A S.T. KRISHNAPPA

v.

SHIVAKUMAR AND ORS.

APRIL 27, 2007

B [S.B. SINHA AND MARKANDEY KATJU, JJ.]

Adoption:

C *Customary law—Dvynamushyayana form—Appellant—Son given in adoption to issueless brother—Appellant claiming coparcenary share in property of natural father on the ground that adoption was in Dvyamushyayana form—Held, No such indication in adoption deed—Hence presumption cannot be raised that adoption was in Dvyamushyayana form.*

D **'T' had a brother 'S' who was issueless. T and his wife gave their son, appellant in adoption to 'S' in a ceremony. The deed of adoption did not contain any stipulation that the said adoption was in 'dvyamushyayana." or in other form.**

'T' had executed a Will of his property. Appellant claimed partition in
E **the property of 'T' on the ground that he continued to be a coparcener in the family of 'T'. 'M' and 'K' are daughters of 'T'. 'K' expired in the year 1982 having behind the contesting respondents as her heirs and legal representatives.**

On appreciation of the evidence and in particular the fact that 'T' had
F **executed a Will, the Trial Judge as also the First Appellate Court negatived the appellant's claim.**

In appeal to this Court, appellant contended that the Courts below committed a serious error insofar as it failed to raise a presumption that the
G **adoption of the appellant by 'S' took place in "dvyamushyayana" form as he was the only son of his natural father.**

Dismissing the appeal, the Court

HELD: 1. It is not in dispute that adoption was evidenced by a deed of
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adoption. No other agreement was produced before the Court to show that both the natural as also adoptive parents had agreed that the adoption would be in some other form. Stipulations made in the said deed of adoption dated 15.2.1945, however, clearly show to the contrary. [Para 9] [893-D-E] A

2. No independent witness was also examined to prove that his genitive parents gave in adoption to 'S' in the form of 'dvyamushyayana" on the basis of oral agreement or otherwise. Such an oral agreement might not have even been admissible in evidence in terms of Section 92 of the Indian Evidence Act. [Para 10] [893-E-F] B

Rajgopal (Dead) by Lrs. v. *Kishan Gopal and Anr.*, [2003] 10 SCC 653, referred to. C

Principles of Hindu Law by Mulla, referred to.

3. No presumption that adoption was in dvyamushyayana form, can be attached as a brother had not given his only son in adoption to another brother. It is also not a case where such a custom was prevalent. If there existed a custom, the matter might have been different. [Para 13] [894-D] D

Kartar Singh (Minor) through Guardian Bachan Singh v. *Surjan Singh (Dead) and Ors.*, A.I.R. (1974) SC 2161, referred to E

4. The twist sought to be given that the purported adoption was made only for the purpose of nominating a heir, was not accepted stating that when a ceremony was performed, the parties intended to comply with the requirements of law that for a valid adoption, there must be a giving and taking. [Para 16] [895-B-C] F

Ujagar Singh v. *Mst. Jeo,* AIR (1959) SC 1041 and *His Highness Maharaja Pratap Singh* v. *Her Highness Maharani Sarojini Devi and Ors.*, [1994] 1 SCC 734, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2207 of 2007. G

From the Final Judgment and Order dated 29.06.2006 of the High Court of Karnataka at Bangalore in Regular First Appeal No. 1187 of 2003.

P.S. Narsimha, Shekhar, G. Devasa, B.V. Binto, Ph. Dinesh Chandra, Rajshri A. Dubey, Ashutosh Dubey and Dinesh Kumar Garg for the Appellant. H

A Sunder Khatri and S.K. Sabharwal for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

B 2. Application of the *"Dvyamushayana"* form of adoption is in question in this appeal which arises out of a judgment and order dated 29.6.2006 passed by the High Court of Karnataka at Bangalore in Regular First Appeal No. 1187 of 2003 affirming a judgment and decree dated 26.7.2003 passed by the Learned XXII City Civil Judge, Bangalore in O.S. No. 4472 of 1991 dismissing the suit for declaration and partition as also separate possession C filed by the appellant herein.

3. One S.M. Thimadasappa was the owner of the properties. He and his wife Smt. Puttamma (original defendant No. 1, since deceased) had a son known as Krishnappa. S.M. Thimadasappa had a brother named Sohur Thimmaiah who was issueless. Thimadasappa and his wife gave plaintiff, D Krishnappa in adoption to Sohur Thimmaiah in a ceremony held therefor on 14.2.1995.

4. The deed of adoption admittedly did not contain any stipulation that the said adoption was in "dvyamushyayana" or in other form.

E 5. Appellant claimed partition also in the property of Thimmadasappa. Thimmadasappa had a daughter Kumari Menaka. The plaintiff claimed that he continued to be a coparcener in the family of Thimmadasappa. A partition took place on 8.7.1960 in the family of Thimmadasappa, item No. 3 whereof fell in his share. Kamala was the other daughter of Thimmadasappa. She F expired in the year 1982 leaving behind the contesting respondents as her heirs and legal representatives. Thimmadasappa executed a Will on or about 26.12.1981. He expired in the year 1984.

6. The short question which arose for consideration in the suit was as to whether the plaintiff/appellant continued to be a coparcener in the joint G family property of Thimmadasappa and thus became entitled to 2/3 share in the suit properties. The learned trial judge framed the following issues:-

"1. Whether the plaintiff proves his right over the suit schedule properties?

H 2. Whether the plaintiff is entitled for 2/3rd share in the suit schedule

properties? A

3. Whether the plaintiff is entitled for the accounts?

4. What decree or order?

5. Whether the defendants prove that the court fee paid is sufficient?" B

7. On appreciation of the evidence and in particular the fact that Thimmadasappa had executed a Will in the year 1981, the genuineness or otherwise whereupon was not questioned by the appellant, the learned Trial Judge as also the First Appellate Court negatived the appellant's claim.

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8. Mr. P.S. Narasimha, learned counsel appearing on behalf of the appellant would, in support of this appeal, submit that the learned Trial Judge as also the High Court committed a serious error insofar as it failed to raise a presumption that the adoption of the appellant by Sohur Thimmaiah took place in "dvyamushyayana" form as he was the only son of his natural father.

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9. It is not in dispute that adoption was evidenced by a deed of adoption dated 15.2.1945. No other agreement was produced before the Court to show that both the natural as also adoptive parents had agreed that the adoption would be in some other form. Stipulations made in the said deed of adoption dated 15.2.1945, however, clearly show to the contrary.

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10. No independent witness was also examined to prove that his genetive parents gave in adoption to Sohur Thimmaiah in the form of "dvyamushyayana" on the basis of oral agreement or otherwise. Such an oral agreement might not have even been admissible in evidence in terms of Section 92 of the Indian Evidence Act.

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11. What are the requisite ingredients of adoption in the said form came up for consideration in *Rajgopal (Dead) by Lrs.* v. *Kishan Gopal and Anr.*, [2003] 10 SCC 653, wherein a Division Bench of this Court upon taking into consideration a large number of decisions stated the law thus;

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> "18. In every case of absolute dwyamushyayana form of adoption, there must be an agreement to the effect that the person given in adoption shall be the son of both i.e. the natural father as well as the adoptive father and such an agreement must be proved like any other fact by the party alleging the same. See *Laxmipatirao Shrinivas Deshpande* v. *Venkatesh Tirmal Deshpande and Mohna Mal* v. *Mula* H

A *Mal."*

12. Mr. Narasimha, however, would refer to sub-section (3) of Section 483 of the Principles of Hindu Law by Mulla which reads as under:-

> "(3) Where a person gives his only son in adoption to his brother, the
> B adoption must be presumed to be in the *dvyamushyayana* form, unless a stipulation is proved that the adoption was to be in the ordinary form. In Bombay, however, it has been held that there is no such presumption, and that a person alleging that an adoption was in the *dvyamushyayana* form, must prove that there was an agreement to that effect, even if the person adopted was the only son of a brother.
> C But it is not necessary that the adoptive father and the natural father should be brothers."

13. No such presumption can be attached in the instant case as a brother had not given his only son in adoption to another brother. It is also not a where case such a custom was prevalent. If there existed a custom, the
D matter might have been different.

14. The principle of law stated in the said paragraph of Mulla's Hindu Law has been taken into consideration in *Rajgopal* (supra). It does not, thus, advance the case of the appellant.

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15. In *Kartar Singh (Minor) through Guardian Bachan Singh* v. *Surjan Singh (Dead) and Ors.*, A.I.R. (1974) SC 2161 whereto our attention has been drawn by Mr. Narasimha, a customary adoption was in vogue. This Court therein noticed that even according to the customary laws of Punjab, there was a special custom under which adoption attached to it, all the consequences
F which flow from full and formal adoption under Hindu Law. Customary adoption in Punjab where mere appointment of the heir creates only a personal relation between the adopter and the adoptee, was held to have been not proved stating:-

> "The whole error in the reasoning of the Division Bench lies in
> G proceeding on the assumption that Maghi Singh intended merely to appoint an heir because he referred to custom. But when the document refers to Maghi Singh taking the appellant into his lap from his parents and adopting him as his son, the words "according to custom" can only refer to the custom of adoption; so would the reference to
> H custom in two other places in the document. Maghi Singh refers to

"adopted son" in three places. He specifically calls the document "adoption deed". The document is to be read as a whole and so reading there cannot be the least doubt that what Maghi Singh intended was to make an adoption according to Law and not merely appoint an heir according to custom which prevailed before 1956 but had been abolished by the Hindu Adoptions and Maintenance Act." A B

16. The twist sought to be given that the purported adoption was made only for the purpose of nominating a heir, was not accepted stating that when a ceremony was performed, the parties intended to comply with the requirements of law that for a valid adoption, there must be a giving and taking. C

17. See also *Ujagar Singh* v. *Mst. Jeo,* AIR (1959) SC 1041 and *His Highness Maharaja Pratap Singh* v. *Her Highness Maharani Sarojini Devi and Ors.,* [1994] Supp 1 SCC 734]

18. In view of the finding of fact arrived at by the courts below, we do not find any merit in this appeal which is dismissed accordingly with costs. Counsel's fee assessed at Rs. 10,000/-. D

D.G. Appeal dismissed.