

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO. 259 OF 2018

Manabai wd/o Maroti Datir (Dead) through LRs -- Appellants

Vs.

Pundlik s/o Natthuji Aswar -- Respondent

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

Court's or Judge's orders

Mr. V.G. Bhamburkar, Advocate for appellants

Mr. Y.J. Chandurkar, Advocate for Respondent

CORAM : MANISH PITALE, J.

DATE : 24th MARCH 2022

By this appeal, the appellant (original plaintiff) has challenged concurrent orders passed by the two Courts below, whereby a suit for declaration, possession and alternatively for partition, stood dismissed.

2. The petitioner i.e. the original plaintiff was the widow of one Maroti Bhadaji Datir, who died in the year 1950. On 16/11/1951, she adopted the respondent by way of a registered adoption deed. Thereafter, the appellant remarried with one Baliram Gujar in the year 1954.

3. In the year 2009, the appellant filed the aforesaid suit claiming that the respondent had gone back to his natural parents, thereby violating one of the conditions of the adoption deed and that, therefore,

he could not have no right in the property originally belonging to Maroti Bhadaji Datir. In the alternative, the petitioner claimed that she had a right to seek partition, because she alongwith the respondent was entitled to the estate of said Maroti Datir.

4. The respondent resisted the suit filed by the appellant, claiming that the suit was barred by limitation, because the registered adoption deed was executed on 16/11/1951 and she had not sought any declaration in respect of the said deed within three years. It was further contended that since the appellant had remarried in the year 1954, in terms of Section 2 of the Hindu Widows' Remarriage Act, 1856, she had lost all her rights in the suit property.

5. The Court of Civil Judge (Junior Division), Anjangaon-Surji i.e. the Trial Court found in favour of the respondent on all the issues, holding that the suit was barred by limitation that the appellant had lost her rights in the suit property, when she remarried in the year 1954 and that since the registered adoption deed was never made subject matter of challenge, merely claiming that the respondent had gone back to his natural parents would not be enough to deprive the respondent of his rights in the suit property. It is relevant that although the appellant claimed that she had remarried in the year 1959, the Trial Court had rendered a finding of fact that she remarried in the year 1954, on the basis of evidence and material on record and a crucial admission in the cross-examination given by the appellant herself that she had married in the year 1954.

6. Aggrieved by the judgment and order of the Trial Court, the appellant approached the District Court. By the judgment and order dated 23/11/2017, the District Court dismissed the appeal and confirmed the findings of the Trial Court.

7. Mr. V.G. Bhamburkar, learned counsel appearing for the appellant emphasized upon the aspect of the respondent having gone back to his natural parents, thereby indicating that he had breached the conditions of the adoption deed and that, therefore, he was not entitled to any rights in the suit property.

8. A perusal of the judgments and orders of the Courts below shows that the provisions of the Hindu Adoptions and Maintenance Act, 1956, particularly, Sections 15 and 16 have been taken into consideration by the Courts and it is found that since the respondent was adopted by a registered adoption deed dated 16/11/1951 and there was no challenge thereto within the period of limitation, it could not be said that the respondent had gone back to his natural parents. The effect of the said deed, in the light of the provisions of the said Act, demonstrated that he had severed all his ties with his natural parents and that for all purposes, he was treated as a child of adopted parents.

9. No fault can be found with the concurrent findings rendered by the Courts on this aspect of the matter. No substantial question of law arises in the appeal. Accordingly, the appeal is dismissed.