

THE HON'BLE SMT JUSTICE T. RAJANI

APPEAL SUIT No.1074 of 1994

JUDGMENT:

Impugning the judgment of the II Additional Subordinate Judge, Vijayawada in O.S.No.66 of 1980 dated 27.06.1985, the appellant who is the plaintiff in the lower court, files this appeal on the grounds that the adoption of the respondent/defendant is against the provisions of the Hindu Adoption and Maintenance Act but the Court below did not appreciate the said fact and dismissed the case; the settlement deed was executed by Late Ramachandraiah in favour of the respondent, at the instance of the natural parents of the respondent and under the influence brought upon Late Ramachandraiah; the said settlement deed was never acted upon and nor was it intended to be acted upon; the tenants took possession of the premises from Late Ramachandraiah but not from the respondent, which is a conclusive proof that the settlement deed was never acted upon; the respondent claimed the property under the settlement deed and simultaneously took plea of adverse possession of the said property, which is contradictory to each other; late Ramachandraiah performed the thread ceremony of the appellant, which was agreed even by the respondent; further the respondent and his mother tried for a compromise in view of the entitlement of the appellant to the suit schedule property but the talks were not fruitful; all these facts were submitted before the Court below but the Court below brushed aside the same.

2. This case faces a difficult situation, as the record is not available and the same was destroyed by the Court below and was intimated to this Court by way of a letter dated 26.04.1999. The said letter was addressed in response to the letter issued by this Court, calling for the records. It was intimated that the records were destroyed on 13.02.1991. Hence, this Court had to request the counsel on either side to assist in reconstructing the record but the counsel could offer no more assistance, than furnishing the copies of Exs.B5 and B6. They informed that the depositions and the other record is not available even with their counter-parts and that their efforts to secure the copies of the depositions and the other record, failed. Though the appeal was filed in the year of the disposal of the suit i.e. 1985, it was being returned with some objections and it came to be dismissed at SR stage once. The appeal got to be numbered only in the year 1994. It is obviously for the reason of there being no intimation to the lower Court, the records were destroyed, though the appeal has been pending.

3. There is no guidance that is offered by law also, as to the procedure that should be adopted in such a situation. There are several cases pertaining to non availability of records in criminal cases and in those cases, ultimately, the accused was acquitted. As the law that the benefit of any situation has to accrue to the accused is well settled, it might have been not difficult for the Judges, who were dealing with criminal case who were confronted with similar situation. But in civil cases, when both parties have equal interest in the litigation and the law of equity operates equally in favour of both

parties, the case cannot be simply decided in favour of any one side based on the hard situation that arises due to the above stated circumstances. The case cannot be kept pending, as there are no prospects of the situation getting better. It is only after seeing no prospects of any assistance coming from the counsel for the reconstruction of the record, that this case was taken up for decision. The Court can only depend on the judgment of the Court below and consider the undisputed facts, which are mentioned in the judgment and consider the grounds of appeal and decide the case. Fortunately, I have the two documents which form the basis of the case, the notification of the adoption of the defendant and the gift deed under which the suit property was gifted to the defendant.

4. The grounds of appeal are only with regard to the validity of the adoption of the defendant by Late Ramachandraiah, who was the original owner of the suit schedule property and with regard to the settlement deed, which was executed in favour of the defendant by the said Late Ramachandraiah. Making it easy for this Court, fortunately, the factum of adoption and execution of the settlement deed are not denied by the appellant. The contention is only that the adoption is not valid in the eye of law, as it took place when the defendant was aged more than 15 years, which is contrary to the provisions of the Hindu Adoptions and Maintenance Act. With regard to the settlement deed, the contention is that the same was obtained from Late Ramachandraiah under duress and that the same was not intended to be acted upon.

5. From the judgment of the Court below, the pleadings of either side can be understood. The correctness of recording the pleadings in the judgment is not questioned by both sides. Hence, they can be relied upon. Though there was inconsistency in the pleadings of the plaintiff about the relationship, the same was resolved by the Court below and the family tree was drawn in answer to issue No.1, which was framed by the Court below, according to which, the plaintiff and the deceased descend from a common ancestor, their fathers being different. The contention of the plaintiff is that the defendant finds place in the family tree only because of his adoption to Late Ramachandraiah and if he is branched out from the family tree, he would not be a person, who would be entitled to inherit the suit schedule property. The claim of the plaintiff or for that matter the entire case hinges upon these two aspects i.e. the adoption of the defendant by Late Ramachandraiah and the settlement deed in favour of the defendant. The Court below framed five issues. The first issue is with regard to the correctness of the genealogy set up by the plaintiff, which was answered and remains to be undisputed by the plaintiff, which can be understood from the grounds of appeal wherein it was not pleaded as a ground. The fourth issue relates to the acquisition of title by the respondent to the said property by adverse possession. As rightly pointed out by the appellant's counsel, the plea of adverse possession cannot be taken by the defendant as he derives right to the said property by way of settlement deed. A plea of adverse possession arises where a person alleges long established, hostile, open and uninterrupted possession, to the knowledge of the true owner. The possession must be with intent, express or implied to hold the

property in denial of the legal rights of the true owner. One who holds possession under title or assumed title, derived from another, cannot assert rights adverse to the title of the true owner. Thus, a plea of adverse possession is, in essence, a plea of ouster of title of the owner and the vesting thereof in another. The defendant claims his right through his adoptive father. His case is not that the plaintiff is the true owner of the property. Hence the question of adverse possession does not arise and there is no need to take up any further discussion on adverse possession. One issue is about the relief. The other two issues remain to be the points, to be decided in this appeal, which are as under:

1. Whether the adoption of the defendant by Late Ramachandraiah and his wife is valid and binding on the plaintiff.
2. Whether the registered gift deed dated 17.04.1961 in favour of the defendant is not valid and binding on the plaintiff.

POINT No.1:

6. The defendant does not dispute that his adoption by Late Ramachandraiah is after he crossed the age of 15 year under Section 10(iv) of the Hindu Adoption and Maintenance Act, but the same provision carves out an exception of custom and usage to the contrary and if the parties are successful in proving that there is a custom of adopting persons above the age of 15 years, the adoption would be valid. The judgment shows that several witnesses were examined on behalf of the defendant to prove that there was a custom of adopting persons beyond the age of 15 years. The appellant's counsel, except

harping upon the same point which was stressed in the Court below, that adoption is not valid as it is beyond the age of 15 years of the defendant, does not extend any argument to overcome the evidence adduced on behalf of the defendant to get himself within the purview of the exception in the above provision. Even Late Ramachandraiah is an adopted son to his adoptive father and as can be seen from the judgment, he was also adopted after crossing 15 years of age. Long list of names were given by the witnesses, who spoke on the issue of adoption, who, according to them, were adopted after 15 years of their age. D.W.4, who is the mother of the defendant, stated that Late Ramachandraiah was adopted when he was 17 or 18 years old. The brother of the defendant was also given in adoption when he was 20 years, according to the evidence of D.Ws.1 and 4.

7. The plaintiff, as rightly observed by the Court below, did not try to discredit the evidence of D.W.4, who deposed about several instances of similar adoptions. She spoke about one Seshamma adopting one Ramachandra Murthy when he was 20 years; one Gollapudi Seetharamayya adopting one Pattabhi Ramayya when he was more than 20 years old; one Gollapudi Balaramayya adopting a grown up boy; one Ratamma adopting one Murali when he was 17 years old. She spoke about several other such persons and some of them were stated to be dayadis. The plaintiff did not, not only discredited the evidence of the above witness but also did not adduce any evidence contrary to the facts spoken to by the above witnesses. Hence, when the factum of adoption is not disputed by the plaintiff and when the validity of such adoption is proved by the overwhelming

evidence of the witness on behalf of the defendant, the conclusion arrived at by the Court below cannot be disturbed. Moreover, Ex.B5, which is a Gazette notification, shows that it was notified that the defendant changed his name as Dontaraju Lalitha Venkata Subrahmanyam, being the adopted son of Dontaraju Ramachandrayya. Hence, all the evidence, which came before the Court below, was in favour of the validity of the adoption of the defendant by Late Ramachandraiah.

POINT No.2:

8. Ex.B6 is the copy of the gift deed, by virtue of which the suit schedule property and another property was gifted to the defendant by Late Ramachandraiah. While, over the suit schedule property, absolute rights were given to the defendant in respect of the said property covered by Ex.B6, Late Ramachandraiah reserved life interest for himself and his wife and gifted the other property after the death of himself and his wife. The evidence in support of the fact that the gift deed was executed by Late Ramachandraiah out of his free will and that the same was acted upon is also overwhelming and cogent. The Court below dismissed the plea of fraud, which was, for the first time, taken up at the argument stage, by the plaintiff, on the ground that the said plea was not taken in the pleadings.

9. The Court below examined the gift deed meticulously to rule out any element of fraud that could have crept into the execution of the gift deed. The gift deed is dated 17.04.1961. The execution of the gift deed was admitted by P.Ws.1 and 2, being the plaintiff and his mother respectively. They admit that they had knowledge about the said gift

deed. The appellant puts forth a strange plea that Late Ramachandraiah requested the plaintiff to take legal action against the defendant stating that the defendant obtained the gift deed by playing fraud and that he would give evidence if plaintiff takes legal action. The dates as regards the said instances are not mentioned. The death of Ramachandraiah was on 08.12.1978. If really, it was executed on the pressure put on Late Ramachandraiah, he had 17 long years, to cancel the said gift deed or initiate any action to get the same cancelled. But he did neither of the two thereby watering down the contention of the appellant that he was requested by Ramachandraiah to take legal action against the defendant with respect to the gift deed. The tenants residing in the suit schedule property were also examined and they had spoken in a manner supporting the execution of the gift deed in favour of the defendant. One clause that was mentioned in the gift deed was also taken into consideration by the Court below in a very right perspective. It was mentioned therein that even if the adoption was not valid, the defendant would still get the rights under the gift deed. It was rightly observed that if Late Ramachandraiah intended to give the property to the defendant, only if adoption was valid, then perhaps the defendant would not have got any rights as adopted son unless the adoption is valid, but when Late Ramachandraiah made settlement of the property on the defendant as an individual, mere describing him as adopted son would not deprive him of the benefits of the gift deed. When the identity of the donee and identity of the property can be made out from the gift deed that would suffice to enforce the gift deed. The description of the defendant as an adopted son of Late Ramachandraiah would at the best turn to

be a wrong description, if adoption is not valid, but his identity would still remain unambiguous. Moreover, there is no argument that the donee mentioned in the gift deed is not the defendant.

10. It was also observed by the Court below that the contents of the gift deed that if the adoption is not valid, the defendant would take the property in his individual capacity, are only as a precautionary measure to preserve the property in favour of the defendant, though his adoption is not upheld. The tax receipts in respect of the suit schedule property were also found to be in the name of the defendant. The evidence that Late Ramachandraiah used to collect the rent till his death would only show the bonding and trust between Late Ramachandraiah and the defendant, but it does not help the appellant in proving that Late Ramachandraiah did not intend to part with the property in spite of execution of the gift deed. The same can be supported by observing that even after the death of Late Ramachandraiah, the defendant continued to collect the rent without any demur from the tenants. D.W.2 though is a hear-say witness, spoke about what Late Ramachandraiah shared with him when he was alive. He states that Late Ramachandraiah told him about the settlement deed executed in favour of the defendant and he also showed it to him. He also spoke about the apportionment made by Late Ramachandraiah with regard to the rent, by stating that he told him that the rent for the northern portion should be paid to the defendant and the rent for the southern portion should be paid to him and after his death, the said rent would also go to the defendant.

11. D.W.5, who is another tenant for 18 years by then, also stated that after the death of Ramachandraiah, he used to pay the rent to the defendant. He also stated that Late Ramachandraiah asked him to pay rent during his lifetime, as the defendant was doing job and that after his death, they should send the rent to the defendant. Late Ramachandraiah told him about the adoption of the defendant, as the reason for directing him to pay the rent to the defendant after his death. Hence, there is any amount of evidence, which would prove that the defendant was adopted by Late Ramachandraiah and the gift deed executed in his favour by Late Ramachandraiah is out of free will and that the same can was acted upon.

12. The contention of the counsel for the appellant that the appellant looked after Late Ramachandraiah is also dismissed by considering the evidence with regard to the financial status of the appellant. The observation of the Court below is that the plaintiff has been staying in the house of P.W.2, which a shed, abutting the graveyard in the Government land, which is an encroachment and that the plaintiff's father worked as a cook and P.W.2 used to assist his father in cooking. Hence, seen from any angle, the adoption of the defendant and the gift deed executed in his favour seem to be genuine and valid thereby binding the plaintiff.

In the result, the appeal is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. In the circumstances, there shall be no order as to costs.

T. RAJANI, J

August 24, 2017
DSK