

Presented on :- 15-04-2005.
Registered on :- 15-04-2005.
Decided on :- 11-01-2016.
Duration :- Y. M. D.
10. 08. 28.

IN THE COURT OF THE DISTRICT JUDGE – 2, NIPHAD.
TAL. NIPHAD, DIST. NASHIK.
(**Presided over by A.G. Mohabey**)

REGULAR CIVIL APPEAL NO.262 OF 2005. Exh.68.

Shri. Waman Aba Wagh, Age.47 years,
Occ :- Agriculturist, R/o. Ankute,
Tal. Yeola, Dist. Nashik.

Appellant.
(Ori.Plff.)

Versus

- 1] Shri. Chiman Deoram Wagh,
Age. 72 years (**Dead.**)
Through his legal heirs :-
1A] Shri. Anil Chimaji Wagh,
Age.50 years, Occ :- Saloon
Business, R/o. M-4A, A.F.76,
Saibaba Nagar, behind
Rajvihar Hotel, CIDCO,
Nashik, Dist. Nashik,
1B] Shri. Madan Chimaji Wagh,
Age. 45 years, Occ :- Saloon
business, R/o. Saikheda,
Tal. Niphad, Dist. Nashik,
1C] Sau. Ranjana Ramrao Shinde,
Age. 40 years, Occ :- Household,
R/o. Kanadgaon, Tal. Chandwad,
Dist. Nashik,
1D] Sau. Anjana Ranjan Aher,
Age. 35 years, Occ :- Household,
R/o. Ankute, Tal. Yeola, Dist.
Nashik,
2] Shri. Aba Deoram Wagh, Age.70 years,
(Name after adoption Vishnu Namdeo
Wagh (**Dead**).Through his legal heirs :-

Respondents.
(Ori.Defts.)

- 2A] Shri Namdeo Vishnu Wagh,
Age. 47 years, R/o. Ankute,
Tal. Yeola, Dist. Nashik,
- 2B] Shri. Santosh Vishnu Wagh,
Age. 30 years, R/o. Ankute,
Tal. Yeola, Dist. Nashik,
- 2C] Sau. Mathurabai Gangadhar
Santh, Age. 45 years,
R/o. Village Shingana,
Tal. Chandwad, Dist. Nashik,
- 3] Shri. Bapu Deoram Wagh,
Age. 65 years, Occ :- Agriculture.
Nos. 1 to 3 R/o. Ankute,
Tal. Yeola, Dist. Nashik,
- 4] Sou. Sonyabai Bhaurao Kadave,
Age. 55 years, Occ :- Household,
R/o. Komalwadi, Tal. Sinnar,
Dist. Nashik,
- 5] Sau.Chandrakala Sopan Aher,
Age. 53 years, Occ :- Household,
R/o. Opposite Santoshi Mata
Mandir, Yeola-Manmad road,
Yeola, Tal. Yeola, Dist. Nashik,
- 6] Smt. Renukabai W/o Deoram Wagh,
Age. 90 years (**Deleted vide Exh.8**),
- 7] Shri. Sukdeo Tukaram Wagh,
Age. 77 years, Occ :- Agriculture,
- 8] Shri. Kacharu Tukaram Wagh,
Age. 55 years, Occ :- Agriculture.
Nos. 7 and 8 R/o. Ankute,
Tal.Yeola, Dist. Nashik,
- 9] The Manager, The Nashik District
Co-operative Land Development
Bank Ltd. Branch Yeola, Kala
Maruti Road, Yeola, Tal. Yeola,
Dist. Nashik,
- 10] Sugandabai Manik Dongare,
Age.35 years, Occ :- Agriculturist,
R/o. Nandur, Tal. Yeola, Dist. Nashik.

Respondents.
(Ori. Defts.)

Advocates appeared :-

Shri A.A. Dhande advocate for the appellant.

Shri J.E. Kalantri advocate for respondent Nos. 1A, 1B, 1D and 3.

Ex-parte against respondent Nos. 1C, 2A, 2B, 2C, 4, 5, 7, 8 and 10

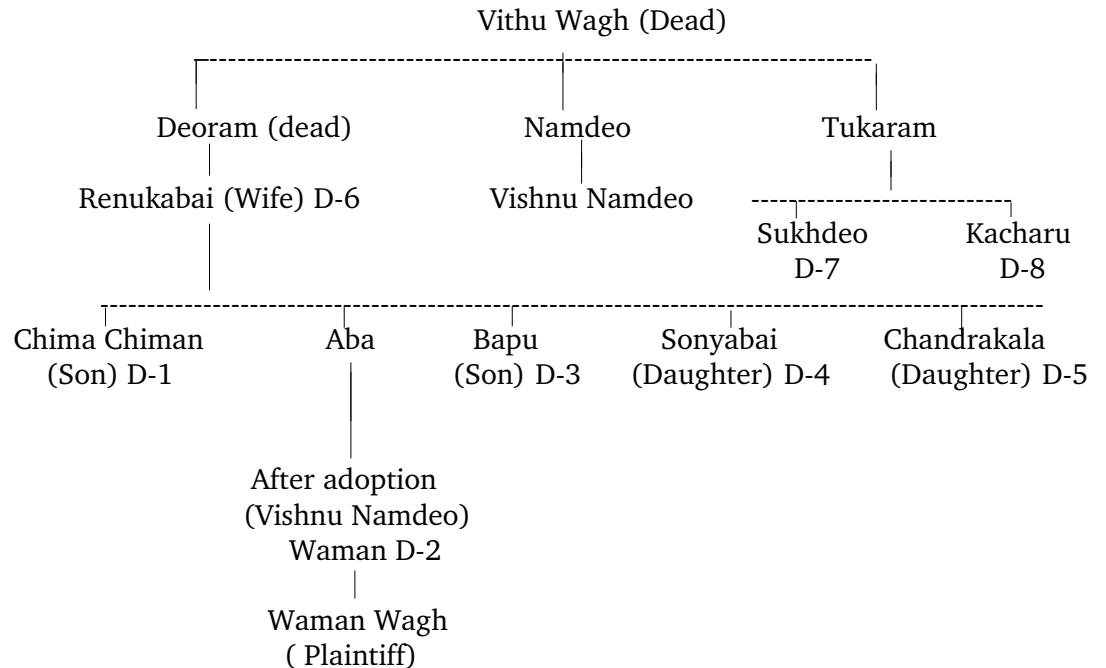
No Say against respondent No.9.

Appeal against the Judgment and Decree
in R.C.S.No. 52/2001 passed by ld. Civil
Judge, Jr.Dn. Yeola, dated 21-03-2005.

J U D G M E N T

(Delivered on this 11th day of January, 2016.)

By this appeal, the appellant/plaintiff has challenged the judgment and decree passed in R.C.S.No.52/2001 dated 21-03-2005 by learned Civil Judge, Jr.Dn. Yeola. Said civil suit is filed by the appellant/plaintiff for partition and possession. The parties are related to each other as per the genealogical tree given below.



2] Plaintiff's father namely, Aba Deoram Wagh has been given in adoption and after adoption, his name is changed to Vishnu Namdeo Wagh. The plaintiff is now claiming share in the property of Deoram, who is the brother of Namdeo in respect of the suit

property, which has been given to Deoram long back in partition. His submission is that, even though his father – Aba has been given in adoption to another branch of genealogical tree i.e. to Namdeo Vithu Wagh, still, through his father namely, Aba @ Vishnu Namdeo Wagh, he can claim property from his natural parental predecessor namely, Deoram and prayed for share in the property by filing said civil suit.

3] Defendant Nos. 1 and 3 have filed their written statement vide Exh.31 and they have submitted that, the plaintiff has no such right as claimed by him. The suit is proceeded ex-parte against defendant Nos. 2, 4, 5, 7, 8 and 10. Defendant No.9 is the formal party, who is the Manager of The Nashik District Co-operative Bank and it has nothing to do with the dispute of parties and hence, accordingly, filed its written statement vide Exh. 24.

4] Respondent Nos. 1 to 8 have filed their cross-objections vide Exh.62-A and they have objected to the finding given to issue No.1 in affirmative by the learned trial Court holding that, the suit property is the joint family property of the plaintiff and defendant Nos. 1 to 8 and therefore, said issue be properly answered.

5] The learned trial Court, after hearing the suit bearing R.C.S. No.52/2001 at length, has dismissed the suit with costs by judgment and decree dated 21-03-2005 and this appeal has been preferred on various grounds amongst others.

6] The appellant/plaintiff has submitted that, the order of the learned trial Court is wrong, illegal and against the provisions of law. The learned trial Court has not framed the issues properly.

He has not properly appreciated the facts, law and the evidence. He has wrongly drawn the inferences against the plaintiff by disbelieving his evidence. The learned trial Court has wrongly held that, necessary parties are not joined and suit is bad in law for non-joinder of necessary parties. The learned trial Court should have given the plaintiff 1/4th share in the suit land. The defendant has not given any evidence before the learned trial Court. In short, the appellant has submitted that, the judgment and decree passed by the learned trial Court in R.C.S.No.52/2001 dated 21-03-2005 is bad in law; it be quashed and set aside and his suit be decreed by allowing this appeal.

7] Now, from the contentions of the parties, the following points arose for my determination and I have recorded my findings thereon as recorded below.

Sr.No.	Points	Findings
01.	Whether the appellant/plaintiff proves that even though his father is adopted to other branch of the genealogical tree, he still can claim share in the ancestral property of the natural parents of his father as per Law of Succession?	In negative.
02.	Whether the judgment and decree passed by the learned trial Court in R.C.S.No. 52/2001 dated 21-03-2005; requires interference at the hands of this Court?	In negative.
03.	What order?	Appeal is dismissed as per final order.

REASONS

8] **Point Nos. 1 and 2 :-** Heard arguments of both sides. Both the parties have filed their written notes of argument i.e. to say

the appellant has filed his written notes of argument vide Exh.66 and contesting respondents have filed their notes of argument vide Exh.65. The facts in short mentioned in both the written notes of arguments are already discussed as above.

9] Now, the only limited law point, which has to be considered before this Court is that, whether after giving a child in adoption to adoptive family, the child or his successor can still claim right of property as a coparcener in the property of his natural parents. Learned Counsel for the contesting respondents has given on this point two important rulings. First ruling is reported in *1978 Mah. Law Journal, Page 604 in case of Baban alias Madhav Dagadu Dange Vs Parvatibai Dagadu Dange and another* in which Their Lordships have held that,

*“Hindu Adoptions and Maintenance Act (78 of 1956),
S.12 – Consequence of adoption – Adopted son occupies
position of natural born son in adoptive family for all
purposes except marriage and adoption – Adoptive father
becomes his father and adoptive mother becomes his mother.”*

He has also cited ruling reported in *AIR 1992 Bombay 189 in case of Devgonda Raygonda Patil Vs Shamgonda Raygonda Patil and another* in which His Lordship has held that,

*“Hindu adoption and Maintenance Act (78 of 1956),
S. 12, Proviso (b) – Effect of adoption – Adoptee
cannot have vested right in the undivided joint family
property of his natural birth.”*

10] The facts are not disputed that, the father of the appellant/plaintiff namely, Aba @ Vishnu Namdeo Wagh was the natural son of Deoram, but, latter on, Vishnu was given in adoption to the brother of Deoram namely, Namdeo. The law is very clear on this point that as soon as the person is adopted by his adoptive

parents, he loses his right in the property of his natural parents. Supported rulings are already cited as above. Therefore, neither Aba @ Vishnu Namdeo nor his son, who is the present appellant, can claim any right in the property inherited by natural father of Aba i.e. Deoram and therefore, it appears that, the appellant/plaintiff has filed false suit and this appeal without any grounds existing for. I do not find any illegality in the judgment and decree passed by the learned trial Court in R.C.S.No.52/2001 dated 21-03-2005. Therefore, the appeal deserves to be dismissed. Hence, I have answered point Nos. 1 and 2 in negative and proceed to pass the following order.

O R D E R

- (i) The appeal is dismissed with costs,
- (ii) Decree be drawn up accordingly.

Place :- Niphad.

Date :- 11-01-2016.

(A.G. Mohabey)
District Judge – 2,
Niphad.