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SAU ASHABAI KATE

v.

VITHAL BHIKA NADE

OCTOBER 17, 1989

B [L.M. SHARMA AND T.K. THOMMEN, JJ.]

Hindu Law: Remarriage of son's widow—Power of son's mother to adopt—Whether revives.

The disputed property belonged to a joint Hindu family, governed by Mitakshra law of which one Bhiku and his son were coparceners.
C **Bhiku died leaving behind Parvati his widow and a son, Balu. Soon after, Balu too died, leaving behind his widow Lilabai who gave birth to a posthumous daughter, the present appellant. Sometime later Lilabai remarried. Thereupon Parvati, Bhiku's surviving wife adopted Vithal, the present respondent in this appeal. The appellant, Ashabai on attain-**
D **ing majority filed the present suit for a decree for possession of properties with mesne profits and a decree for money and challenged the power of her grand-mother to adopt.**

The trial court upheld the adoption of the defendant as valid and dismissed the suit. The plaintiff Ashabai challenged the decision by an
E **appeal. The Appellate court allowed the appeal and passed a decree in her favour granting the reliefs claimed. Thereupon the defendants challenged the decree of the first appellate court in the High Court. The High Court ruled that a Hindu widow's power to adopt is revived the moment there is nobody to continue the line, and thus the adoption of the respondent was found legal and valid and the decree in favour of the**
F **plaintiff-appellant was set aside and her suit dismissed. Hence this appeal by special leave by the plaintiff.**

Allowing the appeal in part by decreeing the suit for half share in the suit properties with mesne profits this Court,

G **HELD: There does not appear to by any scope for holding that on the remarriage of the son's widow the power of son's mother to adopt revives. [467F]**

In the instant case, on the death of Balu, the responsibility for the continuance of the family line fell on his widow Lilabai by the power of
H **adoption vesting in her and the power of Parvati to adopt was extin-**

guished permanently and is not revived even on Lilabai's remarriage. Consequently the adoption of the first defendant was invalid in the eye of law and he did not get any interest in the suit properties. [468B]

The properties belonged to the joint family of which Bhiku was a coparcener. On his death in 1942 his wife Parvati got under S. 3(2) of the Hindu Women's Rights to Property Act, 1937, the same interest as Bhiku had in the joint family properties. [468C]

The interest which initially devolved on Parvati, however, was limited in nature known as the Hindu Women's estate. On passing of the Hindu Succession Act, 1957 she became full owner thereof. [468D]

Ram Chandra **v.** *Murlidhar,* **[1937] 39 Bom. L.R. 599;** *Gurunath* **v.***Kamlabai,* **[1955] 1 SCR 1135;** *Amrendra Mansingh* **v.** *Sanatan Singh,* **[1933] L.R. 60 I.A. 242;** *Ramkrishna Ramchandra* **v.** *Shamrao,* **[1902] I.L.R. 26 Bom. 526 and** *Bapuji* **v.** *Gangaram,* **[1941] I.L.R. Nagpur 178, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1846 of 1974.

From the Judgment and Order dated 25.9.1972 of the Bombay High Court in Appeal No. 512 of 1965.

V.N. Ganpule and Mrs. Urmila Sirur for the Appellant.

V.A. Bobde, Uday U. Lalit and A.G. Ratnaparkhi for the Respondent.

The Judgment of the Court was delivered by

SHARMA, J. This appeal by the plaintiff-appellant is directed against the decision of the Bombay High Court dismissing her suit for possession of the properties detailed in the plaint.

2. The disputed properties belonged to a joint Hindu family governed by Mitakshara law of which one Bhiku and his son Balu were coparceners. Bhiku died on June 6, 1942 leaving behind his widow Parvati, the defendant No. 2 in the present suit and Balu who dies soon after his father's demise on July 24, 1942. In November 1942 Balu's widow Lilabai gave birth to a posthumous daughter who is the present appellant. Sometime later Lilabai remarried and thereupon Parvati

A adopted Vithal, the first defendant in the present suit, in the year 1949. After attaining majority, appellant Ashabai filed the present suit for a decree for possession of the properties with mesne profits and a decree for money for Rs.3,000 as expenses of her marriage. She challenged the power of her grand-mother to adopt the first defendant on the ground that her right to adopt was lost on the death of Balu leaving B behind his widow Lilabai.

3. The trial court accepted the defence case, upheld the adoption of the defendant No. 1 as valid, and dismissed the suit. The plaintiff, Ashabai, challenged the decision by an appeal which was heard by the Extra Assistant Judge, Poona, who allowed the same and passed a decree for possession of the suit properties along with mesne C profits. Now, it was the turn of the defendants to question the decree of the first appellate court before the High Court under s. 100 of the Code of Civil Procedure. After considering a number of Privy Council and Supreme Court decisions, the High Court ruled that a Hindu widow's power to adopt is revived the moment there is nobody to continue the line, and since Lilabai incapacitated herself in doing so by D her remarriage, the right of her mother-in-law to adopt a son to her husband revived. The adoption of the first defendant was, thus, found legal and valid. Accordingly the decree in favour of the plaintiff was set aside and her suit dismissed. The appellant then moved this Court under Article 136 of the Constitution and special leave has been granted. E

4. The case comes from Maharashtra where a Hindu widow may adopt even without any authority. The contention of the plaintiff is that on the death of Balu his mother Parvati lost this power which vested in Balu's widow Lilabai and on Lilabai's remarriage Parvati's power did not revive. The adoption of defendant No. 1 was, therefore, F illegal. Reliance was placed on several decisions of the Bombay High Court including that in *Ram Chandra* v. *Murlidhar,* [1937] 39 Bom. L.R. 599. In similar circumstances the Division Bench held that the mother's power to adopt a son was permanently extinguished on the death of her natural son leaving a widow. The High Court in the present case refused to follow the said decision on the ground that the G same must be held to have been impliedly over-ruled by the judgment of this Court in *Gurunath* v. *Kamalabai,* [1955] 1 SCR 1135. In our view the High Court has not correctly appreciated the decision in *Gurunath's* case.

5. The relevant facts in *Gurunath* v. *Kamalabai,* may be briefly H put thus. The disputed property belonged to Krishtarao who died leaving behind two widows—Radhabai and Gangabai—and a son

Dattatraya. Dattatraya died in 1913 leaving behind his widow Sundarabai and a son Jagannath. Sundarabai died soon after the death of her husband and a year later Jagannath also died. Gangabai, the junior widow of Krishtarao, adopted Gurunath, the appellant before this Court, who filed a suit claiming certain rights as the adopted son of Krishtarao. One of the issues arising in the case related to the validity of Gurunath's adoption. A Bench of seven learned Judges of this Court examined several decisions of the Privy Council including the judgment in *Amarendra Mansingh* v. *Sanatan Singh,* [1933] L.R. 60 I.A. 242, and said that the rule,

> "That the interposition of a grandson, or the son's widow, competent to continue the line by adoption brings the mother's power of adoption to an end;"

was being followed for a very long time and has become a part of Hindu law. They also approved the observation of Chandavarkar, J., who delivered the judgment of the Full Bench of the Bombay High Court in *Ramkrishna Ramchandra* v. *Shamrao,* [1902] I.L.R. 26 Bom. 526, to the following effect:

> "Where a Hindu dies leaving a widow and a son, and that son dies leaving a natural born or adopted son or leaving no son but his own widow to continue the line by means of adoption, the power of the former widow is extinguished and can never afterwards be revived."

They also quoted with approval another part of the judgment of Chandavarkar, J., stating that when a son dies before attaining full legal competence and does not leave either a widow or a son or an adopted son then the power of the mother which was in abeyance during his lifetime revives but the moment he hands over that torch to another, the mother can no longer take it. In view of these observations in the judgment in *Gurunath's* case there does not appear to be any scope for holding that on the remarriage of the son's widow the power of the son's mother to adopt revives. The matter does not stop here. Reliance was placed by the appellant on the decision of the Nagpur High Court in *Bapuji* v. *Gangaram,* [1941] I.L.R. Nagpur 178, where the facts were identical to those in the present appeal. The Nagpur High Court had held that the power of the mother revived on the remarriage of the son's widow. This Court discussed the Nagpur judgment at some length at pages 1148 and 1149 and disapproved it. This part of the judgment does not leave any room for doubt that this Court in *Gurunath's* case has affirmed the decisions of the Bombay High Court in *Ramkrishna Ramchandra* v. *Shamrao,* [1902] I.L.R. 26 Bom. 526

A and *Ram Chandra* v. *Murlidhar,* [1937] 39 Bom. L.R. 599, as laying down the correct law and rejected the rule of law similar to the plea of the present respondent, recognised by Nagpur High Court in identical facts and circumstances. We accordingly hold that on the death of Balu the responsibility for the continuance of the family line fell on his widow Lilabai by the power of adoption vesting in her, and the power B of Parvati to adopt was extinguished permanently and did not revive even on Lilabai's remarriage. Consequently the adoption of first defendant was invalid in the eye of law and he did not get any interest in the suit properties.

6. Now remains the next question as to the relief which the plaintiff is entitled to get in this suit. As has been observed earlier, the C properties belonged to the joint family of which Bhiku was a coparcener. On his death in 1942 his wife Parvati got under s. 3(2) of the Hindu Women's Rights to Property Act, 1937, the same interest as Bhiku had in the joint family properties. If a partition had taken place Bhiku would have got half share in the properties, which on his death D devolved on Parvati. Parvati is still alive and is defending the claim of her grant-daughter. She cannot, therefore, be deprived of her half share in the properties. The interest which initially devolved on Paravati, however, was the limited in nature known as Hindu Woman's estate. On the passing of the Hindu Succession Act, 1956, she became full owner thereof. Likewise the remaining half share of E Balu in the properties, devolved on the appellant on her mother's remarriage and she got a Hindu Woman's estate therein which ripened in full ownership under s. 14(1) of the Hindu Succession Act. She is thus entitled to a decree for half share in the suit properties, as prayed for by way of an alternative relief in the plaint. She has also asked for a decree for partition in case of a partial decree which she is entitled to F get. The first appellate court had also granted a decree for mesne profits, *pendente lite* and future, which should be restored but only in respect of her half share. Accordingly, an inquiry shall be made under Order XX, Rule 12, CPC. Her claim for a money decree for Rs.3,000 was not allowed even by the first appellate court and stands finally rejected.

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7. In the result, the decision of the High Court is set aside and the plaintiff's suit for half share in the suit properties with mesne profits as also for partion is decreed. The appeal is accordingly allowed in part, but the parties are directed to bear their own costs throughout.

H R.N.J. Appeal allowed.