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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 SECOND APPEAL NO.547 OF 2019

Sainath Gana Alikondewad @
Sainath Adelu Yeramwa

.. Appellant

Versus

Prayagbai Laxman Kolkatwad

.. Respondent

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Mr. M.S. Kulkarni h/f. Mr. A.H. Koralkar, Advocate for Appellant
Mr. Subhash Chillarge, Advocate for the Respondent

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WITH

CIVIL APPLICATION NO. 11478 OF 2019

IN

SECOND APPEAL NO.547 OF 2019

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CORAM : MANGESH S. PATIL, J.

DATE : 23-02-2022

PER COURT :

. Heard both the sides on the point of admission of the
Second Appeal.

2. The appellant is the original defendant. The respondent
- plaintiff filed a suit for declaration about having become owner of
the house property described in the para no.2 of the plaint being the
only heir of her paternal uncle Adelu. She averred that Adelu,
Tukaram and Narayan were the full brothers. She is the daughter of

Tukaram and Adelu and Narayan having died without leaving behind any heir, she was the sole heir of Adelu and was entitled to inherit the suit properties which belonged to him.

3. The appellant contested the suit and claimed to be the adopted son of Adelu having been adopted on 20-11-2000. He also filed a counter claim to receive a share in the agricultural lands standing in the name of Adelu.

4. The trial court concluded that the appellant had failed to prove the adoption and rest of the facts and circumstances having been admitted by him as regards genealogy, the suit was decreed and the counter claim was dismissed.

5. By the judgment and order under challenge, the lower appellate court has dismissed his appeal.

6. Mr. Kulkarni h/f. Mr. Koralkar, learned advocate for the appellant would submit that though the point was not raised before either of the lower courts, the parties are Scheduled Tribes and the provisions of Hindu Adoption and Maintenance Act are not applicable to them by virtue of Section 2 (2) of that Act and even the provisions

of the Hindu Succession Act will not be applicable to the parties. He would, therefore, submit that the courts below have committed an error in not taking into consideration this fact and circumstance and have straightway applied the provision of Hindu Adoption and Maintenance Act to come to a conclusion that since the appellant was adopted beyond the permissible age as is laid down under Section 10, the adoption was invalid.

7. Learned advocate Mr. Kulkarni would further submit that the respondent though denied about having relinquished her claims in the suit properties by receiving some money, the cross-examination of the appellant that was conducted on her behalf impliedly insinuated that she was admitting about having received the amount of Rs.7,000/-. Even this fact was conspicuously ignored by the courts below and they have not correctly appreciated it.

8. Learned advocate Mr. Kulkarni would further submit that though it was an appeal even to the extent of dismissal of the counter claim, the lower appellate court has not at all whispered anything about the entitlement of the appellant to have it.

9. As against this learned advocate Mr. Chillarge for the

respondent submits that the evidence was not sufficient and cogent to prove the adoption. The witnesses were examined to prove such adoption, but they were also inconsistent in material particulars. Neither any custom was tried to be established nor even the factum of actual adoption was duly established. The lower courts were justified in appreciating such a lapse on the part of the appellant and have rightly recorded a concurrent finding of fact regarding absence of adoption. He would therefore submit that once the claim of the appellant being an adopted son of Adelu goes away, nothing survives to be agitated on his behalf and the respondent being the sole heir of Adelu would be entitled to the declaration as has been rightly found by the courts below.

10. At the outset, it is necessary to bear in mind that there is no dispute as far as the genealogy is concerned. Obviously, therefore, the entire fate of the matter depends upon the veracity or otherwise of the claim being put forth by the appellant of being an adopted son of Adelu. Once it falls to the ground, in view of admission of the rest of the facts, no fault can be found with the decisions of the courts below in holding the respondent entitled to the declaration.

11. To prove such adoption, the appellant examined couple

of witnesses. However, as has been pointed out by the courts below even both these witnesses Ramchandra (DW-1) and Maroti (DW-3) were not consistent in respect of material particulars albeit both only stated about there being an adoption. They have given dates of adoption, which are not in conformity with the appellant's stand. They were also inconsistent as far as the age of the appellant on the date of the adoption. Conspicuously, they even did not specifically elaborate as to what kind of the ceremony had taken place at the time of adoption. The biological parents of the appellant's were also not examined as witnesses. In fact, in the absence of there such direct evidence which could have been the best evidence available with the appellant, the actual giving in adoption itself has not been established. If such was the state of evidence, no fault can be found with the conclusions drawn by the courts below about he having failed to prove the adoption.

12. Assuming for the sake of arguments that the parties being scheduled caste and the provisions of the Hindu Adoption and Maintenance Act were not applicable to them, still, it was imperative on the part of the appellant to have led cogent and convincing evidence about some sort of ceremony of adoption having taken place according to the custom applicable to his community. In the absence

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of such evidence, I find no error in the conclusion drawn by the courts below regarding his failure to prove the adoption.

13. As is cursorily mentioned above, since the entire fate of the matter depends upon proof or otherwise of he being the adopted son of Adelu, nothing survives to be determined in this Second Appeal.

14. No substantial question of law arises for the determination of this Court. The Second Appeal is liable to be dismissed and is accordingly dismissed.

15. In view of disposal of the Second Appeal, nothing survives for consideration in the pending Civil Application No.11478 of 2019 and the same stands disposed of.

(MANGESH S. PATIL)
JUDGE

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