

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.355 of 2009

(Ramchandra Rawan Pawar, since deceased, through his legal
representatives Shantabai Ramchandra Pawar and others v. Bhanudas Ravan
Pawar and others)

And

Second Appeal No.356 of 2009

(Ramchandra Rawan Pawar, since deceased, through his legal
representatives Shantabai Ramchandra Pawar and others v. Sou. Rangubai
Balu Katkar and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri D.D. Ranaware, Advocate for Appellants.

Shri Dilip Bodake, Advocate for Respondent Nos.1, 3 and 7 (SA No.355 of 2009) and Respondent Nos.1 to 3 (SA No.356 of 2009).

Shri S.S. Patwardhan, Advocate for Respondent No.1 (SA No.355 of 2009) and Respondent No.2 (SA No.356 of 2009).

Coram : R.K. Deshpande, J.

Dated : 30th June, 2015

1. By common judgment and order dated 13-8-2004, the Trial Court decreed Regular Civil Suit No.225 of 1981 and also partly decreed Regular Civil Suit No.235 of 1981. Regular Civil Suit No.225 of 1981 claimed a declaration that the adoption of the respondent No.1 Bhanudas on 3-2-1960 be declared to be valid and for a declaration that the adopted son has no share in the property. Regular Civil Suit No.235 of 1981 was filed for partition. Regular Civil Appeal No.291 of 2004 filed by the respondent No.1 Bhanudas was allowed by the lower Appellate

Court on 28-8-2008 holding that the adoption has not been proved. Regular Civil Appeal No.292 of 2004 filed by the respondent No.1 Bhanudas was partly allowed and the decree passed by the Trial Court in Regular Civil Suit No.235 of 1981 was modified. Thus, these two appeals challenge the common judgment and order dated 28-8-2008 passed by the lower Appellate Court in Regular Civil Appeals Nos.291 and 292 of 2004.

2. It is not disputed that if the finding recorded by the lower Appellate Court that the adoption of the respondent No.1 Bhanudas on 3-2-1960 is not proved, then the view taken by the lower Appellate Court cannot be set aside. Hence, the learned counsels were asked to address the Court on the point of adoption.

3. The lower Appellate Court has held that though the deed of adoption dated 3-2-1960 registered on 5-2-1960, at Exhibit 145, the consent of the genitive mother Gunabai has not been established. Undisputedly, the adoption deed does not carry thumb impression of genitive mother Gunabai. Heavy reliance is placed on the adoption *yadi* at Exhibit 182 by the learned counsel for the appellants. The said document has been disbelieved by the lower Appellate Court in para 14, which is reproduced below :

“14. The Learned Advocate Mr. D.N. Ghadge on behalf of the appellant has submitted that the thumb impression of Gunabai Rawan Pawar the genitive mother of Bhanudas is forged on document of adoption yadi at Exhibit 182. Moreover, the word “Aai” in second line of the document from bottom is subsequently inserted so as to show that she was present at the time of adoption. It can be seen from the naked eyes that thumb impression is adjusted above the thumb impression of Rawan in available space without attestation. There is no reference of Gunabai otherwise in the recitals of the document. There is no prevailing

practice of attesting two or more thumb impressions together as submitted by Mr. Mehata. There is practice of writing the words “Janak Aai Vadil” and not as “Janak Vadil Aai” as shown to be written in the document. The insertion of word “Aai” within the space available between the words demonstrates the fact to indicate the presence of Gunabai genitive mother of Bhanudas at the time of adoption. This is obvious manipulation of the document.”

The lower Appellate Court has further held that the consent of the genitive mother being most essential for valid adoption, as contemplated by the provision of Section 7 of the Hindu Adoption and Mintennce Act, 1956, the adoption is vitiated for lacking most essential requirement of consent. It has also taken into consideration the two documents at Exhibits 126 and 128 signed by the plaintiff Ramchandra, who had urged that the adoption deed should be held to be valid. In the said documents, the name of the respondent No.1 Bhanudas is clearly mentioned as the legal heir of the genitive father Rawan. There are several such circumstances relied upon by the lower Appellate Court to reverse the findings recorded by the Trial Court on the aspect of adoption. There is neither express nor implied consent of genitive mother established. The finding recorded by the Trial Court in favour of the appellants that the adoption has been established, is considered in proper perspective.

4. Thus, the lower Appellate Court has taken a possible view of the matter, which does not give rise to any substantial question of law. The second appeals are dismissed.

Judge.