

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

Second Appeal No. 45 of 1995

- 1) Saraswati w/o Keshav Mandve,
Age 63 years,
Occupation : Agriculture,
R/o Ghargaon,
Taluka and District Beed.
- 2) Prabhu Tulsiram Dhas,
Age 44 years,
Occupation : Agriculture,
R/o As above.
- 3) Shahurao s/o Tulsiram Dhas,
Age 57 years,
Occupation : Agriculture,
R/o As above.
- 4) Deorao Tulsiram Dhas,
Age 54 years,
Occupation : Agriculture,
R/o As above.

All appellants through
General Power of Attorney
Bhaurao s/o Tulshiram Dhas

(The GPA is dead vide bailiff
report dated 21-4-2012)

.. Appellants.

Versus

- 1) Chandrabhan s/o Baliram Kale,
Age 59 years,
Occupation : Agriculture,
R/o Ghargaon,
Taluka and District Beed.

- 2) Champabai w/o Chandrabhan Kale,
Age 51 years,
Occupation: Household,
R/o Ghargaon,
Taluka and District Beed. .. **Respondents.**

Smt. C.S. Deshmukh, Advocate, for the appellant.

Shri. B.S. Shinde, Advocate, for the respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 11th JANUARY 2016

JUDGMENT:

1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.351 of 1984 which was pending in the District Court Beed. The District Court, first appellate Court, has set aside the judgment and decree of trial Court, the Civil Judge, Junior Division, Beed. Present respondent, plaintiff, had prayed for relief of declaration in respect of immovable properties and the sale transactions and such decree is given by the first appellate Court. Both the sides are heard.

2) Survey No.84 admeasuring 2 acres 15 gunthas and survey No.92 admeasuring 1 acre 35 gunthas situated at village Ghargaon, Tahsil and District Beed are the suit

lands. One house property situated in village Ghargaon is also suit property. Its number is not given but the boundaries of the property are given.

3) One Rambhau was natural father of the plaintiff Chandrabhan. Baliram was real brother of Rambhau and they were residents of Ghargaon. Defendant No.1 Yamunabai is widow of Baliram and defendant No.2 Champabai is a daughter of sister of Yamunabai. Defendant No.2 is the wife of plaintiff Chandrabhan. During pendency of the suit Yamunabai died.

4) It is the case of the plaintiff that Baliram had no issue and Rambhau had two sons and daughters. It is contended that right from beginning Baliram had treated the plaintiff as his son and ultimately he adopted the plaintiff in the year 1950. It is contended that plaintiff was aged about 14 years at the relevant time. It is contended that the plaintiff was adopted in the presence of panchas and respectable persons and adoption ceremonies were performed as per custom of society of the plaintiff. It is contended that parties are Sudras as per Hindu law.

5) It is the case of the plaintiff that after the adoption, he lived with Baliram and defendant No.1 in the house of Baliram and he was treated as son by them. It is contended that after six months of the adoption, in the year 1951, Baliram died. It is the case of the plaintiff that the suit properties were owned by Baliram and since the death of Baliram the plaintiff has been in possession of the suit properties.

6) It is the case of the plaintiff that the income of the aforesaid properties was not sufficient for the livelihood and so he shifted to village Wadgaon, Tahsil Kaij, District Beed. It is contended that he did labour work there and he maintained defendant Nos.1 and 2.

7) It is the case of the plaintiff that defendant No.1 in collusion with Talathi of the village entered her name in 7/12 extract of the suit properties behind his back. It is his case that defendant No.1 executed gift deed in favour of defendant No.2 Champabai and then name of Champabai was also entered in the revenue record. It is contended that the suit house was however entered in the name of the plaintiff. It is contended that aforesaid entries

in the record of agricultural lands were made behind his back and so they are not binding on him. It is contended that cause of action took place when he learnt about such entries on 1-4-1979 and when he received information that defendant No.1 and 2 were trying to dispose of the suit properties.

8) The suit was filed on 9-5-1979. During pendency of the suit, on 28-5-1979, the suit lands were sold by defendant Nos.1 and 2 in favour of defendant Nos.3 to 6 and amendment was carried out in the plaint on 15-7-1982 and this circumstance was mentioned and plaintiff then claimed relief of declaration that sale deeds are not binding on him.

9) Defendant Nos.1 and 2 filed joint written statement. They denied that plaintiff was adopted by Baliram. They denied that during life time of Baliram, plaintiff had lived in the house of Baliram with Baliram and Baliram was treating plaintiff as his son. They however admitted that plaintiff is son of Ramrao and Ramrao was brother of Baliram.

10) It is the case of defendant No.1 and 2 that the suit properties and other agricultural lands like Survey Nos.86/1, 100/3 and 109/2 situated at Ghargaon were also owned by Baliram. It is contended that, these lands were sold by defendant No.1 long back, as she was the owner of these lands.

11) It is the case of the defendants that plaintiff lived in Wadgaon since many years. They have contended that plaintiff never maintained them. It is contended that, since many years defendant No.2 is deserted by plaintiff and defendant No.2 maintained defendant No.1. It is the case of the defendant Nos.1 and 2 that due to harassment of plaintiff and his brother, they left Ghargaon and they shifted to Chausala and after that plaintiff managed to get possession of the aforesaid house property.

12) It is the case of the defendant Nos.1 and 2 that after the death of Baliram, suit properties and other properties were entered in the name of defendant No.1 as she is only successor of Baliram. It is their case that from the years 1955 to 1958 plaintiff had somehow managed to

enter his name in the crop cultivation column of the suit lands. It is contended that during those days defendant No.2 was living with plaintiff. It is contended that in the year 1959-60 correction was made in the revenue record, name of the plaintiff was removed and from the year 1961 onwards, the name of defendant No.1 was entered both in ownership and cultivation columns.

13) It is the case of the defendant Nos.1 and 2 that on 14-7-1972 defendant No.1 gifted the suit lands to defendant No.2 and accordingly entries in revenue record were made in favour of defendant No.2. It is contended that from the date of gift, defendant No.2 cultivated the suit lands. They have denied that the plaintiff had no knowledge about the aforesaid mutations and the transactions.

14) It is the case of the defendants that defendant No.1 had succeeded to the properties of Baliram and so she sold Survey No.86/1 to one Housrao Tulsiram Dhas under sale deed dated 2-2-1966. She sold Survey Nos.100/3 and 109/2 under sale deed on 9-9-1971 to one

Mukund Bhanudas Dhas. It is contended that under these sale deeds possession was given of these lands to the purchasers and those lands are still with the purchasers. It is contended that, the circumstance that the plaintiff has not challenged these sale deeds shows that he was never adopted by Baliram. It is contended that the suit lands were also sold under registered sale deeds to defendant Nos.3 to 6 and the possession is handed over by defendant Nos.1 and 2 to these defendants. It is contended by defendant Nos.1 and 2 that the case of the plaintiff that he is in possession of suit property is false.

15) Written Statement was filed by other defendants also and their contentions are similar to the contentions made by defendant Nos.1 and 2.

16) Issues were framed by the trial Court on the basis of aforesaid pleadings. Both sides gave evidence. The case of the plaintiff rests mainly on the contention of his adoption by Baliram in the year 1950. If he fails to prove the adoption, he cannot get any relief. The trial Court had held that plaintiff failed to prove his adoption

by Baliram. The trial Court had refused to believe the witnesses examined by the plaintiff who have given direct evidence on adoption. No document of adoption was created as per the case of the plaintiff and even the names of witnesses were not mentioned in the pleadings by the plaintiff. The trial Court considered the direct evidence and also the surrounding circumstances while giving decision. The first appellate Court has held that the inconsistencies appearing in the evidence of the witnesses to adoption are minor and they can be ignored as the evidence was given after many years of the adoption. The first appellate Court has placed reliance on some observations made by the Orissa High Court in a reported case.

17) This Court, other Hon'ble Judge, admitted the present appeal by observing that substantial questions of law can be formulated on the grounds mentioned in appeal memo as Ground Nos. K, P, Q, R and S. No specific questions were formulated. The substantial questions of law can be formulated on the basis of those grounds as under :-

(I) Whether the first appellate Court has committed error in not considering the circumstance that other transactions of sale made by the defendant No.1 in respect of three agricultural lands like Survey Nos.86/1, 100/3 and 109/2 which were left behind by Baliram are not challenged by the plaintiff in the suit ?

(II) Whether the first appellate Court has committed error in not considering the circumstance that after the death of Baliram name of defendant No.1 only was mutated in the revenue record as successor of Baliram and the name of the plaintiff was not entered as successor of Baliram ?

(III) Whether the first appellate Court has committed error in not considering the circumstance that the cooperative credit society could not have given loan to the plaintiff on the lands left behind by Baliram as plaintiff was not shown as owner in the revenue record and further there is the circumstance that it is defendant No.1 who had repaid the loan ?

(IV) Whether the first appellate Court has committed error in not giving due weight to the circumstance like plaintiff never used name of Baliram as his father anywhere and he continued to use the name of his natural father Rambhau ?

This Court allowed both the sides to argue on following substantial question of law also :-

(V) Whether due to absence of specific pleadings with regard to particulars of adoption and due to inconsistencies in the evidence of the witnesses it can be said that there is sufficient evidence to prove the factum of adoption ?

18) Before considering the evidence given by both the sides, it is necessary to quote the position of law. The first appellate Court has relied on some observations made by Orissa High Court in the case reported as **AIR 1976 Orissa 43 (Gouranga Sahu v. Bhaga Sahu)**. The observations used are as under :

"Hindu Law Adoption Burden of proof Mode of appreciation of evidence adoption 36 years old variety of transactions of open life and conduct on footing that adoption was valid taking place. Burden rests on him, who challenges validity of adoption."

19) In the present case there is specific contention that plaintiff's adoption took place in the year 1950. Plaintiff has deposed that he remembers the factum of adoption and there are witnesses available in whose presence the adoption took place including the priest. In

view of these circumstances, it cannot be said that adoption was ancient, no direct evidence is available on adoption and the inconsistencies can be ignored. Other part of the reasoning given by the first appellate Court is being discussed at appropriate place.

20) In the cases reported as (1) **AIR 1983 SC 114 (Madhusudan Das v. Narayani Bai)**; (2) **A.I.R. (32) 1945 Nagpur 60 (Maroti Bansi Teli v. Radhabai)**; and, (3) **AIR 1970 SC 1286 (L. Debi Prasad v. Tribeni Devi)** Shatrik Hindu Law is discussed. In these cases it is made clear that for proving the adoption, giving and taking are absolutely necessary. Giving and taking is operative part of the ceremony of adoption and so physical act of giving and taking must be proved even if there is a deed of adoption. In these cases, it is laid down that the evidence on giving and taking must be free from suspicion of fraud. It is made clear in aforesaid cases that no particular form of adoption is required but for proving factum of adoption, it needs to be proved that natural father was asked by adoptive parents to give his son in adoption and then the natural father had handed over the son and the adoptive

parents took the boy for adoption. These cases show that the requisites of giving and taking need to be fulfilled even in case of Sudra.

21) In the case reported as **AIR 1930 PC 79 (Dal Bahadur Singh v. Bijai Bahadur Singh)** it has been made clear that adoption must be beyond suspicion and of unimpeachable character. It is laid down that proof should be strict and severe. This decision is reiterated in many cases by various High Courts including Bombay High Court and the Supreme Court in the cases like **AIR 1983 SC 114** (cited supra) and **1977 Mh. L.J. 68 (Laxman Ganpati Khot v. Anusuyabai)** (Bombay High Court). In these cases provision of section 101 of the Evidence Act is referred and provision of section 3 of the Evidence Act for the purpose of definition of proof is also referred. It can be said that in view of provision of section 60 of the Evidence Act, direct evidence on adoption must be given when it is available. This Court in the case of Laxman (cited supra) has referred two more cases of Privy Council like (1) **AIR 1931 PC 84 (Padmalav v. Fakira Debya)**; and, (2) **AIR 1949 PC 18 (Muthuswami v. Chidambara)**.

Specific observations can be found at para 4 of this Court (supra) and they are as follows :-

"4. Three questions really arise in this appeal and have been argued before us, and they are, (1) whether, in view of the provisions of sections 4 and 10(iv) read with section 3(a) of the Hindu Adoptions and Maintenance Act, 1956, it is open to the first defendant to prove that there was a custom or usage applicable to the parties which permitted persons who were over the age of 15 to be taken in adoption; (2) whether any such custom or usage has been proved in the present case; and (3) whether the first defendant has succeeded in proving the factum of the adoption on which he relies. In the view which I take on the third question relating to the factum of the adoption, it is not really necessary for me to decide the first two questions, but I will briefly indicate at the end of this judgment my views in regard to the same. I will, therefore, proceed to consider the evidence, oral as well as documentary, which has been led in the trial Court to prove the factum of the alleged adoption of the first defendant by the deceased Anna on the 25th of January 1959. There can be no doubt that the onus of proving the factum of the adoption is on the first defendant who relies on it, but before I proceed to discuss the evidence relating to the same, I would prefer to refer to three decisions of the Privy Council in regard to the extent of that onus. In the case of *Dal Bahadur v. Bijay Bahadur* the question was really one of proving whether or not authority had been conferred upon the widow to adopt. In dealing with the question of the extent of onus, Lord Buckmaster laid down the legal position in the following terms (at page 81, Cols.1-2):--

"Their Lordships' Board think it would be impossible to rely on this piece of evidence and this piece of evidence alone for the purpose of satisfying the very grave and serious onus that rests upon any person who seeks to displace the natural succession of property by the act of an adoption. In such a case the proof requires strict and almost severe scrutiny, and the longer the time goes back from the date when the power was given to the time when it comes to be examined, the more necessary it is, having regard to the fallibility of human memory and the uncertainty of evidence given after the lapse of such time, to see that the evidence is sufficient and strong."

As the Privy Council was unable to find that the evidence before them was sufficient for that purpose, they allowed the appeal and restored the decree of the subordinate Judge holding that the adoption was not proved. In the case of *Padmalav v. Fakira Debya*, following earlier decisions of its own, the Privy Council took the view (at page 87, Col.1) that proof of the adoption must be free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubt of its truth, and the evidence in support of the same should be of "unimpeachable character." In that connection, their Lordships further observed (page 88, Col.1) that even an admission made by the plaintiff during her widowhood while she was entirely in the power of her husband's relations, would necessarily carry much less weight than, if made at an earlier period. Dealing then with a clause in the compromise arrived at between the parties under which the widow completely renounced her claim to succeed to her husband's estate, their Lordships of the Privy Council stated (at pages 88-89) that the same, far from dispersing the clouds of suspicion raising upon both the adoptions in question was calculated to darken them, and concluded their judgment by stating that both the adoptions in question before them were most improbable in themselves and were "not supported by the contemporaneous evidence which ought to have been forthcoming." The Privy Council, therefore, confirmed the judgment of the High Court holding that the adoptions were not proved. In the case of *Muthuswami v. Chidambara* where also the question of the factum of the adoption was in dispute, though there was an alleged adoption deed on which reliance was placed in support of that adoption, the Privy Council held that the adoption to be not proved observing as follows :-

"All the witnesses seem to have been friends or relations of the parties and there is no corroboration of their testimony such as is often found in cases of disputed adoption. No priest or local official who might be regarded as disinterested was called; no cards of invitation to the ceremony were produced, and there was no photograph of the ceremony. The direct evidence in support of the ceremony was therefore weak"

From these judgments of the highest Court, it is, therefore, clear that since adoption displaces the normal order of succession, Courts, must insist upon strict and even severe

standards of proof, and the evidence by which the adoption is sought to be proved must be beyond suspicion and of unimpeachable character."

22) The learned counsel for the respondent, plaintiff submitted that to ascertain as to whether the witnesses to adoption are trustworthy, surrounding circumstances also need to be considered. On this point he placed reliance on the case reported as **AIR 1968 Mysore 309 (Govinda v. Chimabai)**. The High Court referred a case of the Supreme Court reported as **AIR 1965 SC 354 (Ramchandra v. Champabai)** for discussing the importance of surrounding circumstances for ascertaining the trustworthiness of witnesses. The observations are at paragraph 20 of the case of the Mysore High Court and they are as under :-

"20. "In order to judge the credibility of the witnesses, the Court is not confined only to the way in which the witnesses have deposed or to the demeanour of witnesses, but it is open to it to look into the surrounding circumstances as well as the probabilities, so that it may be able to form a correct idea of the trustworthiness of the witnesses. The issue ... cannot be determined by considering the evidence adduced in the court separately from the surrounding circumstances which have also been brought out in the evidence, or which appear from the nature and contents of the document itself ... "

23) The learned counsel for the respondent placed reliance on another case reported as **AIR 1970 SC 1286 (L Debi Prasad v. Tribeni Devi)**. He submitted that even when there is no direct evidence of adoption, on the basis of surrounding circumstances, Court can draw inference about the adoption. This Court has already observed that fact of adoption can be proved as mentioned in section 3 of the Evidence Act like “any other fact”. But when direct evidence is available, in view of provision of section 60 of the Evidence Act, such evidence must be given. In the reported case (cited supra) observations with regard to dispensing with the direct evidence are made by the Apex Court at para 10 and the observations are as follows :-

“**10.** In the case of all ancient transactions, it is but natural that positive oral evidence will be lacking. Passage of time gradually wipes out such evidence. Human affairs often have to be judged on the basis of probabilities. Rendering of justice will become impossible if a particular mode of proof is insisted upon under all circumstances. In judging whether an adoption pleaded has been satisfactorily proved or not, we have to bear in mind the lapse of time between the date of the alleged adoption and the date on which the concerned party is required to adduce proof. In the case of an adoption said to have taken place years before the same is questioned, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son. There is no predetermined way of proving any fact. A fact is said to have been proved where after considering the

matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Hence if after taking an overall view of the evidence adduced in the case, we are satisfied that the adoption pleaded is true, we must necessarily proceed on the basis, in the absence of any evidence to the contrary, that it is a valid adoption as well."

For making the aforesaid observations, the Apex Court has considered peculiar circumstances of that case which are at paragraphs 12 to 16 and circumstances were as under :

(i) That, Shyamlal, party of the proceeding, who was contending that he was adopted by Gopal Das, was adopted immediately after his birth and so he was not in a position to give evidence on factum of adoption.

(ii) The adoption had taken place more than 54 years prior to the date of challenge and during life time of Gopal Das and his wife, the adoption was not challenged by anybody. Suit was filed against Shyamlal only after the death of Gopal Das and his wife;

(iii) as many years had passed since the date of adoption, there was no direct evidence to prove factum of adoption but there were other circumstances indicating that Shyamlal was treated as adopted son by Gopal Das for about 54 years;

(iv) Shyamlal was admitted in school by adoptive father Gopal Das and application was given to the school by Gopal Das for getting admission to Shyamlal in which Gopal Das had given his name as father of Shyamlal;

(v) in a suit in which Gopal Das was a party he had given deposition that Shyamlal was his adopted son;

(vi) in income tax returns filed by Gopal Das he had shown Shyamlal as a member of his joint Hindu family; and,

(vii) In another suit in which Gopal Das and the plaintiff of the litigation filed against Shyamlal, were on one side as plaintiffs and in the said proceeding Gopal Das and the plaintiff had contended that they were partners of the firm. In that proceeding also Gopal Das had given deposition that Shyamlal was his son.

24) In the case of the Supreme Court (cited supra) there was no direct evidence available but there were aforesaid circumstances showing that Gopal Das had admitted that he had adopted Shyamlal as his son and he had treated Shyamlal as his son for more than 54 years. The Apex Court held that it was ancient adoption and in view of the facts of that case the Court ought not to have

insisted for direct evidence for proving the factum of adoption. There cannot be dispute that in view of such peculiar circumstance it was not proper on the part of the Court to insist for direct evidence on the factum of adoption.

25) The aforesaid discussion on law shows that ordinarily when direct evidence is available, the Court must insist for proof of factum of adoption on the basis of direct evidence. Even when there is a document of adoption, the Court is expected to insist for proof of factum of valid adoption when direct evidence is available. There may be surrounding circumstances in existence, which may be consistent or inconsistent with the direct evidence. In such cases it becomes the duty of the Court to ascertain as to whether the witnesses who have given direct evidence on adoption are trustworthy or not and that needs to be done on the basis of the surrounding circumstances.

26) The facts of the aforesaid reported case indicate that there may be surrounding circumstances like

mutation made in favour of a party claiming rights as adopted son or there may be circumstances that such a party had performed last rites of the deceased (adoptive parents) or the marriage of such party was solemnized by deceased. On the basis of such circumstances only the Court is not expected to draw inference that these things were done only due to adoption. When the Court comes to the conclusion on the basis of so called direct evidence that there was no valid adoption, surrounding circumstances cannot help in proving valid adoption. In the cases (cited supra) the other probabilities available for explaining such circumstances are discussed. In one case it is observed that when no son was born from deceased, performance of last rites by brother of the deceased or son of such brother is possible under Hindu law and so such circumstance cannot weigh much for proving adoption. Thus, the Court is expected to start with presumption that the proof of factum of adoption must be strict and severe.

27) In the case reported as AIR 1983 SC 114 (cited supra) at para 8 the Apex Court has discussed the scope

available for the appellate Court of appreciation of oral evidence. The observations are as under :-

“8. The question whether the appellant was in fact adopted by Jagannathdas and Premwati has been determined essentially on the basis of oral testimony, and reference has been made to a few documents only in supplementation of the oral evidence. At this stage, it would be right to refer to the general principle that, in an appeal against a trial Court decree, when the appellate Court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial Court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence in any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate Court should permit the findings of fact rendered by the trial Court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial Court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. In this connection reference may usefully be made to *W.C. MacDonald v. Fred Latimer*, AIR 1929 PC 15, 18 where the Privy Council laid down that when there is a direct conflict between the oral evidence of the parties, and there is no documentary evidence that clearly affirms one view or contradicts the other, and there is no sufficient balance of improbability to displace the trial Court's findings as to the truth of the oral evidence, the appellate Court can interfere only on very clear proof of mistake by the trial Court. In *Watt v. Thomas*, 1947 AC 484, 486 it was observed “.... it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, only, has the advantage (which is denied to Courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given”. This was adverted to with approval by the Privy Council in *Sara Veeraswami v. Taluri Narayana (deceased)*, AIR 1949 PC 32 and found favour with this Court in *Sarju Parshad v. Raja Jwaleshri Pratap Narain Singh*, 1950 DSCR 781, 783. It seems to us that this approach should be placed in the forefront in considering whether the High Court proceeded correctly in the evaluation of the evidence

before it when deciding to reverse the findings of the trial court. The principle is one of practice and governs the weight to be given to a finding of fact by the trial court. There is, of course, no doubt that as a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate court is entitled to interfere with the finding of fact. Our attention has been drawn by the respondents to *The Asiatic Steam Navigation Co. Ltd. v. Sub-Lt. Arbinda Chakravarti*, (1959) Supp 1 SCR 979 but nothing said therein detracts, in our opinion, from the validity of the proposition enunciated here."

28) When the case of adoption rests on direct evidence and there is nothing like document of adoption or Yadi prepared for adoption and the adoption itself is challenged by a party like widow against whom rights are claimed by so called adopted son, the Court is expected to take more care while appreciating the direct evidence given on factum of adoption. When the trial Court has done such exercise, the appellate court is expected to keep in mind the scope in appeal of appreciation of such direct evidence.

29) Let us see the evidence and the pleadings of the present matter in the background of aforesaid position of law. The suit was filed on 9-5-1979 by present plaintiff for claiming relief of declaration of ownership and for that

he was expected to prove that he was adopted by Baliram in the year 1950. In the pleadings, he had claimed that he was aged about 14 years at the relevant time. In substantive evidence he has stated that he was aged about 12 to 14 years at the relevant time but he remembers the adoption ceremony.

30) In the pleadings no specific custom was pleaded and there is vague contention that the ceremonies necessary for adoption were performed as per the custom of society in the presence of panchas and respectable persons. First time in the evidence, the plaintiff stated that in the ceremony of adoption he was put on thigh (lap) of Baliram by Ramrao and then the priest by name Prabhu Swami made the plaintiff to eat sugar. He has deposed that *pooja* was performed by his natural father, by Baliram, by defendant No.1 and the plaintiff. He has deposed that this ceremony took place in the house of Baliram in the evening time.

31) Neither in the pleading nor in the evidence the day, date or month of adoption is given by the plaintiff.

Even the name of priest was not mentioned in the pleadings. First time in the substantive evidence the plaintiff took name of the priest and he took names of some witnesses. The evidence as it is does not show that there was declaration or utterance of any words by Baliram showing that he had taken plaintiff in adoption though plaintiff has deposed that he was put on the lap of Baliram.

32) In the cross examination, plaintiff has stated that talk about taking him in adoption by Baliram was started from his childhood. He has given evidence that many persons from his village and one person from other village attended the adoption ceremony. He has deposed that no document of adoption or even Yadi was prepared and no invitation cards were printed to invite people for attending the adoption ceremony. He has deposed that age of Baliram at the relevant time was about 80 to 90 years and the age of Ramrao was around 70 to 75 years.

33) Triveni (PW 2) wife of Digamber, a brother of the plaintiff, is examined as witness to adoption by the

plaintiff. It is already observed that her name is not mentioned in the pleadings. Her name was not taken even in substantive evidence by plaintiff. These circumstances need to be kept in mind while appreciating evidence of Triveni.

34) Triveni has deposed that she was given in marriage to Digamber when she was aged 10 to 11 years and the adoption took place after her marriage. Triveni has deposed that adoption ceremony took place in the house of Rambhgau (plaintiff has stated that the adoption took place in the house of Baliram). When the plaintiff had not given the names of other witnesses except the names of witnesses like Prabhu Swami, this witness has given names of many other witnesses by saying that they had also attended the adoption ceremony.

35) Triveni has deposed that during adoption ceremony Rambhau put the plaintiff on the thigh (lap) of Baliram. She has deposed that Prabhu Swami, priest, performed *pooja* and told that the plaintiff had become son of Baliram. Thus, Triveni has also not given evidence

that there was declaration from Baliram that he had taken plaintiff in adoption.

36) In the cross examination, Triveni has deposed that invitation cards were printed for inviting people for adoption ceremony. In the cross examination she has tried to say that the persons only from their community, Jangam community, had attended the ceremony but then she contended that the ceremony was attended by persons of other community also.

37) Triveni has given the age of Baliram as 60 years and she has stated that plaintiff was aged about 10 to 11 years at the relevant time. She has given evidence that document of adoption was written by Prabhu Swami and this document was handed over by Prabhu Swami to Baliram. She has given evidence that adoption ceremony took place in the morning time. Thus, there are inconsistency in the evidence of Triveni and the plaintiff on many points like the place of adoption, time of adoption, printing of invitation cards and writing of adoption document. These inconsistencies cannot be called as minor inconsistencies.

38) The evidence of Triveni does not show that she has knowledge about agricultural lands which were owned by Baliram or even Rambhau. It appears that when deposition of Triveni was recorded Digamber, her husband, was not alive. However, other witnesses like sister of the plaintiff was alive and that can be seen from the evidence of the plaintiff and other witnesses. Said lady was already married, she was elder to plaintiff and so she could have been the better witness to prove adoption. The evidence further shows that the husband of the said sister of the plaintiff is alive and it is stated in evidence that said husband had attended the adoption ceremony. No explanation is given for non examination of these witnesses. In any case names of Triveni or those witnesses are not mentioned in the pleadings or in the substantive evidence by the plaintiff.

39) Ramkishan (PW 3) is another witness examined to prove the adoption. In the cross examination, he has admitted that he is from Bhavaki, relative, of the plaintiff and persons from his society and persons from other community had attended the ceremony. The cross

examination shows that against brother of defendant No.3 (purchaser of suit land) he had a litigation and said suit was decided in favour of the brother of the defendant No.3. This circumstance shows that he has no good relations with the defendants and so he is interested witness. In view of this circumstance his evidence needs a close scrutiny.

40) Ramkishan has given evidence that the adoption took place in the house of Rambhau. He has given evidence that during ceremony, Rambhau stated that as he had two sons, he was giving plaintiff in adoption. This witness has also not given substantive evidence to the effect that Baliram had stated that he was accepting plaintiff in adoption.

41) In the cross examination, Ramkishan has stated that husband of the sister of the plaintiff had attended the ceremony. He has given evidence that age of Baliram was about 55 to 60 years at the relevant time. This evidence of Ramkishan is not consistent with the evidence of the plaintiff in respect of place of adoption, age of Baliram

and the persons who had attended the adoption ceremony. This witness gave his age as 57 years when his deposition was recorded in 1984 and so he had not crossed age of 30 years at the relevant time.

42) Trimbak Kale (PW 4) is examined as one more witness to prove adoption. His evidence shows that he is also relative of the plaintiff. He has given evidence that during ceremony, Rambhau gave plaintiff in adoption to Baliram. This witness has not stated anything about the manner in which the giving and taking took place. Ramkishan has also not stated anything about such manner. Trimbak has also not uttered a word to say in what manner Baliram declared that he had taken plaintiff in adoption.

43) Trimbak (PW 4) has stated in the cross examination that writing about the adoption was done and it was signed by his father and other witnesses. He has deposed that this document was written by Prabhu Swami and it was handed over to Baliram. According to the plaintiff no such document was brought in existence and

so on this point also the evidence of Trimbak is not consistent with the evidence of the plaintiff. It appears that only during re-examination he stated that the document was handed over to Baliram. There is clear possibility that such version was afterthought as there is no such document with the plaintiff.

44) Prabhu Swami (PW 6), the priest, has given evidence that he had performed *pooja* of adoption. He has given evidence that oath was given to natural father to the effect that the natural father had given plaintiff in adoption to adoptive father. He has deposed that oath was administered to the adoptive father to the effect that he had taken plaintiff in adoption. It is already observed that such particulars are not there in the pleadings. Such particulars are not present in the substantive evidence of the plaintiff. Such particulars are not there in the evidence of other witnesses also.

45) Prabhu Swami has given evidence that adoption ceremony took place in the house of Rambhau. In the examination in chief itself Prabhu has stated that one chit

was written by him at the time of adoption ceremony in respect of the adoption and he had handed over the chit to Rambhau. This is altogether different version than the version given by aforesaid two witnesses. The plaintiff is not saying anything about such chit and if the chit was handed over to Rambhau, the natural father of the plaintiff, it was very much possible for the plaintiff to produce and prove that chit. The evidence of the so called priest shows that entry about this ceremony was not made in the record of the community and he himself did not maintain record of such ceremonies. Thus, there is virtually no record but evidence is given on creation of such record.

46) The evidence of Prabhu Swami shows that he is educated person. When he is educated, he could have given day, date or month of the ceremony. He has given evidence that 50 persons had attended the ceremony when other witnesses have stated that about 20 to 25 persons attended the ceremony. Thus, the evidence of this witness also is not consistent with the evidence of the plaintiff and other witnesses. There is no circumstantial

check like the document of adoption or Yadi of adoption. When the widow of Baliram has denied that there was such adoption, burden was heavy on the plaintiff to prove the factum of adoption. As there is no circumstantial check like quoted above and the so called direct evidence is not consistent and convincing, the trial Court had refused to believe the plaintiff and his witnesses. Here only it needs to be kept in mind that defendant No.2 - Champabai is the first wife of plaintiff but she has stated on oath that as per her information there was no adoption. She is not only the wife of the plaintiff but she is a daughter of sister of defendant No.1. Her evidence shows that she came in picture when she was given in the marriage to the plaintiff and as she was resident of Wadgaon in the past, she had no personal knowledge. However, she has given evidence that her marriage with the plaintiff took place in the house of Rambhau, the natural father of the plaintiff. She has given specific evidence that at the time of marriage, plaintiff was living with Rambhau and Baliram was not alive. In the pleadings, the plaintiff has specifically contended that within six months from the so called date of adoption

Baliram died. It was not his case that Baliram had solemnized his marriage with defendant No.2 though he has tried to give such substantive evidence. These circumstances are important as the subsequent events show that defendant No.1 had attachment towards defendant No.2 and so she gifted the suit lands to defendant No.2. Only after the marriage, the plaintiff was in possession but to cultivate the suit lands. Learned counsel for the plaintiff argued much on the basis of so called admissions given by defendant No.2 in her evidence. She has admitted that she had lived in the house of defendant No.1 along with plaintiff and second wife of the plaintiff. Not much weight can be given to this admission as defendant No.1 was widow, she had no support of any male member and there is record to show that she preferred to gift the property to defendant No.2. There are more circumstances to show that even defendant No.1 never treated the plaintiff as her son.

47) If the surrounding circumstances are considered, from the pleadings it can be said that Baliram had no occasion like marriage or other functions to show

to the world that he had adopted the plaintiff. Though plaintiff married two times, there is no record of marriage to show that defendant No.1 had acted as his mother in the marriage and the plaintiff had given name of Baliram as his father. In the plaint, many properties of Baliram (three agricultural lands) are not mentioned and the transactions of sale made by defendant No.1 in respect of these lands are not challenged. Absence of mention of these lands in the plaint create all probabilities like ignorance of plaintiff about such properties of Baliram and his belief that he was not entitled to challenge the transactions as the properties belonged to defendant No.1.

48) It is not disputed that all the agricultural lands of Baliram were mutated in the name of defendant No.1 after the death of Baliram. If Baliram had died prior to 1956, in ordinary course the properties would have been entered in the name of the plaintiff if he was really adopted by Baliram. This did not happen. It needs to be kept in mind that one house property is shown to be entered in the name of plaintiff but that assessment

record is of the year 1982-83 created after starting of the litigation. It is not disputed that the defendant Nos.1 and 2 were living in this house before they left for Chousala. The defendants have specifically contended that only due to harassment of plaintiff and his brother, they were required to leave Ghargaon and then plaintiff got the possession of the house and got entered his name in the assessment record of the house. Defendant No.1 was lady aged about 75 years and she was widow. Defendant No.2 was deserted by plaintiff and then her two daughters were given in marriage by her. The evidence on the record shows that they had no support in village Ghargaon. In view of these circumstances, not much can be made out from the circumstance that in the assessment record of the year 1982-83 of the suit house after filing of suit, the name of the plaintiff was shown as occupant. Such record cannot confer title on the plaintiff.

49) At Exhibits 10 and 11 there are pahani patrak of Survey Nos.84/3, 92/3. This record shows that name of Yamunabai, defendant No.1, widow of Baliram, was entered as owner of these lands from prior to 1955. This

record is for 1955 to 1958. Exhibit 10 shows that name of Chandrabhan (plaintiff) was entered in pahani patrak of land Survey No.84/3 as the person in occupation, cultivating the land. However, this entry also does not show that the plaintiff had given the name of his father as Baliram. Only name of "Chandrabhan" is mentioned in Exhibit 10. On the other hand, in Exhibit 11, Pahani Patrak of other suit land, name of plaintiff was entered in cultivation column as "Chandrabhan Rambhau". Thus in the year 1955 the plaintiff used name of Rambhau as his father and he was not using name of Baliram. It is clear that in 1955 Baliram was not alive and the plaintiff could get opportunity for entering the name in cultivation column as he has married with defendant No.2. The 7/12 extracts of these agricultural lands, suit lands, show that from 1959-60 onwards name of Yamunabai, defendant no.1, was entered even in crop cultivation column. Thus, name of the plaintiff was deleted from crop cultivation column from the year 1959 and it shows that he must have left village Ghargaon in that year.

50) There is pahani patrak in respect of land Survey No.86 for the years 1955-59 and it shows that name of "Chandrabhan" was entered in occupation column. In this document also name of his father was not mentioned. In pahani patrak of land Survey No.100 name of Yamunabai only was entered for the years 1955-59 both as owner and person in possession (Exhibits 43 and 44). The 7/12 extract in respect of these three lands for the year 1959-60 onwards show that the name of the plaintiff came to be deleted from record and the name of Yamunabai only was entered both as owner and person in possession. In the record of Survey No.109 name of Yamunabai only was entered in both ownership and cultivation column. Name of the plaintiff was not entered even in cultivation column of Survey Nos.100 and 109.

51) The pleadings of the plaintiff and the aforesaid record show that after the death of Baliram mutation was effected and the name of Yamunabai only was entered as successor of Baliram in the record of rights. The plaintiff admittedly did not take steps to enter his name as successor even when according to him, he had the right to

do so. It needs to be kept in mind that Baliram died prior to 1956 and so in ordinary course name of the plaintiff only could have been entered in the revenue record as successor of Baliram if he was really taken in adoption by Baliram. The entry of name of the plaintiff in crop cultivation column of few lands cannot help him in any way. The entry was not made as successor of Baliram and he did not give name of his father as Baliram but in one record his name was given as Chandrabhan Rambhau.

52) The aforesaid record is not consistent with the case of the plaintiff on adoption. The oral evidence on the record and the aforesaid revenue record create only one probability that as plaintiff had lived with defendant Nos.1 and 2 in the house of defendant No.1, his name was entered in the crop cultivation column of the few lands. There is clear probability that he was allowed to cultivate the lands as there was no male member in family of defendant No.1 to look after the lands and as defendant No.1 wanted to give the properties to defendant No.2 and as plaintiff was husband of defendant No.2.

53) It is not disputed that defendant No.1 had executed document of gift in favour of defendant No.2. Copy of mutation No.114 produced at Exhibit 75 shows that in the year 1972 defendant No.1 executed such document, she produced the document before the revenue authority and she requested to enter name of defendant No.2 as owner of the two suit lands. The wording used in the report given by the defendant No.2 to the revenue authorities is important and it shows that defendant No.1 had informed to the revenue authority that defendant No.2 was daughter-in-law of brother of her husband (चुलत सून). Admittedly, the aforesaid mutations were never challenged by the plaintiff.

54) It is not disputed that defendant No.1 had sold survey No.86/1 under sale deed dated 10-2-1966. Copy of mutation is at Exhibit 45 and it was sanctioned on 8-12-1967. This sale transaction made by defendant No.1 is not challenged by the plaintiff though he had contended that defendant No.1 had no right to sell the suit property. Similarly, defendant No.1 had sold Survey Nos.100/3 and

109/3 under sale deed dated 24-7-1972 to one Mukunda. At Exhibit 46 there is copy of Mutation No.122 sanctioned in the year 1973. This transaction is also not challenged by the plaintiff. Conduct of the plaintiff of not challenging the mutations and also the sale transactions in respect of aforesaid three agricultural lands goes long way against the plaintiff. This conduct creates probability that there was no adoption. Though plaintiff had tried to contend that he got knowledge in the year 1979, this contention is not acceptable. The revenue record like pahani patrak shows that the aforesaid lands were parts of the old land survey numbers which were owned by Baliram and Rambhau together. Thus, the lands of Rambhau were adjacent to the aforesaid three lands and so it can be said that Rambhau or Digamber and then the plaintiff had no knowledge about the aforesaid mutations and sale of the three lands to third parties by defendant No.1. This voluminous record is ignored by first appellate Court. This record is consistent with the case of the defendants and it is not consistent with the case of the plaintiff.

55) From the aforesaid record and circumstances it

can be said that in or about the year 1959 the plaintiff shifted to Wadgaon with his second wife. He did not produce record even of second marriage. He did not examine witness like relatives of his second wife who could have given evidence about the part played by defendant No.1 in this marriage. On the other hand, the defendants have produced some record to show that plaintiff was using name of Rambhau as his father. The defendants have examined one Narsing Kulkarni (DW 2) to prove the record of ration card of the plaintiff obtained in village Wadgaon. The record and the evidence of this witness show that for getting ration card in the year 1976 the plaintiff had given his name as "Chandrabhan Rambhau". There is no reason to disbelieve this record and this record is not consistent with the case of the plaintiff. The first appellate Court has not considered this evidence.

56) Witness Kashinath Thalkari (DW 3) who is resident of Wadgaon and witness Ganpat Kharbad (DW 5) who is also resident of Wadgaon are examined by defendants to show that the plaintiff has been using the

name of Rambhau as his father. The evidence of these witnesses shows that plaintiff was living in the house of one Balikram Master as tenant with his wife Shivganga, second wife. In view of the aforesaid circumstances and the other record there is no reason to disbelieve these two witnesses.

57) Mahadeo (DW 4), Gram Sevak of village Yusuf Wadgaon is examined by the defendants to prove the record of birth of daughter from second wife of the plaintiff. The oral evidence and the record show that on 31-12-1959 the plaintiff had reported to the local body by giving his name as Chandrabhan Rambhau that a daughter was born to him. Exhibit 112, entry made in the births and deaths register is very old entry and there is no reason to doubt this entry.

58) Jaiwant Jogdand, Gram Sevak of village Soni-Sanghvi is examined by defendants to prove some record. The evidence of this witness and the record of the village panchayat at Exhibit 125 (register of cattle pond) show that on 26-6-1966 Chandrabhan Rambhau Kale, r/o

Ghargaon, at present resident of Yusuf Wadgaon had handed over stray cattle to the cattle pond of the village panchayat. This witness was acting as gram Sevak since 1962. In the Court, the witness identified the plaintiff as a person who had handed over the cattle along with application. In the cross examination, nothing is brought on record to create probability that this record is not correct, it is false. There was virtually no reason for this witness to give false evidence against the plaintiff.

59) Witness Gangadhar Lamture (DW 7) was Sarpanch of village Wadgaon for about 5 years from the year 1964 onwards. He has given evidence that the plaintiff was living in village Wadgaon for 20 to 25 years. In the record of the village, his name was recorded as Chandrabhan Rambhau Kale. There is no reason to disbelieve this witness also in view of the record available. Copy of voters list is produced at Exhibit 131 for the year 1975. The voters list is for the village Wadgaon and it shows that in House No.258-3, Shivganga, second wife of the plaintiff was living along with her husband Kale Chandrabhan Narayan. There is clear probability that

name of father as Narayan was either given by mistake or it was given intentionally by the plaintiff. There is no evidence to show that there is another person having the said name and he has wife by name Shivganga. This record also needs to be used against the plaintiff. Thus, as per the record in village Wadgaon (Yusuf) the plaintiff was always using the name of his natural father Rambhau.

60) The plaintiff has relied on the record of one cooperative credit society of village Ghargaon. Witness Bansi Hazare (PW 7) is examined to prove this record. Evidence is given that in the year 1961 the plaintiff had obtained crop loan by giving his name as Chandrabhan Baliram Kale. The evidence is given in the year 1984. Defendant No.1 had deposited the amount for repayment of the loan. It is already observed that for some time plaintiff was living with defendant Nos.1 and 2. Even two daughters were born to defendant No.2 from plaintiff. It is already observed that the plaintiff was cultivating the lands of the defendant No.1 and he had managed to enter his name in the crop cultivation column of at least three lands. However, the Credit Society could not have given

loan in the name of the plaintiff as he was not the owner of the lands. These things are fishy. It is already observed that on the basis of such circumstances inference is not possible that there was adoption. No record of loan of that transaction is produced. Such record could have helped to show as to whether the defendant No.1 was party to the transaction and she had allowed the plaintiff to use the name of Baliram as his father. There was no alternative for the defendant No.1 than to make payment of the loan as plaintiff was husband of defendant No.2 and he was cultivating the lands during his stay in the house of defendant No.1. Further, there is record to show that in the year 1959 the plaintiff had shifted to Wadgaon and his name was not entered even in crop cultivation column after that year. Due to these circumstances, no weight can be given to the evidence of Bansi and some receipts of payment of loan in the name of Chandrabhan Baliram.

61) The plaintiff has relied on copy of voters list of village Ghargaon. It was of the year 1971. This record shows that in House No.139 following voters were living :-

(i) Kale Yamunabai Baliram;

- (ii) Kale Chandrabhan Baliram;
- (iii) Kale Champabai Chandrabhan;
- (v) Kale Rakhminbai Chandrabhan.

It is already observed that Shivganga was the name of second wife of the plaintiff and not Rakhminbai. Name of Shivganga was in the voters list from Wadgaon also. There is clear probability that in the voters lists of both places name of plaintiff was entered. It is noticed that names of many voters are entered in the voters list of many constituencies and that is done by the persons interested in contesting election or by their workers. The plaintiff was not living in Ghargaon in the year 1971. So, not much importance can be given to the voters list of that year of village Ghargaon.

62) Some assessment receipts in respect of house property from village Ghargaon are produced showing that the assessment was paid in the name of plaintiff from the year 1975-76. The aforesaid record like voters list of Wadgaon and the circumstances show that in that year the plaintiff was probably living in Wadgaon. These receipts of assessment cannot help the plaintiff in any way. It is

already observed that the plaintiff had created some such record.

63) For proving the surrounding circumstances also, the burden was on the plaintiff. It was up to him to show that he was being treated as son by Baliram and by defendant No.1 and was not treated as son of Rambhau. Record on the contrary shows that he was using the name of Rambhau as his father. When there is voluminous record including revenue record to show that the plaintiff was using the name of Rambhau as his father and he never challenged the transactions made by defendant No.1, few pieces of circumstances mentioned above cannot help the plaintiff and on the basis of such circumstances inference is not possible that the plaintiff was taken in adoption by Baliram.

64) It is already observed that probably in or about year 1959 plaintiff started living separately from defendant No.2. The evidence on the record and the circumstances show that there was cohabitation for 6 to 7 years and two daughters were born to defendant No.2

from the plaintiff. He did not participate in the marriages of two daughters. Though defendant No.2 has given evidence that there was cohabitation for 20 to 25 years, such admission cannot help the plaintiff when plaintiff himself has contrary contentions. Evidence on record shows that plaintiff had not taken care of either defendant No.1 or defendant No.2 after 1959. There is clear probability that defendant No.1 had attachment towards defendant No.2 and due to that she had allowed defendant No.2 and plaintiff to live with her and she had allowed plaintiff to cultivate the lands for few years. It is clear that after second marriage, plaintiff left house of defendant No.1, and he shifted to Wadgaon. There is some evidence given through Triveni to show that the properties of Rambhau were not succeeded by plaintiff. But no record in that regard is produced. Such circumstances could have been proved only by producing some record and the oral evidence, even the admission of other side cannot help the plaintiff in that regard.

65) All the aforesaid circumstances and the record were considered by the trial Court. Due to the

circumstances the trial Court had refused to believe the plaintiff and his witnesses. The reasoning given by the first appellate Court, which is already quoted, shows that the first appellate Court has committed serious error in interfering in the decision of the trial Court. Such decision cannot sustain in law.

66) The learned counsel for the plaintiff placed reliance on a case reported as **AIR 2005 SC 1020 (Christopher Barla v. Basudev Naik)** and submitted that interference in second appeal is not possible when the finding is a finding of fact. This Court has already quoted the material and the circumstances which are relevant and which were not considered by the first appellate Court. The finding of the first appellate Court is perverse and interference is warranted. The first appellate Court has not given due weight to the finding given by the trial Court which was based on oral evidence and the surrounding circumstances.

67) The learned counsel for the plaintiff placed reliance on one more case reported as **AIR 2002 SC 2416**

(Raushan Devi v. Ramji Sah). The facts of this reported case show that there was deed of adoption and the adoptive father had supported the case of the adoption of the son. These facts were different. The facts and circumstances of each and every case are always different and the Court is expected to decide the matter on the basis of the facts and circumstances of a particular case.

68) The learned counsel for the plaintiff placed reliance on the cases reported as (1) **AIR 1972 Bombay 164 (Sadashiv Shankar Wani v. Bala Nisbat Babaji Wani)**; (2) **1943 BLR 992 (Tirkangauda M. Kashigaudar v. Shivappa Patil)** and (3) **A.I.R. (32) 1955 Nagpur 60 (Maroti Bansi Teli v. Radhabai Tukaram Kunbi)**. Learned counsel for the plaintiff submitted that parties belong to Wani Jangam community and they are treated as Sudra under Hindu law. He submitted that no religious ceremonies are required for Sudra for adoption. He submitted that mere giving and taking are enough. There is no dispute about the proposition and this proposition is already considered by this Court.

69) The learned counsel for the plaintiff placed reliance on a case reported as **AIR 2003 SC 4319 (Rajgopal v. Kishan Gopal)**. Facts of this reported case show that there was dispute over the form of adoption and there was no dispute about factum of adoption. In view of the circumstances of that case, it was held that the finding given by the Courts below was finding of fact and so it was held that no interference was possible in the second appeal. There cannot be dispute over the proposition made in this reported case also.

70) In view of the discussion made above, this Court holds that the judgment and decree of the first appellate Court needs to be set aside by answering all the substantial questions of law against the plaintiff. In the result, the substantial questions of law are answered accordingly.

71) The appeal is allowed. The judgment and decree of the first appellate Court is hereby set aside and the judgment and decree of the trial Court is hereby restored.

(T.V. NALAWADE, J.)