

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.394 OF 2021
WITH
INTERIM APPLICATION NO.820 OF 2019
WITH
INTERIM APPLICATION NO.3496 OF 2021
IN
SECOND APPEAL NO.394 OF 2021**

Ballal Sidhivinayak Dev through
Vahivatdar and Ors.

...Appellants

Versus

Deepak Chintamna Patkar

...Respondent

....

Mr. Rohit D. Joshi for the Appellants.

Mr. Prakash Mahadik with Mrs. B. Shenoy for the Respondent.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 8th MARCH, 2022.

P.C.:-

1. The Appellant-Plaintiff has challenged the judgment dated 13/06/2019 whereby the learned District Judge-1, Raigad dismissed Civil Appeal No.217 of 2013 and thereby confirmed the judgment dated 30/08/2013 passed by the learned C.J.J.D. in R.C.S. No.65 of 2010.

2. The Appellants (hereinafter referred to as the 'plaintiffs') had filed a suit for declaration and injunction in respect of the land under Gut

No.133 of village Mhatrolipada, Taluka -Alibag, District -Raigad. It was the case of the Plaintiffs that the said land was originally owned by Govind Balkrishna Tendulkar, who had two sons by name Dhundiraj and Chintaman. The Plaintiffs claim right to the property through Dhundiraj. They claim that Chintaman was given in adoption and prior to adoption he had bequeathed his right in respect of the suit property in favour of Shri Ballal Siddhivinayak Dev (Temple trust). The Plaintiffs claim that they are in possession of the entire property.

3. The Respondent (hereinafter referred to as 'Defendant'), who is claiming right through Chintaman claimed that Dhundiraj and Chintaman had effected partition of the ancestral property and by partition deed drawn on 09/12/1950, the suit property (old Survey No.90) was allotted to Chintaman and mutation entry No.1991 was effected on the same day. The Defendant denied that Chintaman had executed a gift deed in favour of Shri Ballal Siddhivinayak Dev. He further claimed that the Plaintiffs are in no way associated with Ballal Devasthan. The Plaintiffs are not in possession of the suit property and have no right, title or interest in the suit property.

4. The Trial Court after considering the evidence on record held

that the Plaintiff has failed to prove that Chintaman had gifted the property in favour of Shri Ballal Siddhivinayak Dev. The learned Judge has also held that by virtue of Section 12 of the Hindu Adoptions and Maintenance Act, 1956 that the property had already vested in Chintaman even prior to his adoption and by virtue of proviso to Section 12 it continued to vest and pass on to him after his adoption. The Trial Court therefore held that the Plaintiff had failed to prove that he is the absolute owner of the property and hence dismissed the suit. The Appellate Court confirmed these findings and dismissed the appeal. Hence, the second appeal.

5. Mr. Rohit Joshi, learned counsel for the Appellant-Plaintiff submits that once Chintaman was given in adoption he ceased to have any right, title and interest in the property inherited by him prior to his adoption. He submits that the courts below have erred in applying clause (b) of Section 12 of the Hindu Adoption and Maintenance Act in as much as Chintaman had already gifted the property to Ballal Devasthan (temple trust) even prior to his adoption. He has relied upon the decision of this Court in *Devgonda Raygonda Patil vs. Shamgonda Raygonda Patil and his heirs and Anr. 1992 AIR (BOM) 189*.

6. Per contra, Mr. Prakash Mahadik, learned counsel for the Respondent-Defendant submits that the suit property was allotted to Chintaman in the partition effected on 09/12/1950. The learned counsel submits that since the property had vested in Chintaman prior to his adoption by virtue of Clause (b) of Section 12 of Hindu Adoption Act, the same continued to vest in him even after his adoption. He submits that the gift deed relied upon by the Plaintiff is not a registered deed and no transfer has been effected under the unregistered gift deed.

7. It is not in dispute that the suit property was originally owned by Govind Tendulkar, upon whose death the properties devolved upon Dhundiraj and Chintaman. It is not in dispute that Chintaman was given in adoption. The question is whether he continued to have right to property devolved on him prior to his adoption. In this regard, it would be relevant to refer to Section 12 of the Hindu Adoption Act which defines the rights of an adopted child. This section provides that the adopted child shall be deemed to be the child of his/her adoptive father or mother for all purposes with effect from the date of the adoption. The section further provides that from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by adoption in the adoptive family. Proviso (b) of this section

which is relevant to decide the issue in the case in hand mandates that property which is vested in the adopted child before adoption shall continue to vest in such person subject to the obligation, if any, attaching to the ownership of such property, including the obligation to maintain relatives of the family of his or her birth. Scope of proviso (b) to Section 12 was considered by the learned Single Judge of this Court in ***Devgonda Raygonda Patil*** (supra), and it was held thus:-

13. Section 12 speaks about effects of adoption. It has three provisos which are exceptions to the general rule contained in main part. The effect of adoption is that the adopted child is to be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to have been severed and replaced by those created by the adoption in the adoptive family. Proviso (b) says that the property which is vested in the adopted child before adoption shall continue to vest in the adoptee, subject of course, to any obligation attaching to the ownership of such property including the obligation of the adoptee to maintain relatives in the family of his or her birth. This proviso therefore, clearly says that the adopted child shall take from the family of his birth to the family of adoption only that property which was vested in him before adoption and no other. If the property which was not vested in him as absolute owner thereof, then the said property is not taken away by him from the family of his birth to the adoptive family.”

8. In the instant case, it is not in dispute that the suit property was allotted to Chintaman by virtue of the partition deed drawn prior to the adoption. Since the suit property had vested in Chintaman prior to his

adoption, by virtue of proviso (b) to Section 12 the same would continue to vest in him even after his adoption. The Plaintiff has come up with a case that Chintaman had relinquished his share and /or gifted his share in favour of Shri Ballal Sidhivinayak Dev. It is not in dispute that the gift deed allegedly executed by Chintaman was not registered. There was thus no valid transfer of the property. Consequently, the unregistered gift deed did not create any rights in favour of Ballal Devasthan.

9. Under the circumstances, the findings recorded by the Trial Court as well as the Appellate Court are based on evidence on record and cannot be termed as perverse. No substantial question of law is involved. The appeal has no merits and is accordingly dismissed.

10. The interim applications do not survive in view of disposal of the appeal and stands disposed of.

11. At this stage, learned counsel for the Plaintiff states that interim relief be extended by four weeks. The Plaintiff has failed to make out any case for execution of interim relief. Request is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)