



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

SECOND APPEAL NO.481 OF 1992

Smt. Kashibai w/o Dadarao,
Nimbalkar (Since died), her
L.Rs.

1. Chingabai w/o Manohar Salunke,
died through L.Rs.

1-A) Malanbai Manohar Salunke,
Age : 65 years, Occu.: Household,
R/o.: At Post Alani, Tq. & Dist. Osmanabad.

1-B) Champabai Dattatraya Mandlik (Patil)
(Died) through L.Rs.

1-B(1) Sunanda w/o Netaji Sathe,
Age : 40 years, Occu.: Household,
At Post Chorakhali, Tq. Kallamb,
District : Osmanabad

1-B(2) Ravi s/o Dattatraya Patil,
Age : 35 years, Occu.: Agril.,
R/o.: Market Yard Tuljapur Road,
Barshi Tq. Barshi, Dist. Solapur APPELLANTS

VERSUS

1. Rajendra s/o Tukaram Nimbalkar,
Age : 25 years, Occu.: Agril.,
R/o.: Alani, Tq. & Dist. Osmanabad.

2. Bapu s/o Tukaram Nimbalkar,
Age : 37 years, Occu. & R/o. As above

3. Shiva s/o Tukaram Nimbalkar,
Age : 32 years, Occu & R/o.: As above.

4. Tanibai w/o Shankar Madake
(Deleted)

5. Nakulabai w/o Mahadeo Sathe
(Deleted)

.... RESPONDENTS

....

Mr. V. G. Mete, Advocate for Appellants
Mr. V. C. Solshe, Advocate for Respondent Nos.1 to 3

....

CORAM : SANDIPKUMAR C. MORE, J.

RESERVED ON : 07/02/2024

PRONOUNCED ON : 08/02/2024.

JUDGMENT :

1. The legal representatives of original plaintiff – Kashibai w/o Dadarao Nimbalkar, who died during pendency of first appeal, have preferred the present second appeal against judgment and decree dated 15/07/1992 passed by the 2nd Additional District Judge, Osmanabad (hereinafter referred to as ‘the learned first appellate court’) in RCA No.136 of 1984 whereby the learned first appellate court, by allowing the appeal, had set aside the judgment and decree dated 06/03/1989 passed by the 2nd Join Civil Judge (J.D.), Osmanabad (hereinafter referred to as ‘learned trial court’) in RCS No. 65 of 1980.

2. Brief facts giving rise to the present appeal are as under :

The original plaintiff – Kashibai had filed the suit for cancellation of adoption deed by which she had adopted present

respondent No.1 i.e. original defendant No.1 and also for perpetual injunction against original defendants, who are present respondent Nos.1 to 3. Though the learned trial court decreed the suit of Kashibai by declaring the adoption deed dated 07/04/1980 in favour of present respondent No.1 as invalid and not binding on her and also by granting perpetual injunction against present respondent Nos.1 to 3 for not to obstruct the possession of Kashibai over the suit land, but the learned first appellate court reversed the said finding by dismissing the suit. Hence, this appeal.

3. Heard rival submissions. Also perused the entire documents on record. The present appeal is admitted only on the following substantial question of law which is formulated by this court vide order dated 16/01/2014 as under :

(a) Whether the First Appellate Court has erred in upholding the adoption deed in question being legal by ignoring Section 10 of Hindu Adoption and Maintenance Act, 1956?

The learned counsel for the appellants pointed out that as per the Section 10(3) of Hindu Adoption and Maintenance Act, 1956 a boy over the age of 15 years cannot be given in adoption and in the

instant matter the present respondent No.1, who was admittedly adopted by original plaintiff – Kashibai under the adoption deed dated 07/04/1980 was 21 years of age i.e. over the age of 15 years. He also argued that nothing is mentioned in the said adoption deed that there was any custom in the family of Kashibai or respondent No.1 in respect of adopting a boy over the age of 15 years. Thus, he prayed for cancellation of said adoption deed since respondent No.1 did not adduce any evidence to show that there was such custom in his family or family of Kashibai. According to him, a boy over the age of 15 years was not capable of giving and taking in adoption. Thus, he prayed for setting aside the judgment and decree of the learned first appellate court and to restore the judgment and decree of the learned trial court.

4. On the contrary, learned counsel for respondent Nos.1 to 3 strongly opposed the submissions made on behalf of the appellants. He pointed out that the observations are already recorded by the learned first appellate court as regards the objection raised by the learned counsel for the appellants in respect of age of the person to be given in adoption. He further pointed out that as per the presumption under Section 16 of Hindu Adoption and Maintenance Act, the adoption deed is presumed to be valid

one if it is registered. He placed his reliance on the judgment of this court in case of ***Hanmant Laxman Salunke since deceased by his legal heirs vs. Shrirang Narayn Kanse***, reported in **2006(2) Bom. C.R. 254** and prayed for dismissal of the appeal.

5. Admittedly, the adoption deed in question, which is dated 07/04/1980, indicates that Kashibai had adopted the present respondent No.1 when he was over the age of 15 years. Moreover, nothing is mentioned in the said adoption deed as regards the custom prevailing in the family of Kashibai that a boy over the age of 15 years was capable of being giving or taking in adoption. However, on going through the judgment of the learned first appellate court, this point is already dealt with by placing reliance on the judgment of this court in the case of ***Hausabai and others vs. Jijabai Baba Pawar and others***, reported in **AIR 1972 Bombay 98**. Moreover, the judgment of this court in case of ***Ramchandra vs. Baburao and others***, reported in **1976 M.L.J. 125**, is also relied upon. For quick reference, I would like to reproduce the aforesaid observations herein below :

“(i) Even prior to the passing of the Hindu Adoptions & Maintenance Act in 1956, the Hindu Law applicable to the Bombay State was that a person may be adopted

at any age even though he may be elder than the adopter and even though he may be married and had children. It is well known that Hindu law in Indian is derived from various texts and commentaries some of which have by custom held that the field in various parts of India. Hindu law, therefore, is by itself customary law, except to the extent to which it has been subsequently codified. In my opinion therefore, the prohibition contained in Section 10 (iv) against the person adopted who has completed the age of 15 years has no meaning in relation to male persons adopted in the territories which were comprised in the former state of Bombay which includes the district of Satara from where this appeal comes.”

- “(ii) A person may therefore, be adopted at any age in Maharashtra State as the Bombay School of Hindu Law never recognized any age limit for adoption that being the legal custom and lexleci unless it is proved that, it is prohibited by the custom of the community.”*

Further, the judgment decided by Full Bench of this Court in the case of **Anirudh Jagdish vs. Babarao and others**, reported in **1983, AIR Bombay, 391**, has also been relied by the learned first appellate court in its judgment.

6. The learned counsel for respondent Nos.1 to 4 placed his reliance on the judgment of this court in case of **Hanmant Laxman Salunke** (supra). In this judgment, this court has discussed the observation of **Anirudha's** (supra) case as under :

- “(a) By following a decision of Seven Judge Bench of the Hyderabad High Court in the case of (Sheshadri v. Venubai) 6, 37 Deccan Law Report 244, in the Marathwada area of the old State of Hyderabad, adoption of a married person was valid and that Hindus in that area were governed by the Myukha or the Bombay School of Hindu Law and not by the Mitakshara;*
- (b) a widow can take a boy over 15 years of age in adoption as also a married person;*
- (c) the practice of taking married persons and boys over 15 years of age in adoption in the regions which are governed by the Bombay School of Hindu Law has been consistently recognized by the; and*
- (d) the expressions custom and usage as defined in Clause (a) of section 3 of the Act include not only customs and usages in the ordinary sense which have obtained the force of law among Hindus in any local area, tribe,*

community, group or family, but also texts, rules and interpretations of Hindu Law which have been continuously and uniformly observed and have obtained the force of law among Hindus in any local area, tribe, community, group or family.

The Full Bench summarized its final conclusions in the following words :

In our opinion, the correct view of the provisions of Clause (a) of section 3 and of section 4 and Clauses (iii) and (iv) of section 10 of the said Act was taken by Vaidya and Shimpi, JJ., in (Haribai v. Baba Anna)⁷, AIR 1977 Bom. 289. We accordingly accept that view and overrule the view taken by Malvankar, J., in Second Appeal No.1444 of 1965 (Bhimrao Vithu Khandagale vs. Chandru Savala Khandagale) ⁸ ; bny Vimadalal and Naik, JJ., in (Laxman Ganpati Khot v. Anusayabai)⁹, AIR 1976 Bom. 264 and by Joshi, J., in (Balkrishna Raghunath Gharat v. Sadashiv Hiru Gharat) ¹⁰, AIR 1977 Bom. 412.”

Further, the Full Bench of this Court in the aforesaid judgment has also given reference of the judgment of the Hon’ble Apex Court in the case of **Kondiba Rama Papal** (*supra*) by which **Anirudhs** case was approved. This court in para 8 of the judgment in **Hanmant Laxman Salunke** (*supra*) has observed thus :

*“8. The learned counsel for the respondent was right in his submissions that the view taken by the Full Bench of this Court in Anirudhs case (*supra*) has been*

approved by the Apex Court in the case of Kondiba Rama Papal (supra) in the following words:

.... The adoption is not invalid although it took place after the thread ceremony of the boy was performed. Thus, the custom is judicially recognized in the Bombay State as regards adoption of a child at any age. Once the custom is judicially recognized, is not requested to be independently proved in subsequent cases...

By following the law laid down by the Full Bench of this Court in the case of Anirudh (supra) and by the Apex Court in the case of Kondiba (supra) it will have to be held that in the instant case it was not necessary for the defendant to prove by evidence before the trial court that there was a custom or usage prevailing in the Maratha community in Satara District of adopting a boy who had crossed the age of 15 years and was also married at the time of adoption. The contentions of the appellant that the adoption of the respondent as had taken place on 22/11/1988 was illegal on account of non-compliance of section 10(iii) and Section 10(iv) of the Act have to be rejected and thus the substantial questions of law at serial No.(ii) and (iii) are hereby answered against the appellant-plaintiff."

7. As such, the aforesaid observations of this court as well as the Hon'ble Apex Court clearly indicate that there was no bar under Section 10(iii) of the Hindu Adoptions and Maintenance Act, 1956 for taking present respondent No.1 in adoption by the original plaintiff Kashibai and there was absolutely no necessity for respondent No.1 to lead evidence to establish that there was custom or usage in his family whereby a boy over the age of 15 years was capable of being given in adoption. Aforesaid observations of this court as well as the Hon'ble Apex Court are applicable to the area to which the parties to the present dispute belong to. Therefore, considering all these aspects, there involves no substantial question of law as regards the capability of adopting a boy over the age of 15 years in adoption. Therefore, there is no substance in the present appeal and the same stands dismissed.

(SANDIPKUMAR C. MORE, J.)