

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

SECOND APPEAL NO.146 OF 2012

Hariram s/o Raosaheb Kakde  
Age 59 years, Occu.Agriculture,  
R/o Nipani Jawalka,  
Taluka Georai, Dist. Beed

..Appellant

Versus

1. Tulshiram s/o Manikrao Kakde,  
Age 61 years, Occu.Agri.,  
R/o Nipani, Jawalka,  
Taluka Georai, Dist. Beed

2. Datta s/o Tulsiram Kakde,  
Age 35 years, Occu. Agri.,  
R/o as above

..Respondents

Mr G.K. Naik-Thigle, Advocate for appellant-plaintiff  
Mr S.N. Patil, Advocate h/f Mr N.V. Gaware, Advocate for respondents  
1 and 2

**CORAM : N.W. SAMBRE, J.**

**DATE : 29th June 2015**

**PER COURT**

1. One Dagadu was blessed with three sons viz. Raosaheb, Uttam and Manik. The plaintiff-Hariram is the son of Raosaheb whereas the defendant No.1 Tulshiram is the son of Manik. Defendant No.2 was adopted by defendant No.1 Datta vide adoption deed dated 18th November 1995. Hariram filed suit for partition and separate possession and also for declaration that the adoption deed dated 18th November 1995 executed by Tulshiram adopting Datta is null and void. The said suit came to be registered as R.C.S.No.345/1997 and was tried by learned Civil Judge, Junior Division, Gevrai. The learned Civil Judge, Junior Division, Gevrai who by his judgment dated 7<sup>th</sup> July

2007 had dismissed the suit, which was assailed in R.C.A.No.141/2007 under Section 96 of the Code of Civil Procedure by the present appellant-plaintiff. Learned District Judge, Beed by judgment and order dated 4th July 2011 dismissed the said appeal, as such the present second appeal by the plaintiff.

2. Mr Thigale, learned Counsel for the appellant-plaintiff, while questioning the legality and validity of the findings recorded by the Courts below would urge that both the Courts have recorded perverse findings by appreciating the evidence to its unreasonableness. According to him, the evidence that is brought on record through the witnesses was not supporting the execution of the same and as such, the burden under Section 16 of the Hindu Adoption and Maintenance Act (hereinafter referred to as 'the Act' for brevity) was rightly discharged. In support of his contentions, he has relied upon the judgment of the Apex Court in the matter of **Boodireddy Chandandraiah and ors., Vs. Arigela Laxmi and anr.**, reported in **AIR 2008 SC 380**. In addition to above, Mr Thigle would urge that even the scope of Section 100 of the Code of Civil Procedure while entertaining the appeal is required to be looked into and the appeal in question is liable to be entertained, as the decisions by both the Courts below are based on no evidence. He has placed reliance on paragraph 13 of the said judgment. In addition to above, he would urge that mere presence of the adoptive son is not sufficient, to meet the requirement of Section 11 sub-section (6) of the Act is mandatory. So as to buttress his contention, he has placed reliance on the

judgment of Apex Court in the matter of **Lakshman Singh Kothari v. Smt. Rup Kanwar, reported in AIR 1961 SC 1378**. According to him, it has not been brought on record that by adoption of boy the natural father has not handed over his custody to adoptive father. According to him, no proper ceremony/customs were followed. He would further urge that the mental condition of the adoptive father was also required to be taken into account. According to him, the appellant has brought on record evidence to indicate that the adoptive father, prior to execution of adoptive deed was suffering blood pressure and had suffered paralytic attack. According to him, the same speaks of his mental condition and he was not in a condition fit for adoption. The burden was discharged on the present appellant qua proving the fact that the adoption deed was not executed in a proper state of mind of the adoptive father. In addition to above, learned Counsel for the appellant has relied upon the judgment of the Bombay High Court in the matter of **Krishnabai Shivram Patil Vs. Ananda Shivram Patil, reported in AIR 1981 BOMBAY 240**. He would urge that the consent of the natural parents of the boy given in adoption is not all reflected in adoption deed and as such, adoption in question should have been set aside by both the Courts below.

3. While opposing the above referred submissions, learned Counsel for the respondent would urge that the points raised by learned Counsel for the appellant do not hold any substance. According to him, if the evidence of the respective parties is analysed in a proper perspective, it could be easily inferred that the adoption ceremony

was appropriately proved. So as to support this contention, he has taken me through the evidence of PW-1 plaintiff-Hariram at Exh.125, PW2- Bhagwan at Exh.136, PW-3 Ramrao and P.W.4 Baburao so as to canvass that the burden as is contemplated under Section 16 of the Act was not at all discharged by the present appellant. He has also sought to analyse the evidence of the parties so as to make submission that proper appreciation of the evidence was advance and there was no perversity. According to him, the appeal against the concurrent findings is liable to be dismissed.

4. Having regard to the submissions made by the parties, it is required to be noted that in the background of Section 16 of the Act, the burden is on the present appellant-plaintiff to prove that the adoption deed was not properly executed. In support of his contentions, the appellant has cross-examined the adoptive father Uttam and examined the natural father of the boy, Datta. Tulshiram who has deposed about the health condition of Uttamrao, has stated that Uttam was suffering from high blood pressure and also suffered a paralytic attack. It is further deposed that wife of Uttam predeceased him and defendant No.2 has looked after Uttam well. The said father has also deposed about the rituals followed at the time of adoption ceremony and the steps taken by Uttam for mutating name of Datta in respect of suit property. The said Uttamrao was cross-examined by the present appellant, however, nothing was extracted from Tulshiram about the adverse mental status of Uttam. He has deposed about the presence of Brahmin, who had performed rituals of adoption. He has

also deposed that in the adoption ceremony, Datta was physically accepted by Uttam and was made to sit on his lap and was offered sweet. He has also deposed that Uttam has called concerned Talathi and asked him to mutate the name of Datta defendant No.2. Witness of defendant i.e. adopted son had also deposed in favour of adoption. He has deposed in tune with his natural father viz. Tulshiram.

5. Upon analysing the evidence of respective parties, it is noticed that there is no material perversity which goes to the root of the matter as is canvassed by learned Counsel for the appellant in the matter of appreciation of evidence. It is required to be noted that for drawing presumption as is provided under Section 16, the burden is on the present appellant-plaintiff to demonstrate that the adoption deed was not properly executed and no adoption took place. Upon perusal of the evidence on record as analysed, it is reflected that the adoption deed was rightly executed by Uttam which had preceded with the adoption ceremonies. In view thereof, the contention as is sought to be raised by learned Counsel for the appellant that the evidence was not properly appreciated, and the reliance placed on decision in the matter of **Boodireddy Chandraiah** cited supra, will hardly be of any assistance to the present appellant.

6. So far as the next contention of the appellant that the consent of natural parents was not obtained and having drawn support from the matter of **Krishnabai Shivram Patil Vs. Ananda Shivram Patil**, reported in **AIR 1981 BOMBAY 240**. it is required to be noted that the appellant himself has made a submission that the natural

father was shown to be a witness to the deed of adoption. Apart from above, it is required to be noted that there is no prescribed proforma for drafting of adoption deed under the statute provided. In view thereof and having regard to the evidence about presence of natural parents at the time of ceremony of adoption of their son, speaks voluminous about performance of the ceremony of adoption. Apart from above, so far as issue about the mental capacity of Uttam to execute adoption deed is concerned, it is required to be noted that the burden was on the present appellant to prove that the adoption ceremony and consequent execution of the deed of adoption was illegal for want of fit and proper mental condition of Uttam. While pressing the point of mental capacity of Uttam, who was at the relevant time suffering from blood pressure and paralytic attack, it has come on record that Uttam himself had been to the office of Sub-Registrar to execute the adoption deed. Apart from above, Uttam called Talathi so as to carry out mutation in the name of Datta. If the mental capacity of Uttam was questioned by the appellant, it was on the appellant to examine the doctor who treated Uttam to establish the same. In absence of any cogent evidence to that effect, the submission of the appellant that Uttam's mental fitness was not proper to execute adoption deed, is also required to be rejected.

7. Apart from above, the claim as is sought to be made that mere presence of the adoptive boy is not enough to accept deed of his adoption, is also required to be rejected. It has come in the deposition of Tulshiram that in the adoption ceremony, Datta was physically

accepted by Uttam and was made to sit on his lap and was made to eat sweet in the presence of natural parents.

8. In my opinion, no question of law in the second appellate jurisdiction is made out. The appeal, which is against concurrent findings fails, stands dismissed.

**( N.W. SAMBRE, J.)**

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