



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

SECOND APPEAL NO. 323 OF 1995

Ramdas s/o Nago Chaudhary
Age : 30 years, Occ. Nil.
R/o; Bahadarpur, Post Bahadarpur,
Taluka Parola, District Jalgaon.

...APPELLANT
(Original Defendant)

VERSUS

1) Rukhmabai alias Ladabai w/o
Shrawan Chaudhari,
Age; 56 years, Occ; Nil,
R/o; Teli Talav, Sada Dharangaon,
Tq. Erandol, District Jalgaon.

...Dead
(Through Lrs.)

1-A) Deokabai Pandit Chaudhari,
Age; Major, Occ. Household,
R/o; Bhokari Post, Warkhadi,
Tq. Pachora, District Jalgaon.

1-B) Pushpabai w/o Devidas Chaudhari,
Age; Major, Occ. Household,
R/o : Galli No. 9, Dhule, Tq. & Dist Dhule

1-C) Rambhabai Pundlik Chaudhari,
Age; Major, Occ; Agril,
R/o; Dharangaon Navegaon,
Tq. Dharangaon, Dist. Jalgaon,

1-D) Gajanan Shrawan Chaudhary,
Age; Major, Occ. Agril,
R/o; Post Dharangaon, Navegaon,
Tq. Dharangaon, District Jalgaon.

...RESPONDENTS
(Original Plaintiffs)

.....
Mr.S.V. Dixit : learned Advocate for Appellant
Mr.D.A. Madake : learned Advocate for Respondents
.....

CORAM : S. G. CHAPALGAONKAR, J.
Date : 12.03.2025

JUDGMENT :

1. Appellant/Original defendant impugns judgment and decree dated 27.07.1995 passed by learned District Judge, Amalner in Regular Civil Appeal No. 220 of 1989, thereby reversing judgment and decree dated 19.03.1988 passed by learned Civil Judge, Junior Division, Parola, Dist. Jalgaon in Regular Civil Suit bearing No.25 of 1984. (Hereinafter parties are referred to by their original status in the suit.

2. Respondent/Plaintiff filed Regular Civil Suit No. 25 of 1984 before Civil Judge, Junior Division, Parola, District Jalgaon seeking decree for partition, declaration and possession with consequential relief and mesne profit qua land Gut No. 54, admeasuring 3 H 77 R and a House property No. 70, situated at Bahadurpur, Tq. Parola. Plaintiff further claims that adoption of defendant by deceased Gojarabai is void ab-initio. In alternate a prayer is made that plaintiff and defendant being legal representatives of Gojarabai are entitle to have a share in suit property. According to plaintiff, her father Nago Raghav Chaudhary expired 15 to 16 years prior to filing of suit, leaving behind her mother Gojarabai and plaintiff. Gojarabai expired on 04.08.1983. On her death, defendant recorded his name over suit property. According to plaintiff, Gojarabai adopted defendant vide adoption deed dated 05.03.1979, which is invalid. After death of Gojarabai, suit property has been taken over in possession by defendant, although, name of plaintiff is mutated over suit property as described in Clause-A of plaint.

3. Defendant refuted plaintiff's claim contending that Nago Chaudhari has left no property. Suit property was purchased and owned by Gojarabai (second). She had no issue from marriage with Nago Chaudhari. Nago Chaudhari had his first wife namely Gojarabai (first). Plaintiff is his daughter from first wife Gojarabai. Plaintiff is legal representative of Nago Chaudhari from his first wife Gojarabai. Defendant, who is nephew of Gojarabai (second) was adopted by her under registered adoption deed. Defendant is sole legal representative of Gojarabai (second) on the basis of adoption deed. Plaintiff cannot claim any right in property left by Gojarabai (Second) in capacity of legal representative of Nago Chaudhari.

4. Trial Court framed issues based on pleadings of parties, recorded evidence, eventually accepted case of defendant and dismissed suit holding that plaintiff is not entitled for declaration and possession as prayed since defendant is adopted son of Gojarabai (second). However, in appeal filed by plaintiff, learned District Judge passed decree in favour of plaintiff declaring her as sole owner of suit property holding that adoption of defendant is null and void, eventually directed defendant to hand over peaceful possession of suit property to plaintiff.

5. This Second Appeal was posted before this Court for admission on 05.09.1995 and came to be admitted on ground No. 18, stipulated in second appeal memo as a substantial question of law, which reads as thus :

SUBSTANTIAL QUESTION OF LAW :-

“ Whether lower Appellate Court failed to appreciate that the prohibition contained in Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1956, 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 as the customs permitting the adoption over the age of 15 years is expressly saved by Section 10 (iv) of the said Act. ”

6. Mr. Dixit, learned Advocate appearing for appellant submits that appellate Court decreed suit of plaintiff holding that adoption of defendant by Gojarabai was illegal since defendant had passed over age of 15 years. He would submit that provisions contained in Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1956 (Hereinafter referred to as “the Act” for the sake of brevity) would not apply in State of Maharashtra (former State of Bombay), where, custom regarding adoption of male above 15 years had been in practice and same has been approved by judicial pronouncements. In support of his contention he relied upon judgment of this Court in case of **Haribai Vs. Baba Anna and Another**,¹ the Full Bench Judgment of this Court in the case of **Aniruddh Jagdeorao vs. Babarao Irbaji and Others**,² also a judgment of Supreme Court in case of **Kondiba Rama Papal @ Shirke (Dead) his Lrs. vs Narayan Kondiba Paopal**.³

7. Per Contra, Mr. D.A. Madake, learned Advocate appearing for respondent supports judgment and decree passed by appellate Court. According to him, adoption of defendant who was admittedly above 15 years of age at the time of adoption, cannot be treated as valid in absence of proof of custom. In present case, there is no evidence of prevailing

¹ 1978 Mh.L.J.127

² AIR, 1983, Bom. 391

³ (1991) 2 SCC 218

custom of adoption of male crossing 15 years of age. He points out that even there is no pleading as to existence of such custom in written statement filed by defendant. Therefore, he justifies judgment and decree of appellate Court. In support of his contention he relies upon judgment of this Court in **Shivankar Vs. Muktabai w/o Govindrao Mate**, ⁴and judgment of Supreme Court in case of **Atluri Brahmanandam Vs. Anne Sai Bapuji**⁵.

8. Having considered submissions advanced and perusal of reasoning as adopted by Courts below, facts which are crystallized and relevant for consideration in this appeal are that, suit property has been purchased by Gojarabai (Second). Before marriage of Gojarabai (Second) with Nago Chaudhari, he had a wife namely Gojarabai (First). Plaintiff is daughter of Nago Chaudhari from Gojarabai (First). Deceased Nago Chaudhari had no issue out of wedlock with Gojarabai (Second). On 05.03.1980 Gojarabai (Second) adopted defendant under registered adoption deed. Gojarabai (Second) expired on 04.08.1983 leaving behind defendant/adopted son. Plaintiff mutated her name in R.O.R. on 23.02.1984 as step daughter of Gojarabai (Second)

9. Trial Court answered issue No. 3 in favour of defendant holding that challenge to adoption by plaintiff has been barred by limitation. However, appellate Court observed that challenge to adoption is well within limitation and declared adoption to be invalid in view of Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1959.

⁴ 2014 (3) ABR 788

⁵ AIR (2011) SC 545

10. In light of aforesaid controversy and substantial question of law as framed, first point requires consideration is as to application of Clause- (iv) of Section 10 of Act in facts of case. However, before entering into aforesaid legal aspect, it can be observed that defendant is relying upon registered adoption deed which raises presumption under Section 16 of the Hindu Adoption and Maintenance Act. Section 16 of the Act reads as thus :

“16. Presumption as to registered documents relating to adoption.— Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

11. Language of Section 16 would show that once adoption is registered and signed, person giving and person taking child in adoption presumption as to compliance with provisions of the Act would arise unless and until it is disproved. Apart from registered document of adoption defendant has relied upon evidence of power of attorney who has deposed about process of adoption. Defendant has also placed on record photographs of adoption ceremony at Exh. 41. Evidence of Photographer Mr. Bhavsar is recorded. Stamp Vendor (Scribe) Mr. Sonar also proved fact of adoption. However, appellate Court refused to accept validity of adoption merely on the ground that defendant was above 15 years of age at the time of adoption.

12. Section 10 (iv) of Hindu Adoption and Maintenance Act

declared that person who completes age of 15 years is incompetent for adoption, unless there is custom or usage applicable which permits person who has completed age of 15 years can be taken in adoption. The issue as to validity of adoption of person aged more than 15 years was first time considered by Division Bench of this Court in case of Haribai (supra). It has been observed that

“notwithstanding what was stated in the Dharmashtra Books, the Bombay School of Hindu Law never recognized any age limit for adoption. That is the legal custom and lex lock generally among Hindus relating to adoption in this part of the country, within the meaning of the definition of ‘custom’ under S.3(a) of the Hindu Adoptions and Maintenance Act.”

13. Thereafter, again issue cropped up for consideration before **Full Bench of this Court** in case of Aniruddh (supra) is that

“2. Whether the words ‘custom or ‘usage’ occurring in section 10 (iii) and section 10 (iv) of the Hindu Adoptions and Maintenance Act, 1956, read along with section 3 (a) of the said Act includes within its sweep the rules of the Bombay School of Hindu Law (Mayukha) or interpretation of the text thereof by the Courts.”

It has been observed that

“This 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 Bombay High Court. The cases which have done so are numerous and many of them have been set out by Vaidya J. who spoke for the Bench in the case of Haribai Vs. Baba Anna In Lala Rup Chand Vs. Jambu Parshad, the Judicial Committee of the Privy Council held that under the general Hindu Law applicable to twice born class, a boy could not be adopted after his marriage, but that there were two exceptions to this rule, namely, (i) in the case of persons governed by the Mayukha, and (2) where there was a custom to that effect.”

14. Lastly Supreme Court of India in case of Kondiba (supra)

observed that that

“so far as Bombay State is concerned the position is well settled in view of more than one judicial decision. As pointed out in Mulla’s Hindu Law (14th Edn. At page 550) in the Bombay State a person may be adopted at any age though he may be older than the adopter and though he may be married and have children.

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, it is not required to be independently proved in subsequent cases. The plaintiff and defendant 1 belonged to the area which was part of the old Bombay State and accordingly such a custom prevailed amongst them as regards adoption of a child at any age.”

15. Mr. Madake, learned Advocate appearing for respondent relies upon Single Judge decision of this Court in case of Shivankar (supra). Perusal of said decision shows that it is rendered without reference of three authoritative pronouncements from this Court and decision of Supreme Court referred above. Therefore, it may not help respondent in advancing her case. Second decision relied upon by Mr. Madake is from Supreme Court in case of Atluri (supra), however, that case relates to Community from Andhra Pradesh and may not be helpful to the respondent.

16. In light of aforesaid exposition of law, customs which have received judicial recognition in particular area do not require to be pleaded and proved. In present case parties are from erstwhile Bombay State. The custom of adoption of person above 15 years has been judicially recognizes. Therefore, even in absence of pleading and proof as to existence of custom, there is no reason to hold that adoption is invalid for

want of evidence as to custom. Apparently appellate Court ignored aforesaid legal position, and declared adoption of defendant as invalid. The substantial question of law, therefore, needs to be answered in affirmative.

17. It is not in dispute that plaintiff is daughter of Nago Chaudhari from his first wife. His second wife Gojrabai was owner of suit property. Defendant being validly adopted son would inherit same as per Section 15 (1) (a) and (b) of Hindu Succession Act which provides for inheritance.

18. The appellate Court as well as Trial Court observed that plaintiff would be entitled to inherit property of Gojrabai (Second), only if, defendant fails to prove his adoption. However, once adoption of defendant is held to be valid, plaintiff being step daughter of Gojrabai (Second) would not be entitled to inherit her property. Defendant being validly adopted son of Gojrabai (second) would be legally entitled to inherit her property being Class-I heir. The step son and step daughter falls in Clause (b) of Section 15 (1), therefore, plaintiff has no right to claim any right over suit property. In result, Second Appeal is allowed. Judgment and decree passed by appellate Court is quashed and set aside and judgment and decree passed by trial Court is restored.

(S. G. CHAPALGAONKAR)
JUDGE