

MHST130005522009



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Registered on : 27.04.2009

Decided on : 28.03.2024

Duration : Ys. Ms. Ds.

13 - 11 - 04

**IN THE COURT OF THE 2<sup>nd</sup> Jt. CIVIL JUDGE JUNIOR DIVISION AT  
PATAN, DIST. SATARA.**

( Presided over by P. D. Bhirde )

**Regular Civil Suit No.62/2009**

**Exhibit No. 160**

Shri. Balasaheb Rau Mahadik,

Age - 25 yrs.,

Occu. : Agriculture

R/o – Tarale,

Tal. Patan, Dist. Satara.

**Plaintiff**

**Versus**

Baburao Bala Mahadik, (Deceased)

Heirs -

1 Sampat Baburao Mahadik (Deceased)

Heir -

1A. Smt. Vaishali Sampat Mahadik,

Age – 60 yrs., Occu. – Household,

R/o. Tarale, Tal. Patan, Dist. Satara.

**Defendants**

2 Shri. Kishor Sampat Mahadik,  
R/o. A501, Classic View, New Link Road  
Kandarpada, Dahisar (West),  
Mumbai 400068.

3 Shri. Madhukar Shankar Mahadik  
Age – 75 yrs., Occu. Agriculture,

**Defendants**

4 Sou. Kamal Madhukar Mahadik  
Age – 75 yrs., Occu. Agriculture,  
Defendants no. 3 and 4 R/o. Tarale,  
Tal. Patan, Dist. Satara.

**Suit for declaration.**

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**Advocates Appeared:-**

Advocate Shri. P. K. Gaikwad for the plaintiff.

Advocate Shri. D. P. Jadhav for defendant Nos. 1 and 2.

Advocate Shri. A. R. Molawade for defendant Nos. 3 and 4.

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**JUDGMENT**

( Delivered on 28.03.2024 )

This is a suit for declaration.

2. The facts of the plaintiffs' case are as under :-

Manyaba was common ancestor of plaintiff and defendants. He had a son namely Bala. Bala had three sons namely, Rau @ Rauba, Shnakar and Baburao. Shankar had five sons namely Baban, Madhukar, Mahadeo, Rama and Uttam. Plaintiff is son of Madhukar. Baburav had two sons namely Sampat (defendant no. 1) and Kishor (defendant no. 2). Rau @ Rauba and his wife Laxmibai had no child. Therefore, they decided to adopt the plaintiff.

Defendants no. 3 and 4 who are the natural father and mother of the plaintiff, agreed to gave the plaintiff in adoption to Rau and his wife Laxmibai. Accordingly, Dattak Home ceremony was performed and adoption deed bearing no. 1889/1993 was registered. Thereafter, a program in respect of adoption was arranged at Tarale. Invitation of the same were issued to the villagers. On the ceremony natural father and mother as well as adoptive father and mother of plaintiff were present. All rites and rituals necessary for adoption were performed in presence of natural and adoptive fathers and mothers of the plaintiff. Therefore, the plaintiff is adoptive son of Rau @ Rauba and Laxmibai.

3. One half share of Gat no. 63 situated at Katewadi, Tal. Patan, Dist. Satara ( more particularly described in para 2 of the plaint, hereinafter referred to as suit property) was inherited by Laxmibai from her mother. Laxmibai was died on 04.01.1995 and her husband Rau died on 09.07.1996. After demise of adoptive mother and father, the plaintiff has been in exclusive possession of the suit property. The natural father of plaintiff (defendant no. 3) and the plaintiff after attending majority have made several attempts to record his name to the suit property in the office of Talathi, Circle Officer, Tahsildar, Sub Divisional Officer, Collector, but due to resistance of defendant, he could not have got recorded his name to the same.

4. In spite of knowing the fact that suit property was inherited by Laxmibai from her mother namely, Vithabai Bandu

Ghodake, the defendants have included the suit property in RCS no. 63/1985, which was instituted for partition of joint family property. Defendant no. 3 and plaintiff have attempted to add him as party in the suit bearing RCS no. 63/1985 and appeal filed against the decree bearing Appeal no. 21/2004. But, the applications for adding plaintiff in the suit and appeal were rejected by the Court. The plaintiff was not party to the suit RCS no. 63/1985 or in the appeal. After rejection of third party application in Appeal bearing no. 21/2004, the plaintiff approached to Tahsildar for recording his name to the suit property. But, Tahsildar denied to record the name of plaintiff to the suit property. Therefore, the plaintiff filed suit for declaration that he is owner of the suit property.

5. Original defendant filed his written statement at Exh. 25. Defendant no. 1 filed his written statement at Exh. 61. Defendant no. 2 adopted the written statement filed by defendant no. 1 by filing pursis at Exh. 60b. The defendants have categorically denied the suit claim of the plaintiff. The sum and substance of defence of the defendants in their written statements is as fallows -

There was joint family between Rau, his brothers Shankar and Baburao. Rau was manager of their family. Shankar used to look after the agricultural property of the family. Baburao used to reside in Mumbai for work. Out of joint family fund Rau has purchased the suit property and other properties in the name of his mother in law Vithabai and wife Laxmibai. Therefore, suit property is joint family property of the defendants. Rau had no child. Rau

had never adopted the plaintiff. Laxmibai could not adopt the plaintiff. The said issue has been decided in RCS no. 77/1984, 63/1985 and Appeal no. 21/2004. Plaintiff has not preferred appeal against these orders. Therefore, the suit is barred by the principle of res-judicata. As Rau died issueless, the suit property came into possession of Shankar and Baburao. Original defendant namely, Baburao has executed a will in favour of defendant no. 2 in respect of suit property. Therefore, on the basis of the will defendant no. 2 is the owner of the suit property. In order to harass and trouble the defendants, the plaintiff has filed false suit. Considering all these aspects they prayed to dismiss the suit.

6. Issues are framed at Exh. 106. I am reproducing them along with findings therefor as under :-

| <b>Sr<br/>No</b> | <b>ISSUES</b>                                                                     | <b>FINDINGS</b>            |
|------------------|-----------------------------------------------------------------------------------|----------------------------|
| 1                | Whether plaintiff proves that he is lawful owner and possessor of suit property ? | <b>:- Yes.</b>             |
| 2                | Whether plaintiff is entitled for relief of declaration as sought ?               | <b>:- Yes.</b>             |
| 3                | Whether suit of plaintiff is within limitation ?                                  | <b>:- Yes.</b>             |
| 4                | What order and decree ?                                                           | <b>:- Suit is decreed.</b> |

### **REASONS**

7. To prove the suit claim, the plaintiff examined himself by filing an affidavit in lieu of examination in chief at Exh. 138. The plaintiff also examined his natural mother Kamal by filing her

affidavit in lieu of examination of chief at Exh. 154. The plaintiff filed following documents on record-

| <b>Sr. No.</b> | <b>Document</b>                                               | <b>Exhibit</b>  |
|----------------|---------------------------------------------------------------|-----------------|
| 1              | 7/12 extracts of suit properties                              | Exh. 142 to 145 |
| 2              | Birth certificate of plaintiff                                | Exh. 146        |
| 3              | Death certificate of Laxmibai                                 | Exh. 147        |
| 4              | Death certificate of Rau                                      | Exh. 148        |
| 5              | Notice issued by Tahsildar                                    | Exh. 149        |
| 6              | Letter of Tahsildar                                           | Exh. 150        |
| 7              | Order of Collector                                            | Exh. 151        |
| 8              | Tax assessment                                                | Exh. 152        |
| 9              | Mutation entry no. 4572                                       | Exh. 153        |
| 10             | Adoption deed                                                 | Exh. 155        |
| 11             | Sale deed                                                     | Exh. 158        |
| 12             | Document executed by adoptive father in the name of plaintiff | Exh. 159        |

Plaintiff closed his evidence by filing pursis at Exh. 156.

8. In spite of ample opportunities defendants have neither examined themselves, nor examined any witness, nor filed any documentary evidence on record. Heard learned advocate Shri. P. K. Gaikwad for the plaintiff. Perused record and proceedings. Perused all the documents produced on record.

9. Learned advocate Shri. P. K. Gaikwad for the plaintiff argued that perusal of sale deed at Exh. 158 it is clear that suit property was purchased by the Laxmibai and her mother namely Vithabai Bandu Ghodake. Accordingly, on 11.10.1956 mutation

entry no. 4572 was carried out. Perusal of 7/12 extract it is clear that the suit property appears in the name of Laxmibai. Rau and his wife Laxmibai decided to adopt the plaintiff. Natural parents of plaintiff Madhukar and Kamal agreed to give plaintiff in adoption. Accordingly, a deed was registered. Further, adoption ceremony was performed. Invitation Card was issued. Photo produced on record shows that natural and adoptive fathers and mothers of the plaintiff were present at the time of adoption ceremony. Though Laxmibai was exclusive owner and possessor of the suit property, defendants fraudulently included the suit property in RCS no. 63/1985. The applications on behalf of plaintiff to add him as a party to the suit and the appeal were rejected. In that suit and in appeal, the plaintiff was thrown out of the Court without giving an opportunity of hearing and producing evidence. The plaintiff was not a party to the suit and the appeal. So, the suit is not barred by principle of res-judicata. The issue is decided by the Appellate Court in Appeal no. 12/2014 that the suit is not barred by principle of res-judicata. Further, plaintiff proved that he is adoptive son of Rau and Laxmibai. All the documents i.e. Adhar card, pan card, license of the plaintiff show his name as Balasaheb Rau Mahadik. The evidence produced by the plaintiff is not rebutted by the defendants. Though deed shows that Laxmibai adopted the plaintiff, but the photographs, other deed and documents produced on record clearly show that both Rau and Laxmibai jointly adopted the plaintiff. The evidence produced by the plaintiff remains intact. Therefore, considering all these aspects he prayed to decree the

suit.

10. Before going to deal with issues first and foremost it is apt to mention that defendants have taken defence that suit is barred by principle of res-judicata as the property was included in RCS no. 63/1985. Thereafter, preliminary issue in respect of res-judicata was framed and suit was dismissed as principle of res-judicata would apply. Thereafter, plaintiff preferred an appeal no. 12/2014 against the order before the Hon'ble District Court, Karad. The Appellate Court allowed the appeal and set-aside order of this Court and it is held that suit is not barred by principle of res-judicata and directed to decide the suit on merit. Against which no appeal is preferred. Therefore, even though the suit property was included in RCS no. 63/1985, the suit is not barred by principle of res-judicata. Considering these aspects, I am not inclined to go into details about the same and I am going to decide suit on merit.

**Issue No. 1 -**

11. In so far as issue no. 1 is concern it is burden on the plaintiff to prove that he is owner and possessor of suit property. The plaintiff is claiming owner and possessor of suit property on the basis that he is adopted son of late Rauji and Laxmibai. Therefore, the plaintiff has to prove that he is adopted son of the Rauji and Laxmibai. To establish his claim the plaintiff examined himself and witness namely Kamal who is his natural mother. The plaintiff in his examination-in-chief has reiterated the contents of the plaint. It is contention of the plaintiff that he is adopted by



Rauji and Laxmibai. To prove the adoption the plaintiff has to establish that there were ceremony of giving and taking him by his natural parents to his adoptive parents and there was consent of natural parents and wife of adoptive father. Perusal of adoption deed at Exh. 155 it shows that the adoption was taken by Laxmibai on behalf of the plaintiff and given by Laxmibai herself. The adoption deed was signed by Rauji and natural parents of the plaintiff as witnesses.

12. As per Section 8 of the Hindu Adoption and Maintenance Act, 1956, prior to its substitution, a married women has no right to adopt unless her marriage was dissolved, or her husband is died, or completely renounced the world, or has ceased to be Hindu or of unsound mind. The contents of adoption deed shows that Laxmibai adopted the plaintiff for herself and her husband. Further, Rauba was present at the time of deed. The deed shows that Laxmibai only adopts the plaintiff. As per pleading of the plaintiff he stated that Laxmibai and Rauji adopted him and all the ceremonies and rituals required by law for valid adoption have been duly performed. To establish the contention of the plaintiff produced invitation card of adoption ceremony. Perusal of the same it appears that the ceremony was performed on 03.03.1994 and names of adoptive as well as natural parents were mentioned. The plaintiff also filed photograph showing his natural parents giving him to the adoptive parents. To prove his contention the plaintiff has produced another document dated 02.06.1996 executed by Rau @ Rauba at Exh. 159. Perusal of contents of the document it is

clear that Rauba is the owner and possessor of the suit property. This document has to be read along with adoption deed dated 23.12.1993. Perusal of the same it clears that Rauji was not only signed the adoption deed as a witness, but he also along with his wife Laxmibai adopted the plaintiff. As per Section 11 of the Hindu Adoptions and Maintenance Act, 1956 it provides that for valid adoption the child to be adopted must be actually given and taken in adoption by the parents or guardian or under their authority with intent to transfer the child from the family of its birth to the family of its adoption. It is clear that for the purpose of valid adoption, deed is not necessary and actually given and taken child in adoption is necessary. Perusal of evidence produced on record by the plaintiff it is clear that Rauba and Laxmibai both adopted the plaintiff. If Laxmibai alone adopted plaintiff then why did Rauba execute document dated 02.06.1996. The document dated 02.06.1996 shows intention of Rauba that he and his wife adopted the plaintiff.

13. It is defence of the defendant that as the suit property was included in the former suit, so the suit is barred by principle of res-judicata. It is also defence of the defendant that plaintiff was never adopted. Further, it is defence of the defendant that the suit property is joint family property of the defendant. Because it was purchased by Ruaji out of common fund of the joint family, in the name of his wife and mother in law. But, to prove their stand defendants neither examined themselves nor examined any witness nor produced any documents on record. Therefore, mere pleading

without any evidence their contention cannot be taken into consideration. Further, defendants have not cross examined the plaintiff or his witness.

14. The witness of the plaintiff i.e. his natural mother in her examination in chief at Exh. 154 deposed that Rauji and Laxmibai had no child and they requested her and her husband to give the plaintiff in adoption. The witness further deposed that she and her husband agreed and given consent to give plaintiff in adoption to Rauba and Laxmibai. Thereafter, in the year 1993 the ceremony was performed and Laxmibai and also Rauji executed documents in favour of the plaintiff. She further deposed that at the time of ceremony she, her husband, her father in law, Rauba and Laxmibai etc. were present and in presence of all the ceremony of adoption was performed. She and her husband in presence of all given the plaintiff on the thigh Rauji and Laxmibai and feed sugar. The photograph shows the presence of natural and adoptive parents of the plaintiff. As mentioned above the defendants have not cross examined the plaintiff and his witness. Therefore, the evidence oral as well as documentary produced by the plaintiff has remained unchallenged.

15. Considering over all evidence on record the plaintiff successfully proved that he is adopted son of Rauji and Laxmibai. Further, the plaintiff has produced his pan card, license card, adhar card, ration card and bank passbook. All these documents shows his name as Balaso Rau Mahadik. Therefore, there is nothing on

record to disbelieve the contention of the plaintiff that he was adopted by Rauji and Laxmibai.

16. According to the plaintiff suit property was inherited by his adoptive mother for the same the plaintiff has produced original sale deed at Exh. 158. Perusal of the same it clears that on 01.08.1956 Laxmibai and her mother had purchased the suit property. Whereas the contents of the sale deed show that Laxmibai and her mother themselves purchased the property and nothing therein mentioned that the property is joint family property of defendants or Rauji supplied the fund for purchase of the suit property. Though as per defendants the suit property is joint family property, but to prove the same they did not produce any evidence on record. Moreover, it is hard to digest that a person purchases a property for his family in the name of his mother in law. So, the defence taken by the defendants appears to be false. Therefore, it cannot be said that the property is joint family property of the defendants. The revenue record on record also clears that the property was recorded in the name of adoptive mother of the plaintiff.

17. Considering over all evidence on record the plaintiff successfully proved that he is owner and possessor of the suit property. There is nothing on record to disbelieve the contention of the plaintiff. Therefore, I answer issue no. 1 in the affirmative and record my findings accordingly.

**Issue No.3 :-**

18. In so far as the issue is concern whether the suit is within limitation. As per the plaintiff on 09.07.2008 his third party application in Regular Civil Appeal no.21/2004 was rejected. So, being aggrieved by the order, the plaintiff approached Tahasildar and requested to record his name to the suit property, but he refused to do so. The learned advocate for the plaintiff submitted that when the third party application was rejected and his request was turned down by the Tahasildar his right to sue accrues, so as per Article 58 of the Limitation Act the suit is well within limitation. Here it is worthwhile to mention that Article 58 of the Limitation Act provides three years limitation for filing suit from the date of accruing right to sue and it is residuary Article governing all those suits for declaration which are not specifically governed by any other Articles.

19. As per Article 58 Limitation Act the three years limitation for filing suit for declaration from the date when right to sue accrues. As per the plaintiff his third party application filed in Appeal no. 21/2004 was rejected and thereafter he approached to Tahsildar to record his name to the suit property, but he refused to do so. Perusal of revenue orders produced by the plaintiff it is clear that as the matter was subjudice in the Appeal no. 21/2004, all the application filed by the plaintiff before revenue authority were not decided. After, rejecting his application in Appeal no. 21/2004, the plaintiff approached to Tahsildar to record his name to the suit property, but he refused to do so. Thereafter, the plaintiff filed present suit on 24.04.2009. Considering the pleadings of the

plaintiff and documents filed on record it is crystal clear that the suit of the plaintiff is well within limitation. Therefore, I answer issue no. 3 in the affirmative and record my finding accordingly.

**Issue No.2 :-**

20. In view of answer to issue no.1 the plaintiff successfully proved that he is owner of the suit property. So, the plaintiff is entitled to get declaration that he is lawful owner of the suit property. Therefore, I answer issue no.2 in the affirmative and record my findings accordingly.

**Issue No.4 :-**

21. In view of my discussion in foregoing paragraphs and findings recorded to issues No.1 to 3, the suit needs to be decreed. It is trite that cost shall follow the event, considering the facts and circumstances of the suit there is no special reason to deviate from the said principle. So, it is just and proper to direct the defendants to bear their own cost and the cost of the plaintiff. In result, to answer the issue, I pass the following order.

**ORDER**

1. The suit is decreed with cost.
2. It is declared that the plaintiff is owner of suit property i.e. 1/2 share in Gat no. 63 situated in Katewadi, Tal. Patan.
3. The defendants to bear their own cost and cost of the plaintiff.

4. Draw decree accordingly.

**Place : Patan.**

**Date : 28.03.2024.**

**( P. D. Bhirde )**

**2<sup>nd</sup> Jt. Civil Judge Junior Division,  
Patan.**