

APPELLATE CIVIL

Before R. S. Narula, J.

TARA CHAND,—Appellant.

versus

RAM AVTAR, ETC.,—Respondents.

R.S.A. No. 1103 of 1963.

February 19, 1974.

Hindu Adoptions and Maintenance Act (LXXVIII of 1956)—Sections 13 and 30—Adoptions made before coming into force of the Act—Section 13—Whether applies thereto—Parties governed by custom—Whether can make formal adoption like the one under Hindu Law.

Held, that the whole scheme of Hindu Adoptions and Maintenance Act, 1956, is such as not to have any effect on the adoptions which had been made before the Act came into force except in any matter for which definite provisions to the contrary is made. Judged from the scheme of the Act the provisions of Section 13 are intended to apply to only those adoptions which are referred to in Section 5 and the expression "adoption" in Section 13 is referable to the adoptions mentioned in sub-section 1 of section 5. Even if there is some doubt in confining the scope of section 13 to post-Act adoptions by a process of interpretation, the doubt is laid at rest by the express provisions of Section 30 of the Act. Hence where the adoption is made before the enforcement of the Act the effect of the adoption for all purposes has to be determined independently of the Act and provisions of Section 13 do not apply thereto.

Held, that if parties are governed by custom they can make a formal adoption. The effect of such an adoption is that of one under the Hindu Law but that does not mean that the parties are governed by Hindu Law or that the adoption is made under that law.

Regular Second Appeal from the decree of the Court of Shri Sukhdev Singh Sidhu, Additional District Judge, Mohindergarh (Camp Narnaul), dated the 9th day of April, 1963, modifying that of Shri P. C. Saini, Sub Judge 1st Class, Mohindergarh, dated the 30th March, 1962 (dismissing the plaintiff's suit and leaving the parties to bear their own costs) to the extent of granting the plaintiff a decree for declaration to the effect that the gift in dispute is null

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and void and shall not affect the reversionary rights of the plaintiff in the gifted property after the death of Parbhoo donor-defendant and dismissing the suit of the plaintiff regarding the second relief i.e., for perpetual injunction and leaving the parties to bear their own costs throughout.

Roop Chand, Advocate, for the appellant.

J. V. Gupta, Advocate, for the respondents.

JUDGMENT

NARULA, J.—Ram Autar minor plaintiff-respondent, the adopted son of Prabhu defendant-respondent filed a suit on April 15, 1961; for a declaration to the effect that the parties being Ahirs belong to an agricultural tribe and are governed by Customary Law in matters of adoption according to which an issueless proprietor can adopt someone from amongst his collaterals and in the presence of such an adopted son, the adoptive father is not competent to dispose of his ancestral property otherwise than for consideration and legal necessity, and that in view of the said custom his adoptive father Prabhu defendant was not competent to make the gift of vacant land with some *kothas* and *haveli* on it, which was ancestral property. On that ground he challenged the binding nature of the gift made by Prabhu defendant in favour of his brother Tara Chand defendant-appellant on March 10, 1961. The plaintiff-respondent while claiming a declaratory decree about the impugned gift being null and void, and, therefore, have no effect on his reversionary rights after the death of his adoptive father, also sought a decree for perpetual injunction restraining Prabhu from disposing of his remaining ancestral property.

(2) The suit was contested by the donor as well as the donee. From the pleadings of the parties the trial Court framed the following seven issues:—

- “(1) Whether the plaintiff is the adopted son of Prabhu defendant, and as such his reversioner?
- (2) Whether the suit property is ancestral qua the plaintiff?
- (3) Whether the parties are governed by custom, if so, what is that custom in matter of alienation and succession?
- (4) Whether the gift in question is valid?
- (5) Whether the plaint discloses no cause of action?

(6) Whether the plaintiff is entitled to the injunction prayed for?

(7) Relief.”

By judgment, dated March 30, 1962, the trial Court dismissed the suit of the plaintiff-respondent on the ground that the plaintiff had no right to challenge the alienation as his was a customary adoption which amounted to a mere appointment of an heir creating a personal relationship between the adoptive father and the adopted son, there being no tie of kinship between the appointed heir and collaterals of the adoptive father. On the other issues the trial Court found that the plaintiff had been validly adopted under the custom, but his status was different from that of a son adopted under the Hindu Law; that the suit land was ancestral, but the constructions on the same were non-ancestral; that the parties were governed by custom; that the gift was otherwise valid; but the suit for injunction was not maintainable. The plaintiff-respondent's appeal against the decree of the trial Court was allowed by the judgment of the Court of Shri Sukhdev Singh Sidhu, Additional District Judge, Mohindergarh, dated April 9, 1963. The learned Judge affirmed all the findings of the trial Court except on two matters; namely (i) regarding the ancestral nature of the constructions on the plot; and (ii) regarding the effect of formal adoption of the plaintiff in spite of the parties being governed by custom. On issue No. 2 the lower appellate Court held that in view of the law laid down in *Suchet Singh and others v. Banka and others* (1), the houses built on ancestral land were mere adjuncts to the land and were ancestral, and, therefore, the entire suit property was ancestral *qua* the plaintiff. The findings on issues Nos. 1 and 3 were varied to the extent that though the parties were admittedly governed by custom, the territory to which they belonged was the old Delhi territory wherein an adoption amongst agricultural tribes under the Customary Law was not mere customary appointment of an heir as understood in the rest of the Punjab, but was full and formal adoption having the same effect as in Hindu Law, and, therefore, the plaintiff-respondent had lost all his connections with his natural family, and having merged with the new family he was entitled to succeed collaterally in the family of his adoptive father as for all practical purposes the plaintiff had become the grandson of Prabhu's father.

(1) 90 P.R. 1891.

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(3) In this second appeal filed by Tara Chand donee-defendant, Chaudhry Roop Chand has pressed only two points. He has first submitted that the suit from which this appeal has arisen should have been held to be barred under section 13 of the Hindu Adoptions and Maintenance Act (78 of 1956) (hereinafter called the Act). His argument is that as section 4 of the Act *inter alia* directs that save as otherwise expressly provided in the Act, any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act shall cease to have effect with respect to any matter for which provision is made in the Act, the provisions of this Act have the effect of repealing or overriding any other law or usage having the force of law. He then argued that since section 13 of the Act confers on the adoptive father the power to dispose of his property by transfer *inter vivos* or by will, the effect of any customary adoption to the contrary is abrogated by section 13. That section reads:—

“Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.”

Counsel has referred to the judgment of a Division Bench of this Court in *Shrimati Banso and others v. Charan Singh and others* (2), in support of the proposition that section 4 of the Act has overriding effect. In the case of *Shrimati Banso and others* (supra), section 4 of the Hindu Succession Act (30 of 1956) was interpreted to give overriding effect against the rules of succession under the Punjab Customary Law “in cases where succession opens after the coming into force of that Act”. There is no difficulty in interpreting the meaning, effect and scope of section 4 of the Act. On going through the provisions of the Act it appears to me, however, that the whole scheme of the Act is such as is not to have any effect on adoptions which had been made before the Act came into force except in any matter for which definite provision to the contrary is made. Chapter II of the Act deals with adoptions. Section 5 which regulates adoptions clearly refers to adoptions made after the commencement of the Act. Section 6 containing the requisites of a valid adoption, section 7 referring to the capacity of a male Hindu to take in adoption, section 8 dealing with the capacity of a female Hindu to take in adoption,

section 9 which enumerates the persons capable of giving in adoption, section 10 which contains a list of persons who may be adopted, section 11 which provides other conditions for a valid adoption, and section 12 which contains the effect of adoption appear to me to deal with only such adoptions as are referred to in section 5, that is adoptions made after the coming into force of the Act. Judged from this scheme of the Act, it would appear that the provisions of section 13 are also intended to apply to only those adoptions which are referred to in section 5. The expression "adoption" in section 13 is referable to the adoption mentioned in sub-section (1) of section 5. Even if there could be some doubt in confining the scope of section 13 to post-Act adoptions by a process of interpretation, the doubt seems to have been laid at rest by the express provision of section 30 of the Act. That section is in the following terms:—

"Nothing contained in this Act shall affect any adoption made before the commencement of this Act, and the validity and effect of any such adoption shall be determined as if this Act had not been passed."

What Chaudhry Roop Chand is asking me to decide about the effect of the adoption of Ram Autar by Prabhu is regarding his right to challenge the alienation made by Prabhu in favour of Tara Chand. For deciding that matter, the provisions of the Act cannot be looked at in view of what is stated in section 30. It is the common case of both sides that Ram Autar respondent had been adopted by Prabhu respondent before the latter executed the adoption-deed Exhibit P.A. on February 4, 1955. The Act came into force in December, 1956. Since Ram Autar was adopted before the Act, the effect of his adoption for all purposes has to be determined independently of the Act, and, therefore, the provisions of section 13 of the Act cannot be of any avail to Tara Chand appellant. The first contention of Chaudhry Roop Chand, therefore, fails.

(4) The only other argument advanced by the learned counsel for the appellant is that if the adoption of Ram Autar is held to have the same effect as a formal adoption under the Hindu Law, the suit as framed was not maintainable and the plaintiff-respondent should then have sued for joint possession with his adoptive father and not for a declaration. This contention must fail for more than one reason. Firstly no such plea was taken by the appellant in his written statement and no issue was claimed in that respect. Secondly, the suit

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as framed is more advantageous to the appellant than the suit which should, according to the appellant, have been filed by the plaintiff. Thirdly, it is nobody's case that the parties are governed by Hindu law. The concurrent finding of both the Courts, the correctness of which has not been disputed before me, is that the parties are governed by custom. The only finding of the lower appellate Court which again has not been disputed is that though the parties are governed by custom, the effect of adoption according to the custom prevalent in the erstwhile Delhi area including Mohindergarh district was that of a formal adoption under the Hindu Law. The effect of adoption is that of a formal one like the one under the Hindu law but that does not mean that the parties were governed by Hindu law, or that the adoption was made under that law. It is settled law that even if the parties are governed by custom, they can make a formal adoption. This has been settled in *Kehar Singh and others v. Dewan Singh and others* (3). In these circumstances no fault can be found with the frame of the suit.

(5) No other argument was advanced by Chaudhry Roop Chand in this appeal. Both his contentions having failed, the appeal cannot succeed and the same is accordingly dismissed though without any order as to costs.

K.S.K.

FULL BENCH

Before S. S. Sandhawalia, D. S. Tewatia, and P. S. Pattar, JJ.

BALWINDER KUMAR, ETC.,—Petitioners

versus

THE GURU NANAK UNIVERSITY,—Respondent.

C.W. 1273 of 1975.

May 1, 1975.

Guru Nanak University Act (XXI of 1969)—Section 19—Regulations to be validly framed by the University—Procedure laid

(3) A.I.R. 1966 S.C. 1555.