ಕೊಡುವ ಮೊದಲು ದತ್ತಕ ಕೊಡುವುದು ಮತ್ತು ತೆಗೆದುಕೊಳ್ಳುವ ಬಗ್ಗೆ ನಮ್ಮ ನಡುವೆ ಯಾವುದೇ ಮಾತುಕತೆಯಾಗಿರಲಿಲ್ಲ."

(emphasis supplied)

32. On perusal of the deposition of DW6, the same would indicate that, a customary practice is prevailing in the family of natural parents of the plaintiff for adoption and it is deposed by DW-6 that a requisite ceremony has not happened and except her brother and sister-in-law, no one was present at



the time. The said fact makes it clear that the ceremony has not been conducted at the time of giving and taking of plaintiff by Puttamma as alleged by the plaintiff.

33. It is also forthcoming from the evidence of DW3- scribe to Adoption Deeds at Exhibits D43 and D45 that no such ceremony was conducted to prove the adoption. It is also forthcoming from Exhibit D9 and D10 that the change of mutation entry has been made at the instance of Puttamma. In that view of the matter, taking into consideration the finding recorded by both the courts below, I am of the view that the plaintiff has failed to prove adoption as alleged by plaintiff taking the advantage of Exhibit D43 and D45. In this regard, it is relevant to cite the law declared by Hon'ble Supreme Court in the case of **PARAM PAL SINGH** (*supra*), wherein at paragraphs 12 to 14, it is held as follows:

"12. In Hindu law in the celebrated decision of this Court in Lakshman Singh Kothari [AIR 1961 SC 1378], the legal requirement for a valid adoption has been succinctly stated in para 10 which reads as under:

"10. The law may be briefly stated thus: Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the



corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party."

13. The said legal position has been consistently followed by this Court which can be mentioned by referring to a recent decision of this Court in M. Gurudas v. Rasaranjan. Paras 26 and 27 are relevant for our purpose which read as under:

"26. To prove valid adoption, it would be necessary to bring on record that there had been an actual giving and taking ceremony. Performance of 'datta homam' was imperative, subject to just exceptions. Above all, as noticed hereinbefore, the question would arise as to whether adoption of a daughter was permissible in law.

27. In Mulla's Principles of Hindu Law, it is stated:

'488. Ceremonies relating to adoption.—

(1) The ceremonies relating to an adoption are—

(a) the physical act of giving and receiving, with intent to transfer the boy from one family into another;

(b) the datta homam, that is, oblations of clarified butter to fire; and



(c) other minor ceremonies, such as putresti jag (sacrifice for male issue).

(2) The physical act of giving and receiving is essential to the validity of an adoption.

As to datta homam it is not settled whether its performance is essential to the validity of an adoption in every case.

As to the other ceremonies, their performance is not necessary to the validity of an adoption.

(3) No religious ceremonies, not even datta homam, are necessary in the case of Shudras. Nor are religious ceremonies necessary amongst Jains or in the Punjab."

14. In this context, it will be worthwhile to note the requirement of registration of an adoption deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in sub-section (1) of Section 17 which mandatorily requires registration. Sub-section (3) of Section 17 only refers to the mandatory requirement of registration of an authorisation that may be given for adopting a son executed after 1-1-1872 if such authorisation was not conferred by a will. Dealing with the said provision relating to authorisation, it has been held in the decision in Vishvanath Ramji Karale v. Rahibai Ramji Karale [AIR 1931 Bom 105] that a deed of adoption as distinguished from authority to adopt does not require registration."

34. The aforementioned dictum was further fortified by the Hon'ble Supreme Court in the case of **M. VANAJA** (*supra*) at paragraphs 15 and 16, which reads as follows:



"15. A plain reading of the above provisions would make it clear that compliance of the conditions in Chapter I of the 1956 Act is mandatory for an adoption to be treated as valid. The two important conditions as mentioned in Sections 7 and 11 of the 1956 Act are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption. The appellant admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption. Admittedly, there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. That apart, the respondent who is the adoptive mother has categorically stated in her evidence that the appellant was never adopted though she was merely brought up by her and her husband. Even the grandmother of the appellant who appeared before the Court as PW 3 deposed that the appellant who lost her parents in her childhood was given to the respondent and her husband to be brought up. PW 3 also stated in her evidence that the appellant was not adopted by the respondent and her husband. Therefore, the appellant had failed to prove that she had been adopted by the respondent and her husband Narasimhulu Naidu.

16. The appellant relied upon a judgment of this Court in L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] to submit that abundant evidence submitted by her before the Court would point to the fact that she was brought up as the daughter of the respondent and her husband (Late) Narasimhulu Naidu. Such evidence can be taken into account to draw inference that she was



adopted by them. The facts in L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] are similar to those in the instant case. In that case, Shyam Behari Lal was adopted by Gopal Das in the year 1892 when he was an infant. Shyam Behari Lal was unable to establish the actual adoption but has produced considerable documentary evidence to show that he was treated as the son of Gopal Das for a quarter of century. This Court accepted the submission of Shyam Behari Lal and held that there was sufficient evidence on record to infer a valid adoption. Though the facts are similar, we are unable to apply the law laid down in L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] to the instant case. L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] case pertains to adoption that took place in the year 1892 and we are concerned with an adoption that has taken place after the 1956 Act has come into force. Though the appellant has produced evidence to show that she was treated as a daughter by (Late) Narasimhulu Naidu and the defendant, she has not been able to establish her adoption. The mandate of the 1956 Act is that no adoption shall be valid unless it has been made in compliance with the conditions mentioned in Chapter I of the 1956 Act. The two essential conditions i.e. the consent of the wife and the actual ceremony of adoption have not been established. This Court by its judgment in Ghisalal v. Dhapubai [Ghisalal v. Dhapubai, (2011) 2 SCC 298 : (2011) 1 SCC (Civ) 411] held that the consent of the wife is mandatory for proving adoption."



35. A perusal of the aforesaid judgments would indicate that the two essential conditions for proving adoption are required, i.e., there must be an actual ceremony of adoption though the Dattaka Homa is not compulsory, however the giving and taking ceremony has to be conducted by the parties as to the prevailing customary practices.

36. In the judgment of the Hon'ble Supreme Court in the case of **JAI SINGH** (*supra*) at paragraphs 8 and 9, it is held as follows:

"8. The issue thus arises as to whether the High Court was justified in laying emphasis on the conduct of the adopted son. As noticed hereinbefore the presumption is a rebuttable presumption. While it is true that the registered instrument of adoption presumably stands out to be taken to be correct but the court is not precluded from looking into it upon production of some evidence contra the adoption. Evidence, which is made available to the court for rebutting the presumption, can always be looked into and it is on production of that evidence that the High Court has recorded a finding of non-availability of the presumption to the appellant. A brief reference to the available evidence may be convenient at this juncture. The following documents were placed on record:

(i) voters' list prepared in the year 1991;

(ii) receipts of chulha tax said to have been paid by the appellant;



- (iii) mutation proceedings dated 23-8-1986; and*
- (iv) jamabandi for the year 1988-89.*

9. As regards (i), no fault can be ascribed on rejection of this piece of evidence by reason of the fact that the suit was instituted on 24-9-1986 and being aware of the pendency of the dispute the appellant described himself as the son of Sunda Ram. Incidentally in the voters' list prepared in 1984, the appellant has been described as the son of his natural father i.e. Jage Ram and accordingly the High Court came to a definite conclusion that Ext. D-8 being the document, which came into existence after the institution of the suit can be of no consequence whatsoever".

37. In the aforementioned judgment, the Hon'ble Supreme Court has held that, in order to prove adoption, the documents which are made available to the Court for rebutting the presumption has to be considered. In the above case also, the voters list, the mutation proceedings and the revenue records pertaining to the suit schedule properties have been considered by the Hon'ble Supreme Court and held that the aforementioned documents can be factors to consider as compulsory, however, fortifies as to the performance of ceremony of Dattaka Homa and the giving and taking of the child. Therefore, I am of the view that the plaintiff has failed to prove the adoption in a manner known to law as the voter



list and ration card marked in the present case establish that there is no adoption of plaintiff by Puttamma.

38. The Hon'ble Supreme Court in the case of **SALEKHCHAND (DEAD) BY LRS vs. SATYA GUPTA AND OTHERS**, reported in (2008) 13 SCC 119 at paragraph 16, had an occasion to consider the interpretation of Sections 11 and 12 of the Hindu Adoptions and Maintenance Act, 1956. At Paragraphs 16 to 20, it is held as follows:

"16. In support of the appeal learned counsel for the appellants submitted that the custom was established. There was enough material to show that the family members treated Chandra Bhan as the adopted son and, therefore, the first appellate court's judgment and decree should have been maintained. It was submitted that the trial court and the High Court should not have given any undue importance to the fact about the Janeu ceremony being held on the same day, overlooking the fact that the evidence was being given by the witness who was more than 80 years old. It is submitted that even if the defendants acquire any title because of the transaction with Anand Swaroop his share was 1/4th and in any event the defendants cannot claim 1/3rd share. It is further submitted that even if the stand about the acceptance of Chandra Bhan as an adopted son is to be accepted, that in any event do away with the requirement to prove legality of adoption. It is to be



noted that the adoption took place sometime in 1928-1929.

17. In response, learned counsel for the respondents submitted that the custom was not established. Evidence of PWs 1, 2 and 3 did not prove existence of custom.

18. The rival stands need careful consideration.

19. Since the alleged adoption took place prior to enactment of the Hindu Adoptions and Maintenance Act, 1956 (in short "the Act"), the old Hindu Law is applicable.

20. "10. It would be desirable to refer to certain provisions of the Act and the Hindu Code which governed the field prior to the enactment of the Act. Section 3(a) of the Act defines 'custom' as follows:

'3. Definitions.—In this Act unless the context otherwise requires—

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family;'

11. Section 4 provides that 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 the Act shall become inoperative with respect to any matter for which provision was made in the Act except where it was otherwise expressly provided. Section 4 gives overriding application to the provisions of the Act. Section 5 provides that adoptions are to be regulated in terms of the provisions contained in Chapter II. Section 6 deals with the requisites of a valid adoption. Section 11 prohibits adoption in case it is of a son, where the adoptive father or mother by whom the adoption is made has a Hindu son, son's son, or son's son's son, whether by legitimate blood relationship or by adoption, living at the time, of adoption. Prior to the Act under the old Hindu Law (the Hindu Code) Article 3 provided as follows:

'3. (1) A male Hindu, who has attained the age of discretion and is of sound mind, may adopt a son to himself provided he has no male issue in existence at the date of adoption.

(2) A Hindu who is competent to adopt may authorise either his (i) wife, or (ii) widow (except in Mithila) to adopt a son to himself.'

12. ... Where a son became an outcast or renounced Hindu religion, his father became entitled to adopt another. The position has not changed after enactment of the Caste Disabilities Removal Act (21 of 1850), as the outcast son does not retain the religious capacity to perform the obsequies rites. In case parties are governed by Mitakshara Law, additionally adoption can be made if the natural son is a congenital lunatic or an idiot. ... Relevant provisions [relating to custom] as defined in the Hindu Code are as follows:

'Custom defined.—Custom is an established practice at variance with the general law.



Nature of custom.—A custom varying the general law may be a general, local, tribal or family custom.

Explanation 1.—A general custom includes a custom common to any considerable class of persons.

Explanation 2.—A custom which is applicable to a locality, tribe, sect or a family is called a special custom.

Custom cannot override express law.—(1) Custom has the effect of modifying the general personal law, but it does not override the statute law, unless it is expressly saved by it.

(2) Such custom must be ancient, uniform, certain, peaceable, continuous and compulsory.

Invalid custom.—No custom is valid if it is illegal, immoral, unreasonable or opposed to public policy.

Pleading and proof of custom.—(1) He who relies upon custom varying the general law must plead and prove it.

(2) Custom must be established by clear and unambiguous evidence.'

(See Sir H.S. Gour's Hindu Code, Vol. I, 5th Edn.)

13. Custom must be ancient, certain and reasonable as is generally said. It will be noticed that in the definition in clause (a) of Section 3 of the Act, the expression 'ancient' is not used, but what is intended is observance of custom or usage for a long time. The English rule that a 'custom, in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary' has not been strictly applied to Indian conditions. All that is necessary to prove is that the custom or usage has been acted upon in practice for such a long



period and with such invariability and continuity as to show that it has by common consent been submitted to as the established governing rule in any local area, tribe, community, group or family. Certainty and reasonableness are indispensable elements of the rule. For determination of the question whether there is a valid custom or not, it has been emphasised that it must not be opposed to public policy. [I shall deal with the question of public policy later on.]

14. *[The origin of custom of adoption assumes great importance.] The origin of custom of adoption is lost in antiquity. The ancient Hindu Law recognised twelve kinds of sons of whom five were adopted. The five kinds of adopted sons in early times must have been of very secondary importance, for, on the whole, they were, relegated to an inferior rank in the order of sons. Out of the five kinds of adopted sons, only two survive today, namely, the Dattaka form prevalent throughout India and the Kritrima form confined to Mithila and adjoining districts. The primary object of adoption was to gratify the means of the ancestors by annual offerings and, therefore, it was considered necessary that the offerer should be as much as possible a reflection of a real descendant and has to look as much like a real son as possible and certainly not be one who would never have been a son. Therefore, the body of rules was evolved out of a phrase of Saunaka that he must be the reflection of a son. The restrictions flowing from this maxim had the effect of eliminating most of the forms of adoption. (See Hindu Law by S.V. Gupte, 3rd Edn. at pp. 899-900.)*

15. *The whole law of Dattaka adoption is evolved from two important texts and a metaphor. The texts are of Manu and Vasistha, and the metaphor that of Saunaka. Manu provided for the identity of an adopted son with the family into which he was adopted. (See Manu, Chapter IX, pp. 141-42, as translated by*



Sir W. Jones.) The object of an adoption is mixed, being religious and secular. According to Mayne, the recognition of the institution of adoption in early times had been more due to secular reasons than to any religious necessity, and the religious motive was only secondary; but although the secular motive was only dominant, the religious motive was undeniable. The religious motive for adoption never altogether excluded the secular motive. (See Mayne's Hindu Law and Usage, 12th Edn., p. 329.)

16. As held by this Court in V.T.S. Chandrasekhara Mudaliar v. Kulandaivelu Mudaliar [AIR 1963 SC 185] substitution of a son for spiritual reason is the essence of adoption, and consequent devolution of property is mere accessory to it; the validity of an adoption has to be judged by spiritual rather than temporal considerations; and, devolution of property is only of secondary importance.

17. In Hem Singh v. Harnam Singh [AIR 1954 SC 581] it was observed by this Court that under the Hindu Law adoption is primarily a religious act intended to confer spiritual benefit on the adopter and some of the rules have, therefore, been held to be mandatory, and compliance with them regarded as a condition of the validity of the adoption. The first important case on the question of adoption was decided by the Privy Council in Amarendra Man Singh Bhramarbar v. Sanatan Singh [(1932-1933) 60 IA 242 : AIR 1933 PC 155] . The Privy Council said : (IA p. 248)

Among the Hindus, a peculiar religious significance has attached to the son, through Brahminical influence, although in its origin the custom of adoption was perhaps purely secular. The texts of the Hindus are themselves instinct with this doctrine of religious significance. The foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to



provide for the continuance of the line and the solemnisation of the necessary rites.

18. With these observations it decided the question before it viz. that of setting the limits to the exercise of the power of a widow to adopt, having regard to the well-established doctrine as to the religious efficacy of sonship. In fact the Privy Council in that case regarded the religious motive as dominant and the secular motive as only secondary.

19. This object is further amplified by certain observations of this Court. It has been held that an adoption results in changing the course of succession, depriving wife and daughters of their rights, and transferring the properties to comparative strangers or more remote relations. (See Kishori Lal v. Chaltibai [AIR 1959 SC 504] .) Though undeniably in most of the cases motive is religious the secular motive is also dominantly present. We are not concerned much with this controversy and as observed by Mayne it is unsafe to embark upon an enquiry in each case as to whether the motives for a particular adoption were religious or secular and an intermediate view is possible that while an adoption may be a proper act, inspired in many cases by religious motives, courts are concerned with an adoption, only as the exercise of a legal right by certain persons.

20. The Privy Council's decision in Amarendra Man Singh case [(1932-1933) 60 IA 242 : AIR 1933 PC 155] has reiterated the well-established doctrine as to the religious efficacy of sonship, as the foundation of adoption. The emphasis has been on the absence of a male issue. An adoption may either be made by a man himself or by his widow on his behalf. The adoption is to the male and it is obvious that an unmarried woman cannot adopt. For the purpose of adoption is to ensure spiritual benefit for a man after his death by offering of oblations and rice and libations of water to the manes periodically. Woman having no



spiritual need to be satisfied, was not allowed to adopt for herself. But in either case it is a condition precedent for a valid adoption that he should be without any male issue living at the time of adoption."

39. Following the declaration of law made by Hon'ble Supreme Court in the above cases, it is well established principle in law that, as to the religious efficacy of the adoption is concerned, there must be a foundation to prove the adoption in a manner known to law. Though emphasis has not been made as to performance of Dattaka Homa, however the surrounding circumstances particularly with regard to the documents which have been made available by the parties have to to considered to prove the adoption. In the present case, as the mutation entries as per Exhibit D9, wherein Puttamma herself has given a Vardi to the revenue authorities for transfer of suit schedule property in favour of Defendant on 05th January, 1975, the said fact makes it clear that the adoption has not been taken place as contended by the learned counsel for the respondent.

40. In that view of the matter, looking into the finding recorded by the Trial Court, wherein the Trial Court after appreciating the entire material on record, particularly as to



Issue No.2, rightly answered the same holding that there was no adoption of the plaintiff by Puttamma. In that view of the matter, the First Appellate Court has not properly re-appreciated the material on record in a manner known to law particularly in terms law declared by Hon'ble Supreme Court in the case of **SANTOSH HAZARI VS. PURUSHOTTAM TIWARI (DECEASED) BY LRS.,** reported in (2001) 3 SCC 179. Therefore, I am of the opinion that the substantial question of law framed by this Court favours the appellant/defendants as the re-appreciation of the facts by the First Appellate Court is on erroneous assumption of law and facts by ignoring the relevant documents, particularly Exhibit D9 and evidence of DW3. The First Appellate Court has not re-appreciated the material on record as required under Order XLI Rule 31 of the Code of Civil Procedure, 1908. Hence, I pass the following:

ORDER

- i) Regular Second Appeal **allowed.**
- ii) The judgment and decree passed by the First Appellate Court dated 12th April, 2014 in Regular Appeal No.197 of 2013 is hereby set-aside;



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- iii) The judgment and decree dated 28th March, 2012 passed by the Trial Court in Original Suit No.27 of 2009 is hereby confirmed;
- iv) The suit plaintiff in Original Suit No.27 of 2009 is hereby dismissed.

**SD/-
(E.S. INDIRESH)
JUDGE**