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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 637 OF 2011

Nathaji @ Sudhakar Tayaba Katkar,
since deceased through his heirs and
legal representatives:

a) Kusum Nathaji Katkar

b) Rajlaxmi @ Jayashri Nathaji Katkar

c) Maya Nathaji Katkar

d) Jitendra Nathaji Katkar

All residing at Kukudwad, Taluka Man,
District Satara. … Appellants

vs.

1. Shri Vithal Satava Katkar,
   Parera Apartments, Hansnagar,
   Pachpakadi, Thane -400 601.
2. Shri Shrinavas Ganpat Kale,
   Taluka Patan, District Satara.
3. Shri Ajit Ganpat Kale,
   Taluka Karad, District Satara.
4. Aruna Ganpat Kale,
   Khurd, Taluka Karad, Dist: Satara.
5. Kalawati Bhagwanrao Yadav, since
   deceased through his heirs and

legal representatives:

a) Bhagwan Bandoba Yadav,

b) Ashok Bhagwan Yadav

c) Arvind Bhagwan Yadav

d) Satish Bhagwan Yadav

e) Sheela Prakash Kale

All agriculturist, residing at Kadepur,

Taluka Khanapur, District Sangli. … Respondents

Mr. R.N. Kachare a/w. Mr. Pradeep Gole for the Appellants.

Mr. D.S. Mhaispurkar for Respondents.

CORAM : GAURI GODSE, J.

RESERVED ON : 24th OCTOBER 2024

PRONOUNCED ON: 14th FEBRUARY 2025

JUDGMENT:

BRIEF FACTS:

1. This appeal is preferred by the heirs and legal representatives of the original plaintiff to challenge the judgment and decree passed by the first appellate court. The trial court decreed the plaintiff's suit, declaring that the suit properties are owned by the plaintiff, defendant no.3 and heirs

of defendant no.2. The trial court had directed the defendants not to obstruct the plaintiff's possession over the suit property. The trial court's decree declared that defendant no.3 and the heirs of defendant no.2 can claim partition of the suit property by a separate legal proceeding. However, they were held not entitled to disturb the plaintiff's possession over the suit property till recovery of their shares after following due process of law. The first appeal preferred by defendant no.1 is allowed, and the trial court's judgment and decree is set aside, and the suit is dismissed. Hence, the second appeal by the heirs and legal representatives of the plaintiff.

2. The second appeal is admitted on the following substantial questions of law:

I) What is the legal effect of the fact of adoption dated 12th September 1940?

II) Whether the appellate court was correct according to law to interfere with the decree passed by the trial court?

3. The plaintiff had filed a suit for declaration of his title in respect of the suit property. The plaintiff is defendant no. 1's biological brother and Defendant no.2 - Pushpalata, and defendant no.3 – Kalawati, are their biological sisters. One Tatya Katkar was their father. At the age of 15 years, defendant no. 1 (Vithal) was given in adoption to Ratnabai Sakharam Katkar on 12th May 1940 by executing a registered adoption deed. Before giving defendant no. 1 in adoption, his biological father, Tatya, purchased the suit property in the name of defendant no. 1, Vithal. In the revenue record, the suit property was entered into defendant no.1's name, represented through his adoptive mother as guardian. Thus, based on the registered sale deed and the revenue record in his name, defendant no. 1 claims to be the exclusive owner of the suit property.

4. The plaintiff contends that defendant no. 1 was given in adoption in a different family, and he had no right with respect to the suit property. The plaintiff contends that the suit property purchased in the name of defendant no.1 was purchased from

the joint family income. The suit property belongs to the joint family of Tatya, plaintiff and defendant nos. 2 and 3.

5. Thus, the controversy in the suit is regarding the fact of the sale deed in the name of defendant no.1, the revenue record in the name of defendant no.1 represented through his adoptive mother as guardian and the plaintiff's claim that he and defendant nos. 2 and 3 had a share in the suit property as it belonged to the joint family of Tatya. The trial court held that in view of the adoption deed, defendant no.1 was not entitled to claim any right in the suit property. However, the first appellate court held that the suit property was purchased by way of a registered sale deed in the name of defendant no.1. The first appellate court, thus, held that the plaintiff would not be entitled to seek any declaration of ownership in the property which was purchased in the name of defendant no.1.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

6. Learned counsel for the appellant (plaintiff) submitted that the sale deed dated 21st May 1940 was executed in the name of defendant no.1; however, the property was purchased from

joint family income by their father, Tatya. Learned counsel for the appellant further submitted that after execution of the sale deed, defendant no.1 was given in adoption on 12th September 1940. He submitted that since the sale deed was standing in the name of defendant no.1, who was a minor at the relevant time, he was shown as represented through his adoptive mother as a guardian while making the entry in the revenue record. He submitted that Tatya expired sometime in the year 1968, and the suit was filed in the year 1985 for declaration on the ground of obstruction made by defendant no.1 on 7th June 1985.

7. Learned counsel for the appellant relied upon defendant no.1's pleading in paragraph 10 of the written statement. He submitted that defendant no.1 raised an alternative plea of perfecting title by adverse possession. He submits that the alternate plea of defendant no.1 is sufficient ground to hold that the property never belonged to defendant no.1, and it was a joint family property of the plaintiff, Tatya and defendant nos. 2 and 3.

8. With reference to question no.1 framed by this court, learned counsel for the appellant submitted that Tatya purchased the suit property from joint family income; therefore, after the adoption, it remained in the joint family. He submitted that since defendant no.1 was given in adoption in a different family, the property remained in the joint family of the plaintiff, Tatya and defendant nos. 2 and 3. With regard to the mutation entry effected in the name of defendant no.1, after adoption, learned counsel for the appellant submitted that since the sale deed was in the name of defendant no.1, the mutation entry ought to have been effected in the name of defendant no.1. He submits that only because defendant no.1 was a minor, he was shown as represented through his adoptive mother-Ratnabai. He, however, submitted that the mutation entry, in any case, would not create any right in favour of defendant no.1.

9. Learned counsel for the appellant submitted that till 1968, i.e. during the lifetime of Tatya, defendant no.1 never claimed any right in respect of the suit property. He submitted that though the property continued to remain in the name of defendant no.1, the suit property was always in possession of

Tatya and the plaintiff, and they were cultivating the same. Learned counsel for the appellant submits that the adoption of defendant no.1, in whose favour the sale deed is executed, has no right in the suit property as the suit property belongs to the joint family of Tatya, plaintiff and defendant nos. 2 and 3.

10. Learned counsel for the appellant submitted that even if defendant no.1 had any right in the suit property, the same stood divested in view of the adoption. To support his submissions, learned counsel for the appellant relied upon the decisions of this court in the case of ***Dattatraya Sakharam Devli Vs. Govind Sambhaji Kulkarni***[1]***,*** which was followed in the case of ***Bai Kesarba Vs. Shivsangji Bhimsangji Thakor***[2]***.*** He submitted that in view of the settled legal principles, once defendant no.1 was given in adoption, he lost all his rights, which he otherwise acquired through his natural father. He submits that in view of the legal principles settled in the aforesaid decisions, the right, if any, in favour of defendant no.1 stood extinguished in view of the adoption. Learned counsel for the appellant, thus, submitted that the trial court

1 1916 SCC Online Bom 65
2 1932 SCC Online Bom 28

had rightly decreed the suit, declaring the plaintiff and defendant nos. 2 and 3 as owners of the suit properties.

11. Learned counsel for the appellant submits that the first question of law thus be answered in favour of the appellant. He submits that in view of well-settled legal principles, the legal effect of the adoption deed would divest defendant no.1 from any of the rights created in his favour regarding the suit property. He thus submits that the first appellate court erred in interfering with the findings recorded by the trial court and erred in not considering the legal effect of the adoption deed. He, thus submits that both the questions of law must be answered in favour of the appellant.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1:

12. Learned counsel for respondent no. 1 (defendant no.1) submitted that there is a presumptive value to the contents of the registered sale deed in the name of defendant no.1. He submits that the entry in the revenue record after adoption deed clearly indicates that the intention of Tatya always was to keep the suit property as exclusively owned by defendant no.1.

Hence, inspite of adoption, the entry in the revenue record was made in the name of defendant no.1 shown as represented through his adoptive mother.

13. To support his submissions on the legal effect of the adoption deed, learned counsel for defendant no.1 relied upon the decision of the Hon'ble Apex Court in the case of ***Omprakash Sharma alias O.P. Joshi Vs. Rajendra Prasad Shewda and Ors[3].*** Learned counsel for respondent no.1 submitted that to determine the nature of the transaction, the relevant circumstances would indicate the actual intention of execution of the document. He, thus, submits that the entry in the revenue record clearly showed Tatya's intention that the suit property was purchased in the name of defendant no.1 as his independent property and there was no intention to keep it as joint family property.

14. Learned counsel for respondent no.1, submitted that there is no evidence produced by the plaintiff to show that there was joint family property or any joint family income. He submits that, admittedly, Tatya was in Government service; hence, it is

3 (2015) 15 SCC 556

clear that the suit property was purchased from his independent income. Learned counsel for respondent no.1, thus submits that the legal principles settled in the case of *Omprakash Sharma* squarely apply to the facts of the present case. He thus submits that the execution of the adoption deed would have no effect on respondent no.1's absolute title over the suit property in view of the registered sale deed in his name. He submits that the undisputed mutation entry in the name of respondent no.1, after the adoption deed, also indicates that the intention of Tatya was to purchase the suit property as an independent property of defendant no.1. Learned counsel for respondent no.1; thus, submits that there would be absolutely no effect on respondent no.1's title, in view of adoption deed. He thus submits that the first appellate court rightly interfered in the findings recorded by the trial court and correctly set aside the trial court's judgment and decree and dismissed the suit. Learned counsel for respondent no.1 thus submits that the substantial questions of law must be answered in favour of defendant no.1.

SUBMISSIONS IN REJOINDER ON BEHALF OF APPELLANT:

15. With reference to the submissions made on behalf of defendant no.1, learned counsel for the appellant submitted that there was a presumption of jointness of the Hindu joint family of Tatya, plaintiff and defendant nos. 2 and 3. He, thus, submits that the burden would lie upon defendant no.1 to show that there was no joint Hindu undivided family. Learned counsel for the appellant further submits that after the adoption, defendant no.1 takes the name of his adoptive family. However, the sale deed remained in the name of defendant no.1's biological family. He submits that the name in the sale deed was never to change after the adoption. Hence, only based on the sale deed in the biological name of defendant no. 1, he would not get any right in respect of the suit property after his adoption.

16. Learned counsel for the appellant submits that the decision of the Hon'ble Apex Court, in the case of ***Omprakash Sharma***, is based on the provisions of the Benami transaction.

He submits that in the present case, since there was a Hindu undivided joint family and Tatya was Karta or the Manager of the Hindu joint family, he always had the right to purchase the suit property in the name of one member. He submits that, admittedly, defendant no.1 was minor at the time of execution of the sale deed, and he had no independent source of income. He thus submits that the suit property, though purchased in the name of defendant no.1, would continue to remain in the joint family property of Tatya. He thus submits that in view of adoption, the right would stand divested, and thus, the first appellate court erred in not considering the adoption deed's legal fact. Thus, he submits that both questions must be answered in favour of the appellant.

CONSIDERATION OF THE SUBMISSIONS AND ANALYSIS:

17. I have considered the submissions made on behalf of both parties. I have perused both the judgments, pleadings, and evidence on record. The relations between the parties are not in dispute. The basic facts regarding the execution of the sale deed, the adoption deed, and the mutation entry in the

name of defendant no.1 after his adoption are not in dispute. It is not in dispute that Tatya was in Government service. There is no evidence on record to indicate that there was any joint family of Tatya and his children and that there was any joint family income. Thus, the sale deed was executed in favour of defendant no.1 by Tatya from his independent income from his government service.

18. The sale deed was executed in the name of defendant no.1 before he was given in adoption. After he was given adoption, mutation entry no. 2406, was effected in the name of defendant no.1 based on the sale deed executed prior to his adoption. The mutation entry clearly records that defendant no.1 was a minor and, thus, was represented through his adoptive mother as a natural guardian. The said mutation entry is not under challenge. Even after the adoption, the entry in the revenue record was made in the name of defendant no.1, represented through his adoptive mother as guardian. Thus, Tatya's intention is very clear to purchase the suit property for defendant no.1. Thus, the undisputed mutation entry no. 2406, supports the case of defendant no.1 that the

suit property was always treated as the independent property of defendant no.1.

19. The only fact that defendant no.1 was a minor and his biological father purchased the suit property in his name, *ipso facto,* will not make it a joint family property, in the absence of any iota of evidence that there existed a joint family of Tatya and he intended to treat the property as a joint family property. The presumptive value of the registered document has to be taken into consideration. In the present case, the fact of the adoption deed would only mean that defendant no.1 was given in adoption in another family, he acquired the name of the adoptive family and all his ties with his biological family were severed.

20. I do not find any substance in the argument raised on behalf of the appellant that since the sale deed was executed in the biological name of defendant no.1, after his adoption, there was no necessity to change the name in the sale deed. The fact of effecting mutation entry in the name of defendant no.1 after his adoption through his adoptive mother

as guardian clearly validates execution of the sale deed in the name of defendant no.1 to be his independent property.

21. There is no evidence to indicate that there was any joint family of Tatya and the possession was with the joint family. Therefore, it cannot be assumed that the suit property was purchased as joint family property and therefore the plaintiff was in possession. Thus, without evidence, the suit property cannot be accepted as a joint family property. Even otherwise, there is nothing on record to indicate that there was any joint family income. Admittedly, Tatya was in Government service, and thus, it is clear that Tatya purchased the suit property from his independent source of income. Thus, I see no reason to accept that the suit property anytime was treated as a joint family property of Tatya and defendants nos. 2 and 3.

22. The payment of consideration by Tatya would not mean that it was a joint family property. The most crucial aspect regarding mutation entry in the name of defendant no.1 through his adoptive mother clearly indicated that Tatya's intention was to purchase suit property as an independent property of

defendant no.1. Thus, the execution of adoption deed would have no legal effect on the sale deed which was in the name of defendant no.1. The sale deed continued to stand in the biological name of defendant no.1 would not take away his absolute right created in his favour in view of registered sale deed in his name. Thus, the legal effect of the adoption deed would only be limited to defendant no.1, being a member of the adoptive family and not part of Tatya's family.

23. The execution of the registered sale deed in the name of defendant no.1 and the execution of mutation entry after his adoption support defendant no.1's case that the suit property was always treated as his independent property. Thus, execution of the adoption deed would not divest the rights created in favour of defendant no.1 by way of execution of the registered sale deed in his name.

LEGAL PRINCIPLES:

24. In the decision of ***Dattatraya Sakharam Devli,*** relied upon by the learned counsel for the appellant, One Mahadev and his brother, Sambhaji, were divided in interest. Mahadev died more

than twenty years ago, leaving a widow, Parvatibai, a son Ramchandra, and daughters. After Mahadev's death, Ramchandra was given in adoption to a different family at Gwalior. The properties in the suit, which were initially assigned to the share of Mahadev and which were vested in Ramchandra alone after Mahadev's death, were mortgaged by Parvatibai in 1909 to one Dattatraya long after Ramchandra's adoption. Dattatraya filed the suit to enforce his mortgage, to recover possession and to obtain an injunction. The suit was filed against Sambhaji's sons, and Parvatibai represented by her daughters. Sambhaji's sons contested the suit claim, essentially on the ground that the property being vested in Ramchandra at the time of his adoption remained vested in him even after he was given in adoption and that Parvatibai had no right to mortgage the property, as Ramchandra was alive.

25. This court, in the decision of ***Dattatraya Sakharam Devli,*** held that the fundamental idea underlying an adoption is that the son given in adoption gives up the natural family and everything connected with the family and takes his place in the adoptive family, as if he had been born there, as far as

possible. It is held that the son given in adoption gives up the rights, which may be vested in him by birth, to the property of his natural father if the adoption takes place in his father's lifetime, and to that extent, the rights vested in him are divested after adoption. This Court, thus, held as under;

> “If the divesting of a vested interest so far is to be allowed, I do not see any difficulty in holding that even if the estate of the natural father be wholly vested in the boy before adoption, he is divested of it when he is given in adoption. It seems to me that there is nothing repugnant to Hindu Law in thus insisting upon what is a necessary incident of an adoption and in preventing an adopted son from taking away with him to his adoptive family the property, which may have devolved upon him in the family of his birth. The divesting of vested estates is by no means an uncommon incident of adoptions under certain circumstances, and seems to me to be quite consistent with the Hindu Law.”

26. This Court dealt with one of the arguments, that if the adopted son can take his self-acquired property with him and is under no obligation to leave it in the family of his birth, there is no reason why he should be treated differently with reference to the property, which has vested in him exclusively on the death of his father before the adoption. While dealing with this argument, it was held as under:

> “But this argument ignores the difference between his self-acquired property and the estate which has become vested in him exclusively on his father's death. In one case the property is his own, and in the other it is the property of his natural father. The text of Manu refers to the estate of the natural father, and the mere fact that he is dead at the time of adoption and that it has become the property of his son at the time does not change the character of the property for the purposes of the rule laid down by the text, and it cannot be treated as his self-acquired property.”

27. Learned counsel for the appellant also relied upon the decision of this Court in the case of ***Bai Kesarba***, which followed the decision of ***Dattatraya Devli.*** In the facts of the said case, the plaintiff therein had alleged that on the adoption of defendant no. 1 therein, his right to the estate of biological family was extinguished, and in accordance with the custom of lineal primogeniture in the family, the plaintiff became entitled to succeed to the estate. It was observed that the decision of ***Dattatraya Devli*** was approved subsequently by the Privy Council in ***Raghuraj Chandra*** v. ***Subhadra Kunwar***[4], so far as it proceeds on the fundamental idea that the son given in adoption gives up the natural family and everything connected with the family, including the right to property, which had become vested in him before the date of his adoption.

28. Thus, the legal principles regarding the effect of adoption can be summarised to mean that the distinction between self-acquired property and the estate, which had become vested exclusively on father's death, is to be seen to ascertain the effect of adoption. In one case, the property is self-owned, and

4 (1928) L. R. 55 I.A. 139 at p.148

in the other, it is the property of the natural father. The mere fact that the father is dead at the time of adoption and that it has become the property of his son at the time does not change the character of the property, and it cannot be treated as his self-acquired property. Thus, adoption will divest the adopted son of right devolved through his natural father. However, in the case of self-owned property, adoption will not divest the adopted son from the property acquired before his adoption.

29. In view of the aforesaid legal principles regarding the adoption, the nature of the property must be ascertained to decide whether to divest a property held by a person before adoption. Learned counsel for respondent no.1 relied upon the decision of the Hon'ble Apex Court in the case of ***Omprakash Sharma.*** To correctly understand the legal principles, it is necessary to refer to the facts briefly. The facts of the said case are as follows:

(a) One Jaganath purchased the property in question in the name of his wife Moni. The plaintiff therein claimed that

her husband Sitaram was adopted in 1942 by Jagannath and Moni. She was married to Sitaram in 1945, and Sitaram died in 1946. Trial Court held that the property was of Jagannath and accepted the adoption theory. Thus, the trial court held that Moni and the plaintiff had half share each; on death of Moni, her half share devolved upon her natural daughter Gomati, and on death of Gomati, her share devolved upon her adopted son, the defendant. Therefore, it was held that the plaintiff and defendant both had half share each.

(b) In an appeal before the High Court, it was held that the property was not a benami transaction in the name of Moni and that she was the absolute owner pursuant to the sale deed in her name. The theory of adoption of Sitaram was disbelieved. Sitaram was nephew of Jagannath and Moni; therefore, it was held that he would not be entitled to any share and the property would devolve upon the natural daughter of Jagannath and Moni, i.e. Gomati. Since the adoption of Sitaram was not accepted, the High Court did not go into the issue of

adoption of the defendant by Gomati and a gift deed executed by her in favour of the defendant. Therefore, the High Court allowed the defendant's appeal and dismissed the cross-objections of the plaintiff. The Hon'ble Apex Court dismissed the plaintiff's appeal and confirmed the decision of the High Court.

30. In view of the aforesaid facts, the Hon'ble Apex Court discussed the practice in India of purchasing property by a husband in the name of his wife, which was a specie of benami purchase that had been prevalent in India since ancient times. The Hon'ble Apex Court observed that the purchase of immovable property by a husband in the name of the wife to provide the wife with a secured life in the event of the death of the husband was an acknowledged and accepted feature of Indian life which even finds recognition in the Explanation clause to Section 3 of the Benami Transactions (Prohibition) Act, 1988. It was thus, held that such prevalent practice is a fundamental feature that must be kept in mind while determining the nature of a sale/purchase transaction of immovable property by a husband in the name of his wife,

along with other facts and circumstances which has to be taken into account in determining what essentially is a question of fact, namely, whether the property has been purchased benami.

31. The Hon'ble Apex Court also referred to the well-established principles of law for determining the true nature of the transaction. The legal principles relevant to the facts of the present case are found in paragraphs 11 and 12 of the decision of ***Om Prakash Sharma,*** which reads as follows:

> **"11.** The "other" relevant circumstances that should go into the process of determination of the nature of transaction can be found in *Jaydayal Poddar* v. *Bibi Hazra* [*Jaydayal Poddar* v. *Bibi Hazra*, (1974) 1 SCC 3 : AIR 1974 SC 171] which may be usefully extracted below: (SCC pp. 6-7, paras 6-7)
>
> "*6*. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by

adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. *Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the*

probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (*1*) the source from which the purchase money came; (*2*) the nature and possession of the property, after the purchase; (*3*) motive, if any, for giving the transaction a benami colour; (*4*) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (*5*) the custody of the title deeds after the sale; and (*6*) the conduct of the parties concerned in dealing with the property after the sale.

7. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1 viz. the source, whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another."

(emphasis supplied)

12. The reiteration of the aforesaid principles has been made in *Binapani Paul* v. *Pratima Ghosh* [*Binapani Paul* v. *Pratima Ghosh*, (2007) 6 SCC 100] . The relevant

part of the views expressed may be profitably recollected at this stage: (SCC p. 113, paras 26-27)

"*26*. The learned counsel for both the parties have relied on a decision of this Court in *Bhim Singh* v. *Kan Singh* [*Bhim Singh* v. *Kan Singh*, (1980) 3 SCC 72] **wherein it has been held that the true character of a transaction is governed by the intention of the person who contributed the purchase money and the question as to what his intention was, has to be decided by:**

(*a*) surrounding circumstances,

(*b*) relationship of the parties,

(*c*) motives governing their action in bringing about the transaction, and

(*d*) their subsequent conduct.

27. All the four factors stated may have to be considered cumulatively. The relationship between the parties was husband and wife. Primary motive of the transaction was security for the wife and seven minor daughters as they were not protected by the law as then prevailing. The legal position obtaining at the relevant time may be

considered to be a relevant factor for proving peculiar circumstances existing and the conduct of Dr Ghosh which is demonstrated by his having signed the registered power of attorney."

emphasis applied

32. Thus, the legal principles can be summarised as under:

(a) The distinction between self-acquired property and the estate, which had become vested exclusively on father's death, is to be seen to ascertain the effect of adoption.

(b) In one case, the property is self-owned, and in the other, it is the property of the natural father. The mere fact that the father is dead at the time of adoption and that it has become the property of his son at that time does not change the character of the property, and it cannot be treated as his self-acquired property.

(c) Thus, adoption will divest the adopted son of right devolved through his natural father. However, in the case of self-owned property, adoption will not divest the

adopted son from the property acquired before his adoption.

(d) The burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so and this burden has to be strictly discharged.

(e) The true character of a transaction would be governed by the intention of the person who contributed the purchase money and the question as to what his intention was.

(f) Adoption would mean entry into the adoptive family as a person born in the adoptive family and severance from the biological family.

(g) The self-owned property cannot be divested in view of adoption.

CONCLUSIONS:

33. Applying the above principles, the findings recorded in the present case by the first appellate court cannot be faulted.

The first appellate court held that the right in the suit property accrued in favour of respondent no. 1 before the adoption, and such right cannot be divested. The first appellate court rightly relied upon the application filed by Tatya after the adoption to enter the name of defendant no. 1 in the revenue record. Filing such an application by Tatya reveals his intention to purchase the property exclusively for respondent no.1. Thus, Tatya's intention, who paid the consideration amount, is seen from his subsequent conduct to enter respondent no. 1's name in the revenue record after his adoption, which reveals that the true character of the transaction was to hold the property in the name of respondent no. 1 as his absolute ownership. Thus, mutation entry no. 2406 in the name of defendant no.1, represented through his adoptive mother, is correctly interpreted to mean that the suit property was an independent property of defendant no.1. There is no reason to interfere with the findings recorded by the first appellate court to set aside the trial court's judgment and decree.

34. In the present case, the adoption is dated 12th September 1940; hence, reference to Section 12 of The Hindu Adoptions

and Maintenance Act 1956 (“Adoption Act of 1956”) by both the Courts was unnecessary. Therefore, the law prevailing prior to 1956 is discussed in the above paragraphs. The legal principles summarised in the above paragraphs are regarding adoptions prior to the Adoption Act of 1956.

35. Thus, for the reasons recorded above, the adoption deed would have no legal effect on defendant no.1’s right, title and interest created in his favour in view of the registered sale deed. Thus, the first appellate court was right in interfering with the findings recorded by the trial court and correctly set aside the trial court’s judgment and decree and dismissed the suit. Hence, both the questions of law are accordingly answered in favour of defendant no.1.

36. Hence, for the reasons stated above, the second appeal is dismissed. The impugned judgment and decree dated 15th October 2011 passed by the learned District Judge – 1, Vaduj in Regular Civil Appeal No. 30 of 2010, dismissing the suit, is confirmed.

(GAURI GODSE, J.)