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Exh 16

**IN THE DISTRICT COURT
OF**

SINDHUDURG

AT: OROS

TAL. : KUDAL, DIST. : SINDHUDURG

(Presided over by Dr Sudhiir M Deshpande, Principal
District Judge, Sindhudurg)

REGULAR CIVIL APPEAL NO. 67 OF 2019

(CNR MHSIo10006282019)

1. Chandrabhaga Manohar Bagkar
(Nee Leela Dhananjay Shirodkar)
(Since deceased through her legal
representatives)

1A Manisha Madhukar
Nanoskar
(Nee Ratnamala Manohar
Bagkar)
Age about 65 yrs., Occu.:
Housewife
R/o Nanoskarwadi,
Sawantwadi,
Tal. Sawantwadi, Dist.
Sindhudurg

Appellants
(Ori. Plaintiffs
No. 1A to 1C and
1E)

1B Anita Hanumant Madye
(Nee Shrimati Manohar
Bagkar)
Age about 60 yrs., Occu.:
Housewife
R/o Wadivarvade, Kudal,
Tal. Kudal, Dist. Sindhudurg

- 1C Ramkrishna Manohar
Bagkar
Age about 56 yrs., Occu.:
Agriculture
- 1D Ulhas Manohar Bagkar
Age about 50 yrs., Occu.:
Agriculture
Appellants No. 3 and 4 R/o
Tank, Tal. Vengurla, Dist.
Sindhudurg
As a power of attorney for
Appellants No. 1A to 1C and
Appellant No. 1D for himself.

Versus

1. Anant Baburao Madye
(Since deceased through his legal
representative)
Digambar Anant Shirodkar
Age about 72 yrs., Occu.:
Agriculture
R/o Dabholi, Tal. Vengurla
Dist. Sindhudurg
Respondent
(Ori. Defendant)
2. Ravindra Manohar Bagkar
(The claim has abated as the
deceased died during the
pendency of the case and the
legal heirs were not brought on
record, as mentioned in the title
clause of the appeal)
Respondent
(Ori. Plaintiff
No. 1D)

Appearance:

Mr S R Ogale, Ld advocate for the Appellants No. 1A to 1D
Mr R S Gavankar, Ld advocate for the Respondent No. 1
Respondent No. 2: Abated

J U D G M E N T

(Declared on: 22nd day of June, 2026)

This appeal is directed against the judgment and decree dated 15.04.2019 passed by the learned Civil Judge, Junior Division, Vengurla in Regular Civil Suit No. 62 of 2010, whereby the suit filed by the plaintiff came to be dismissed.

2] For perceptual convenience, the parties are referred to by their original positions and nomenclature as in the suit before the trial court.

3] Unlike most of the civil suits, this suit is not property specific but it is declaration specific. No description of property or properties is given in the plaint although in the prayer No. 7A there is reference to ancestral property.

4] The facts leading to the present appeal are like this. The suit was instituted by the original plaintiff Chandrabhaga Manohar Bagkar (nee Leela Dhananjay Shirodkar) through her power of attorney son Ramkrishna Manohar Bagkar. After the death of original plaintiff her legal representatives i.e. plaintiffs No. 1A to 1E contested the suit. It is the case of the plaintiff that deceased Dhananjay alias Babalo Aapa Shirodkar (died on 19.07.1962), original plaintiff's father, had tenanted as well as ancestral properties in village Dabholi. The original plaintiff was illiterate who did not brought on record the

legal heirs of Dhanajaya alias Babalo. In the meantime father of the defendants Anant Madhukar Madye, in order to grab the properties, projected himself as adopted son of Dhananjaya alias Babalo. He entered his name at serial No. 507 as the legal heir of Dhananjaya alias Babalo on 05.01.1971. On the basis of this legal heir entry he mutated his name for the properties of Dhananjaya alias Babalo vide Mutation Entries No. 3318 and 3798, which was allegedly approved by the Additional Tahasildar, ALT, Vengurle on wrong basis. In the meantime, the name of original plaintiff Chandrabhaga remained to be taken on the revenue record. Whenever the plaintiff would enter the properties through her three sons, they would not be hurdled by any of the defendants. Recently people from other place started purchasing lands in the region. Therefore, the original plaintiff verified the revenue record and other record and then she discovered the entries in the name of the defendant Anant. After making an application, she caused her name to be entered on the revenue record vide Mutation Entry No. 5557 for the ancestral properties. The defendant filed RTS Appeal No. 119/2010 before the SDO. The original plaintiff also filed RTS Appeal against the Mutation Entries No. 3318 and 3798. In the plaint it was mentioned that both these appeals were pending.

5] It is the prime contention of the original plaintiff that she was the only legal heir for Dhananjaya alias Babalo and he had no son. Hence, she brought the

suit against the defendants. The cause of action is mentioned in paragraph No. 5 of the plaint that she came to know about the entry of name of Anant as son of Dhananjaya alias Babalo and the defendant filed RTS Appeal against the Mutation Entry No. 5557 which was allowed on 29.07.2010. The original plaintiff prayed for the declaration that Anant Baburao Shirodkar (deceased father of the defendants) was not son of Dhananjaya alias Babalo and that he had no right or interest in the ancestral lands of the original plaintiff.

6] The defendant Digambar Anant Shirodkar filed the written statement which is Exh 15. He denied all contentions of the plaint. Paragraph 13 onward the defendant set out the defence which is broadly like this. Anant Baburao Shirodkar (i.e. master Vasant Baburao Madye) was the adopted son of Dhananjaya alias Babalo. He was adopted by Dhananjaya alias Babalo from his aunt Janakibai Madye, wife of Baburao Madye, on 17.12.1947 when Anant was 3 years old. After the death of Dhananjaya alias Babalo, name of Anant was entered on the record of rights vide Mutation Entry No. 3318, allowed on 30.07.1970. It is the contention of the defendant that the original plaintiff Chandrabhaga had no relation with said Dhananjaya alias Babalo and that this Dhananjaya alias Babalo had only one daughter named Leelabai. It is alleged that Chandrabhaga caused the bogus entry No. 5557 by acting hand in hand with the revenue officials, to enter her name on the record of rights, against which entry

the defendant has filed RTS Appeal No. 119/2010. Based on the above footing, the defendant prayed for dismissal of suit with costs.

7] Based on the rival pleadings, the trial court framed following issues and gave findings.

	Issues	Findings
1.	Whether the Plaintiff proves that she is the blood-related daughter of Late Dhananjay @ Bablo Appa Shirodkar and thus his only heir?	Partly Yes.
2.	Whether the defendant proves that his father late Anant Baburao Shirodkar is an adoptive son of Late Dhananjay @ Bablo Appa Shirodkar and thus his only heir?	Partly Yes.
3.	Whether the plaintiff is entitled to the relief of declaration, as prayed for?	No.
4.	Whether the suit is filed well within limitation?	No.
5.	What order and decree?	Suit is dismissed.

8] After considering the oral and documentary evidence before it, the Trial Court dismissed the suit.

9] Aggrieved by the judgment and order of the Trial Court, the plaintiff has filed the present appeal.

10] Heard.

11] Mr Ogale, Ld Advocate for the appellant-plaintiff, during his very lengthy argument, assailed the judgment and decree passed by the trial Court and

submitted that the suit was wrongly dismissed. According to him, the suit was essentially one for declaration of status as sought in prayer clause 7(a), and the findings recorded by the trial Court on all issues are unsustainable. He invited attention to Exhibit 92, the alleged original adoption deed, and to paragraph 3 of the examination-in-chief of DW-2 Madhukar, wherein the document was referred to only by its exhibit number. He contended that the entire adoption deed was a fabricated document, not executed by Dhananjay Shirodkar, and therefore incapable of being read in evidence. Its execution and attestation were never proved in accordance with law. He further submitted that the document purports to record an adoption dated 17.12.1947, when the field was governed by uncodified Hindu law. According to the judicial precedents prevailing at that time, the alleged adoption fell within prohibited degrees of relationship and was therefore invalid.

12] He further submitted that DW-2 Madhukar, whose evidence was originally recorded at Exhibit 90, was again examined as DW-4 at Exhibit 113 to cure defects in the earlier examination-in-chief. However, the evidence at Exhibit 113 came to be discarded by the trial Court by order dated 08.12.2017. Thereafter, the defendants filed Application Exhibit 138 seeking to have Exhibit 92 admitted on the basis of the presumption available under Section 90 of the Evidence Act, contending that it was a document more than thirty years old. The trial Court itself

rejected the said application by order dated 01.01.2019. Despite this, the trial Court ultimately accepted the alleged adoption as valid. Learned Advocate submitted that once the document itself was not proved by any legally recognized method, there was no foundation for accepting the adoption. Referring to paragraph 74 of the impugned judgment, he argued that the trial Court relied upon certain surrounding circumstances to uphold the adoption. According to him, there is no legal principle under which a disputed adoption can be declared valid merely on circumstantial evidence in the absence of proof of the adoption deed and the essential ceremony of adoption.

13] He further argues that the transliteration of the Modi script document at Exhibit 84/2 remained unexhibited since the original adoption deed itself was never duly proved. The trial Court has erroneously referred to the document as Exhibit 27/2 instead of Exhibit 84/2. Learned Advocate then invited attention to paragraph 13 of the written statement (Exhibit 15) and submitted that the defendants had taken an evasive and self-contradictory stand regarding the plaintiff's status. While one part of the pleading admitted that Dhananjay had only one daughter, namely Leela, another part denied that the plaintiff Leela had any connection with Dhananjay. According to him, the defendants attempted to suggest that the plaintiff Leela and the daughter Leela referred to in the pleading were different persons, but no specific case to that effect was pleaded. The defendants never clearly denied that the

plaintiff was the natural daughter of Dhananjay. Such evasive pleading, according to learned Advocate, strikes at the root of the entire defence.

14] He further submits that Exhibit 33 contains the evidence of PW-1 Ulhas, son of the plaintiff, who deposed after the plaintiff's death. Significantly, there was no cross-examination challenging the assertion that the plaintiff was the daughter of Dhananjay Shirodkar. PW-2 Ganpat, aged about seventy-four years, was examined to prove the relationship between Leela and Dhananjay, but his evidence came to be discarded by order dated 16.06.2017. PW-3 Balkrishna, aged about seventy-five years, was also examined on the same aspect. In his entire cross-examination, not a single suggestion was put to him that Dhananjay had any daughter other than the plaintiff. According to learned Advocate, this omission assumes considerable significance.

15] Turning to the defence evidence, Mr Ogale submits that Exhibit 83 contains the evidence of DW-1 Digambar, son of the alleged adopted son Anant. The answers given by him, particularly those in paragraph 23 and the admissions recorded in paragraph 17, demonstrate that he had no personal knowledge regarding the pleadings contained in paragraph 13 of the written statement. It was highly unnatural, according to learned Advocate, that a nephew would not know the identity of his father's sister Leela. He then relied upon the Heirs Register extract at

Exhibit 5, which shows the names of both Anant and Chandrabhaga as legal heirs of Baburao Shirodkar in Entry No. 507. Mutation Entry No. 3318 dated 26.05.1970 (Exhibit 6) was made on the basis of the said heirship entry. These documents, according to him, clearly establish that Anant was aware of the existence of Chandrabhaga as an heir of Bablo @ Baburao @ Dhananjay.

16] He also referred to Exhibits 50, 107 and 108. Exhibit 50 is the Election Card of Chandrabhaga showing her address at Bagkarwadi. Exhibit 107 is the birth certificate of her granddaughter, while Exhibit 108 is Chandrabhaga's death certificate, again recording her address as Bagkarwadi. These documents, according to him, corroborate the plaintiff's identity and status.

17] A substantial challenge was mounted to the alleged adoption deed on the ground of age. Mr Ogale pointed out that Digambar admitted in cross-examination that Anant was born on 15.07.1917. The same date is reflected in the School Leaving Register produced at Exhibit 103. Consequently, on the date of the alleged adoption deed in 1947, Anant would have been approximately thirty years old. Digambar's own date of birth is recorded as 26.05.1948. Thus, the recital in the adoption deed that Anant was a child of three years at the relevant time stands completely falsified. There is neither any pleading nor any evidence suggesting a clerical or

typing mistake. Nevertheless, in paragraph 64 of the judgment, the trial Court speculated that Anant may have been three years old at the time of adoption and that the deed might actually have been executed in 1917 instead of 1947. Learned Advocate submitted that such a conclusion is wholly conjectural and unsupported by any pleading or evidence.

18] He further attacked Exhibit 103, the school register, through the evidence of DW-3 Supriya Haldankar, the custodian of the record. According to him, Exhibit 103 itself demonstrates manipulation. DW-3 admitted that all entries on the relevant page appeared to have been made with the same pen and in the same handwriting. The entry relating to Anant pertains to the year 1925 and describes him as the son of Dhananjay Shirodkar. This, according to learned Advocate, is impossible if the case of the defendants is that Anant became Dhananjay's son only by virtue of an adoption in 1947. Yet again, the trial Court resorted to conjecture in paragraph 67 by presuming that the original register may have been torn and rewritten in a new register. No such endorsement or evidence was forthcoming from DW-3. Hence, the finding rests entirely on speculation.

19] He also questions the testimony of DW-2 Madhukar, an attesting witness to the adoption deed. According to his own version, he was only eight years old when he allegedly witnessed the execution of the adoption

deed. It is inherently improbable that a child of such tender age would be present as a witness to a formal adoption transaction. His cross-examination, according to learned Advocate, completely exposed the falsity of his testimony. Significantly, he failed even to identify his father's signature on Exhibit 92. Thereafter he was recalled and examined as DW-4, but that evidence itself was discarded. DW-5 Ramakant Dabhulkar was examined to identify the signature of his uncle on Exhibit 92. When all attempts to prove the document failed, the defendants resorted to Application Exhibit 138 under Section 90 of the Evidence Act, which too was rejected.

20] He submits that the entire theory of adoption was subsequently invented with the object of grabbing the properties of Dhananjay Shirodkar and thereafter dealing with them as owners. According to him, Exhibits 49, 127 and 134 support this inference. He emphasized that neither Exhibit 6 nor Exhibit 7, both pertaining to the year 1971, contains any reference whatsoever to the alleged adoption of 1947. Further, in Entry No. 507 (Exhibit 5), Anant's age is recorded as forty years in 1971. Thus, on the defendants' own documents, Anant could neither have been three years old nor thirty years old at the time stated in the adoption deed. This internal inconsistency completely destroys the defence case.

21] On the issue of limitation, Mr Ogale submitted that the suit was instituted on 23.11.2010 and the cause of

action has been specifically pleaded in paragraph 5 of the plaint. According to him, the findings recorded by the trial Court on limitation are wholly erroneous and contrary to the pleadings and evidence on record.

22] In conclusion, Mr Ogale submits that the trial Court repeatedly substituted conjectures and surmises for legal proof. Instead of deciding the issues on the basis of pleadings, evidence and settled principles governing proof of adoption, the Court built its conclusions on assumptions unsupported by the record. He therefore prayed that the appeal be allowed, the impugned judgment and decree be set aside, and the suit be decreed.

23] Mr Gavankar, Ld Advocate for the respondent-defendant supports the impugned judgment and decree and submitted that the trial Court has correctly appreciated the evidence and law on record. According to him, no interference is warranted in appeal.

24] He invites my attention to Section 10(iv) read with Section 30 of the Hindu Adoptions and Maintenance Act, 1956. He submitted that the statutory restriction regarding the age of a person capable of being adopted was introduced only upon the coming into force of the Act in December 1956. The adoption in question, however, is evidenced by a deed dated 17.12.1939 and is therefore governed by the uncodified Hindu law prevailing at that time. In view of the saving provision contained in Section

30 of the Act, the validity of such adoption cannot be questioned on the basis of the age criterion subsequently introduced by the 1956 Act.

25] He further contends that the suit itself was hopelessly barred by limitation. According to him, the suit seeks a declaration of status and the applicable period of limitation is three years. The suit having been instituted on 23.11.2010 was clearly beyond the prescribed period and therefore not maintainable.

26] Referring to Section 85 of the Evidence Act, Mr Gavankar submits that the statutory presumption attached to a document extends only to its execution and signatures and not to the truth of every statement contained therein. He argued that PW-1 could not legally depose regarding the contents of the adoption deed as he had no personal knowledge of the facts recorded therein. Consequently, his testimony on that aspect is inadmissible and liable to be discarded.

27] He then invites attention to Exhibit 103, the school register, wherein at Serial No. 267 the name of the concerned person is recorded as “Anant Dhananjay Shirodkar”. According to him, this entry lends support to the defendant's case regarding the adoption and the status acquired by Anant thereafter.

28] He further submits that the transliteration of the adoption deed at Exhibit 84/2 is merely a translated version of Exhibit 92, which is written in Modi script. Although the transliteration was not formally marked as a proved exhibit, that circumstance is not decisive. He argues that the act of exhibiting a document is essentially ministerial in nature and does not determine its evidentiary value. Therefore, the Court is not precluded from considering the contents of the transliteration along with the original document and the other evidence on record.

29] Reiterating his objection on limitation, he submits that the challenge raised by the plaintiff was grossly belated and that the suit for declaration instituted in the year 2010 could not be entertained after the expiry of the prescribed period. According to him, the findings recorded by the trial Court on all material issues are well supported by the evidence and applicable legal principles.

30] On these grounds, Mr Gavankar prayed that the appeal be dismissed with costs.

31] After hearing the learned advocates on both sides and perusing the record of proceedings, including the evidence and the trial court's judgment, as well as examining the contents of the appeal memo and the authorities cited by the parties, the following key points emerge for consideration. My findings on each of these

points, along with the detailed reasons, are set out in the subsequent part of this judgment.

Sr. No.	Points	Findings
1.	Whether the plaintiff Chandrabhaga proves that she only was Leela who was natural daughter of late Dhananjaya alias Babalo?	Yes.
2.	Whether the defendant proves that his father Anant Baburao Shirodkar was adopted son of Dhananjaya alias Babalo?	Yes.
3.	Whether the suit was instituted within limitation?	No.
4.	Whether the plaintiff is entitled to the relief of declaration as prayed for?	No.
5.	Whether interference is warranted in the Trial Court's Judgment and Decree?	Partly Yes.
6.	What Order?	Appeal is partly allowed.

REASONS

32] Before going into the reasons, it would be proper to review the oral and documentary evidence on the record.

33] The plaintiff's oral evidence is like this. The plaintiff's power of attorney Ulhas Manohar Bagkar is the PW1. His evidence is Exh 33. Ganpat Devu Gawade is the PW2. His evidence is Exh 74. However, the PW2 did not

remain present for cross-examination, hence his evidence was discarded by the Trial Court. Balkrishna Waman Rajapurkar is the PW3. His evidence is Exh 80.

34] The documentary evidence of the plaintiff is like this. The village Form No. 6-C i.e. the register of legal heirs is Exh 5. It shows that Anant Baburao Shirodkar and Chandrabhaga Manohar Bagkar were entered as his legal heirs. In Column No. 6, Anant Baburao Shirodkar (Son) was entered as actual possessor. This entry is of 05.01.1971. Mutation Entry No. 3318 dated 26.05.1970 shows Anant Baburao Shirodkar, the son of Babalo alias Dhananjay Aapa Shirodkar was taken on the record of rights, since Babalo had died in 1964. Mutation Entry No. 3798 (Exh 7) dated 19.11.1972 shows that correction was made in the previous Entry No. 3318 (Exh 6). However, what is the nature of correction is not mentioned in this entry. Mutation Entry No. 5433 (Exh 8) dated 10.01.2006 shows that Anant Baburao Shirodkar died on 13.11.2004 and the name of his sole son Digambar Anant Shirodkar was taken on the record of the rights. The 7/12 extract of Survey No. 92/2+6+10A showing the name of Digambar Anant Shirodkar and Chandrabhaga Manohar Bagkar is Exh 23. This 7/12 extract is of 2010-11. Mutation Entry No. 5557 dated 14.07.2010 is Exh 39, shows Chandrabhaga Manohar Bagkar filed an application stating therein that the five properties mentioned in Mutation Entry No. 3318 where ancestral properties for which the name of Anant Baburao Shirodkar was entered; and that the co-occupants

were Anant Baburao Shirodkar as well as Chandrabhaga Manohar Bagkar. Consequently by this Mutation Entry No. 5557 the name of Chandrabhaga Manohar Bagkar along with Anant Baburao Shirodkar was entered on the record of the rights. The judgment passed by the Sub-Divisional Officer in RTS/Appeal No. 119/2010 is Exh 40. Digambar Anant Shirodkar was appellant and Chandrabhaga Manohar Bagkar was the respondent. This appeal was in connection with the Mutation Entry No. 5557 by which the name of Chandrabhaga Manohar Bagkar was entered in the record of the right along with Anant Baburao Shirodkar. The appellant before the SDO is the son of Anant Shirodkar who objected to the entry of Chandrabhaga on the revenue record. However, the SDO held that the Mutation Entry No. 5557 was correct and the appeal was dismissed. The decision given by the Circle Officer dated 29.07.2010 was confirmed by the SDO vide his judgment dated 20.06.2013. The 7/12 extract of Survey No. 96/3 showing the names of Digambar Anant Shirodkar and Chandrabhaga Manohar Bagkar is Exh 41. In the other rights column of this entry, there is the entry of stay on Mutation Entry No. 5557. However, this stay was quashed by the SDO vide same judgment dated 20.06.2013. There are similar 7/12 extracts for Survey No. 149/2 (Exh 42), and Survey No. 77A/3 (Exh 43). There is 7/12 extract of Survey No. 92/2+6+10C (Exh 44) in the names of Madhukar Krushna Madye and Sulochana Devu Madye. The said 7/12 extract is showing the number of Mutation Entry is 4838.

35] The village Form No. 14 (Exh 45) is showing the name of Gurunath son of Anant Babu Shiroadkar. One more village Form No. 14 (Exh 46) is showing the name of Dhanaji alias Babalo Aapa Shiroadkar. The 7/12 extract of 96/2 (Exh 47) is showing the names of Digambar Anant Shiroadkar and Chandrabhaga Manohar Bagkar. This entry shows the stay in other rights column on Mutation Entry No. 5557, which stay was later quashed. The power of attorney is Exh 48 executed by Chandrabhaga Manohar Bagkar in favour of her son Ulhas Manohar Bagkar in respect of eight properties. This power of attorney was given for RCS No. 62/2010 pending in the Vengurla Court. The Tenancy Case No. 24/2010 is Exh 49 by which the name of Digambar Anant Shiroadkar was removed from Survey Nos. 79/7, 81/8, and 81/9. This proceeding was held under section 70(b) of the BTAL Act, 1948. This order is accompanied by statement of Digambar Anant Shiroadkar in which he states that the said three properties were belonging to the Rawool family members and that he was never their tenant and that he had his consent to remove his name as tenant of the said lands. The election identity card of Chandrabhaga Bagkar is Exh 50. The power of attorney executed by Manisha Madhukar Nanoskar in favour of Ulhas Manohar Bagkar is Exh 88 in respect of the eight properties. This power of attorney was for RCS in Vengurla Court No. 62/2010, MCA No. 46/2012 in District Court, Oros and revision/appeal No. 92/2014 before Commissioner, Mumbai.

36] The oral evidence of the defendants is like this. Digambar Anant Shirodkar i.e. defendant No. 1 is the DW1 (Exh 83). Madhukar Krushna Madye is the DW2 (Exh 90). Supriya Subhash Haldankar, Headmistress, Z P Primary School, Vengurla No. 2 is DW3 (Exh 99). There is one more evidence of same witness i.e. Madhukar Krushna Madye as DW4 (Exh 113). Ramakant Raghoba Dabhokar is the DW5 (Exh 114).

37] Defendants' documentary evidence is like this. There is one adoption deed in modi script (Exh 92). Its transcription in devnagari script is Exh 84/2 filed by defendant. The school leaving certificate of Anant Dhananjay Shirodkar showing his birth date as 15/07/1917 is Exh 102. The school registration extract is Exh 103 which shows birth date of Anant Dhananjay Shirodkar as 15/07/1917. The birth certificate of Arya Ulhas Bagkar showing her birth date as 30.03.2009 is Exh 107. The death certificate of Chandrabhaga Manohar Bagkar showing her date of death as 06/12/2014 is Exh 108. The letter written by Tahasildar, Vengurla stating that Rukmini Krushna Madye failed to prove her tenancy, written to the Talathi, Dabholi dated 28.02.1973 is Exh 125. Exh 126 is the letter dated 17.06.1974 sent by the SDO, Sindhudurg to Rukmini Krushna Madye and Madhukar Krushna Madye informing them that their appeal was dismissed. Exh 127 is the notice under section 32-G given to Anant Baburao Shirodkar in respect of Survey No. 79/8A and 81/10.

Anant Baburao Shirodkar was tenant and Anusayabai Shankar Rawool was the land owners, as per the said notice.

As to Point No. 1

38] In paragraph 13 of the written statement, the defendant Digambar Anant Shirodkar specifically pleaded that Dhananjaya alias Babalo had only one daughter and that her name was Leelabai. He further pleaded that the plaintiff Chandrabhaga had no relationship whatsoever with Dhananjaya alias Babalo. In view of such pleading, the burden undoubtedly rested upon the plaintiff to establish that she herself was the said Leelabai and not some other person.

39] In the title clause of the plaint, however, the plaintiff described herself as “Chandrabhaga Manohar Bagkar” and, in brackets, disclosed her maiden name as “Leela Dhananjaya Shirodkar”. Significantly, the defendant did not specifically deny this description. There is neither a pleading nor any evidence suggesting that Chandrabhaga's maiden name was something other than Leela Dhananjaya Shirodkar. Civil disputes are adjudicated on the touchstone of preponderance of probabilities. In the absence of any rebuttal evidence, a natural and probable inference arises that Chandrabhaga and Leela were one and the same person.

40] It is true that a plaintiff must succeed on the strength of her own case and not on the weakness of the defence. Nevertheless, by describing herself at the very outset of the plaint as “Leela Dhananjaya Shirodkar” and asserting that she was the daughter of Dhananjaya alias Babalo, the plaintiff laid a factual foundation for her claim. There is no allegation from the defendant that the plaintiff inserted the name “Leela” falsely, surreptitiously or with any ulterior design. On the contrary, the defendant himself admitted that Dhananjaya alias Babalo had only one daughter and that her name was Leelabai.

41] Moreover, in the opening paragraphs of the plaint, the plaintiff categorically pleaded that she was the sole daughter of Dhananjaya alias Babalo. Thus, the defendant's admission that Dhananjaya had only one daughter named Leelabai substantially corroborates the plaintiff's case that she was Chandrabhaga alias Leela, the only daughter of Dhananjaya alias Babalo. Viewed from the standpoint of probabilities, the pleadings of both sides converge on the existence of only one daughter of Dhananjaya, and there is no material on record to indicate that Chandrabhaga and Leelabai were different persons.

42] There is further evidence in the form of Exhibit 5, namely Form No. 6-C, being the Register of Legal Heirs. At Serial No. 507, the names of Chandrabhaga Manohar Bagkar and Anant Baburao Shirodkar are recorded as the legal heirs of Dhananjaya alias Babalo. The entry further

mentions that Dhananjaya alias Babalo had died about six years earlier, though according to the plaintiff his actual date of death was 19.07.1962, which would place the interval at approximately nine years. The entry itself is dated 05.01.1971.

43] To the extent that the entry records the death of Dhananjaya alias Babalo prior to its making, it broadly accords with the plaintiff's case regarding his death in the year 1962. However, the precise period elapsed since his death is not of substantial significance in the present controversy. Exhibit 5 is essentially a register maintained for recording legal heirs and not for conclusively determining the exact date of death of the deceased person. The real evidentiary value of the entry lies in the fact that it identifies the persons recognized as the legal heirs of Dhananjaya alias Babalo at the relevant time.

44] Viewed from that perspective, the entry assumes importance because it records both Chandrabhaga Manohar Bagkar and Anant Baburao Shirodkar as legal heirs of Dhananjaya alias Babalo. Thus, the document is heirship-specific rather than death-specific, and its relevance is confined primarily to the status and recognition of the persons shown therein as the heirs of the deceased.

45] Thereafter, Exhibit 23, being the 7/12 extract pertaining to Survey No. 92/2+6+10A situated at village

Dabholi, assumes significance. The said extract records the name of Chandrabhaga Manohar Bagkar on the strength of Mutation Entry No. 5557 and the name of Digambar Anant Shirodkar on the strength of Mutation Entry No. 5433. Similar revenue entries are reflected in respect of Survey Nos. 77A/3, 96/2, 96/3, 92/2+6+10A and 149/2, all situated at village Dabholi, wherein the names of Chandrabhaga Manohar Bagkar and Digambar Anant Shirodkar appear jointly in the record of rights.

46] Mutation Entry No. 5557, produced at Exhibit 39, is dated 14.07.2010. The said entry came to be effected pursuant to an application submitted by Chandrabhaga seeking incorporation of her name in the revenue records. Thus, the entry evidences the fact that her claim was recognized by the revenue authorities and her name came to be recorded alongside that of Digambar Anant Shirodkar.

47] Apart from Exhibit 23, there are several other 7/12 extracts on record, namely Exhibits 41, 42, 43, 44 and 47, pertaining to other lands. These documents also consistently reflect the names of Chandrabhaga Manohar Bagkar and Digambar Anant Shirodkar jointly in the revenue records. Collectively, these revenue extracts indicate that Chandrabhaga's name was entered and continued to be reflected in respect of multiple properties situated at village Dabholi along with that of Digambar Anant Shirodkar.

48] It may be observed that the particular survey numbers and property descriptions reflected in the revenue extracts are of limited relevance for deciding the present controversy. The plaint does not seek any declaration of title or possession in respect of any specific property, nor does it contain a detailed schedule of properties. The suit is essentially one of a general declaratory nature, the core issue being the status and legal character of Chandrabhaga and Anant in relation to Dhananjaya alias Babalo. Consequently, the significance of the revenue documents lies not so much in the identity of the lands concerned, but in the manner in which the parties are described and recognized therein.

49] A further circumstance of relevance is that Mutation Entry No. 5557, pursuant to which the name of Chandrabhaga came to be entered in the revenue records, was challenged by Digambar Anant Shirodkar, the principal contesting defendant. However, the challenge proved unsuccessful. The Sub-Divisional Officer, Sawantwadi, by his order in RTS Appeal No. 119 of 2010, dismissed the appeal and upheld Mutation Entry No. 5557. Consequently, the revenue entry recording the name of Chandrabhaga remained operative and continued to subsist despite the objections raised by Digambar before the revenue authorities.

50] The foregoing discussion leads to the conclusion that, when the evidence is evaluated on the touchstone of preponderance of probabilities, a reasonable inference emerges that Chandrabhaga and Leelabai were one and the same person. Consequently, it can safely be held that Chandrabhaga alias Leelabai was the daughter of Dhananjaya alias Babalo. Hence, I answer Point No. 1 in the affirmative.

As to Point No. 2

51] The burden of proving the adoption of Anant Baburao Shirodkar undoubtedly rested upon the defendant. Although the adoption deed at Exhibit 92 was subjected to serious challenge regarding its execution and proof, the issue cannot be decided solely on the basis of the evidentiary value of that document. The Court is required to consider the entire body of evidence and determine whether the fact of adoption is established on the touchstone of preponderance of probabilities. In that regard, Exhibit 103, being the school register maintained in the ordinary course of official business, assumes considerable significance. The entry therein records Anant as “Anant Dhananjaya Shirodkar”. This is a contemporaneous public record created long before the present dispute arose and therefore carries substantial evidentiary weight. Though an attempt was made to discredit the register through the cross-examination of DW-3 Supriya Haldankar, no convincing material has been

brought on record to establish that the entry relating to Anant was subsequently fabricated or interpolated. The mere fact that the entries on the relevant page appear in the same handwriting or ink is insufficient to discard an old official record. The school register demonstrates that Anant was publicly known and recognized as the son of Dhananjaya from an early period of his life. This circumstance finds support from the subsequent revenue records and heirship entries wherein Anant was treated as a legal heir of Dhananjaya alias Babalo. In cases concerning ancient transactions, direct evidence is often unavailable owing to the passage of time and, therefore, long-standing recognition in public records assumes considerable importance.

52] The authorities relied upon by learned Advocate Mr. Ogale do not advance the case of the appellant in the peculiar facts of the present matter. In **Haridas Chatterjee v. Manmatha Nath Mullick, 1936 AIR(Cal) 1, Dhani Bai v. Neem Kanwar, 1972 AIR(Raj) 9, Madan Lal v. Gopi, 1980 AIR(SC) 1754** and **Rahasa Pandiani v. Gokulananda Panda, 1987 AIR(SC) 962**, the Courts emphasized that adoption must be proved by cogent and reliable evidence, that the ceremony of giving and taking is important, and that suspicious or contradictory evidence cannot establish a valid adoption. There can be no quarrel with these propositions. However, the controversy in the present case arises from an alleged adoption said to have taken place

several decades ago. Owing to the passage of time, direct evidence regarding the ceremony is naturally unavailable. The present case does not rest merely upon the disputed adoption deed at Exhibit 92. On the contrary, there exists a contemporaneous school register entry at Exhibit 103 recording Anant as “Anant Dhananjaya Shirodkar”, coupled with long-standing recognition in public and revenue records. The said documentary evidence was created long before the present dispute arose and furnishes an independent basis for inferring the status of Anant. Thus, unlike the cases relied upon by the appellant, the finding herein is not founded solely upon doubtful oral testimony, suspicious circumstances or unproved recitals in an adoption deed. The cumulative documentary evidence renders the defendant's version more probable and therefore satisfies the civil standard of proof based on preponderance of probabilities.

53] The decision in **Mst. Sansar Devi v. Jammu, 1988 AIR(J&K) 19** merely recognizes the maintainability of a suit seeking a declaration that an adoption is invalid. In the present matter, the maintainability of such a suit is not in dispute. The real question is whether the plaintiff has succeeded in disproving the adoption and whether the defendant has established Anant's status as the adopted son of Dhananjaya alias Babalo. Consequently, the said authority has no bearing on the merits of the controversy.

54] In **Muthuswami Thevar v. Chidambara Thevar, 1949 AIR(PC) 18**, relied upon by Mr Ogale, the Privy Council (Madras) held that father and mother alone can give son in adoption. In the present case the question is whether the adoption can be held valid when the adoption deed is executed many years after. Moreover, it is mentioned in the written statement that the said adoption was approved by the parents of Anant.

55] In **Kishori Lal v. Chaltibai, 1959 AIR(SC) 504**, relied upon by Mr Ogale, the Hon'ble Supreme Court held that evidence of adoption should be free from all suspicions of fraud and so consistent and probable as to leave no occasion for doubting its truth. In the present case the school register entry is highly relevant and decisive for corroboration of the fact of adoption on the basis of preponderance of probability.

56] The authorities relied upon by the defendant support his case. In **Janki Vashdeo Bhojwani and Another v. Indusind Bank Ltd. and Others, [2005] o AIR(SC) 439**, the Hon'ble Supreme Court held that a witness can depose only to facts within his personal knowledge and that the burden of proving a fact must be discharged by competent evidence. This principle diminishes the evidentiary value of any testimony based merely on hearsay. In **Bama Kathari Patil v. Rohidas Arjun Madhavi & Anr, 2004(2) ALL MR 290**, it was held that mere exhibition or non-exhibition of a document

does not determine its proof, which must be assessed in accordance with the Evidence Act. Thus, the plaintiff's technical objections regarding exhibit numbers and proof of documents do not materially advance his case, and both authorities lend support to the defendant's contentions.

57] While certain discrepancies pointed out by the plaintiff may cast doubt upon the precise manner in which the adoption took place, they do not outweigh the cumulative effect of the documentary evidence establishing Anant's accepted status in society and official records. Viewed as a whole, the evidence adduced by the defendant renders the fact of adoption more probable than not. Applying the settled civil standard of proof based on preponderance of probabilities, this Court holds that the defendant has successfully proved that his father, Anant Baburao Shirodkar, was the adopted son of Dhananjaya alias Babalo. Accordingly, I answer point No. 2 in the affirmative.

As to Point No. 3

58] The suit was instituted on 23.11.2010 seeking a declaration that Anant Baburao Shirodkar was not the son or adopted son and legal heir of Dhananjaya alias Babalo and that the plaintiff alone was entitled to such status. Such a relief is governed by Article 58 of the Limitation Act, which prescribes a period of three years from the date when the right to sue first accrues.

59] The evidence on record demonstrates that Anant's status as an heir of Dhananjaya was reflected in public records long before the institution of the suit. Exhibit 5, being the Register of Legal Heirs, contains Entry No. 507 dated 05.01.1971 wherein Anant Baburao Shirodkar was recorded as a legal heir of Dhananjaya alias Babalo. This entry formed the basis of subsequent Mutation Entry No. 3318 (Exhibit 6) and remained part of the public revenue record for several decades. The plaintiff's contention that she became aware of such entries only in the year 2010 cannot be readily accepted, particularly when the entries were neither secret nor concealed but existed in public records accessible to all concerned. No convincing evidence has been adduced to establish any fraud or deliberate concealment so as to postpone the commencement of limitation.

60] The cause of action to challenge Anant's status first arose when he was recognized as an heir in the revenue records and not when the plaintiff eventually chose to dispute such recognition. Mutation Entry No. 5557, effected in favour of the plaintiff in the year 2010, could not furnish a fresh cause of action for challenging a status that had stood reflected in official records since 1971. The challenge raised by the plaintiff after nearly four decades is therefore hopelessly belated. Applying the settled principle that limitation begins to run when the right to sue first accrues and not when its consequences

continue to be felt, this Court holds that the suit was not instituted within the prescribed period of limitation and is consequently barred by law. Accordingly, I answer point No. 3 in the negative.

As to Point No. 4

61] The plaintiff seeks a declaration that Anant Baburao Shirodkar was not the son or adopted son and legal heir of Dhananjaya alias Babalo and that the plaintiff alone was entitled to claim such status. The burden of establishing these assertions squarely rested upon the plaintiff. Although the plaintiff succeeded in showing, on a balance of probabilities, that Chandrabhaga alias Leela was the daughter of Dhananjaya alias Babalo, that fact by itself does not entitle her to the declaration sought. The principal relief claimed in the suit necessarily required the plaintiff to disprove the defendant's case of adoption and to establish that Anant had no legal status whatsoever in the family of Dhananjaya.

62] The evidence on record falls short of discharging that burden. The defendant has produced material indicating long-standing recognition of Anant as the son of Dhananjaya alias Babalo. In particular, Exhibit 103, being the school register maintained in the ordinary course of official business, records Anant as “Anant Dhananjaya Shirodkar”. This is a contemporaneous document of considerable evidentiary value. Despite

extensive cross-examination of DW-3, the custodian of the register, the plaintiff could not establish that the entry was fabricated, interpolated or otherwise unreliable. The said document, coupled with the subsequent heirship and revenue records, demonstrates that Anant was publicly recognized as belonging to the family of Dhananjaya for several decades.

63] Exhibit 5, namely the Register of Legal Heirs, records Anant as a legal heir of Dhananjaya alias Babalo. The subsequent mutation entries were also effected on that basis. These public records remained in existence for a long period without challenge. The plaintiff has undoubtedly questioned the validity and proof of the adoption deed at Exhibit 92 and has pointed out certain discrepancies concerning the age of Anant and the circumstances surrounding the alleged adoption. However, even if some doubts are assumed to exist regarding the precise mode or proof of adoption, the plaintiff was required to establish affirmatively that Anant had no legal status whatsoever as the son or adopted son of Dhananjaya. The evidence led by the plaintiff does not reach that threshold.

64] The Court has already held, while deciding the earlier point, that the defendant has succeeded in proving, on the touchstone of preponderance of probabilities, that Anant Baburao Shirodkar was the adopted son of Dhananjaya alias Babalo. Once such a finding is recorded,

the very foundation of the declaratory relief claimed by the plaintiff disappears. A declaration cannot be granted in the face of credible evidence establishing the status sought to be denied.

65] Apart from this, the suit itself has been found to be barred by limitation. A declaratory relief, being discretionary and equitable in nature, cannot ordinarily be granted when the claim is pursued after an inordinate and unexplained delay of several decades despite the existence of public records recognizing the status now under challenge.

66] The authorities cited on behalf of the plaintiff regarding strict proof of adoption undoubtedly emphasize careful scrutiny of evidence in adoption cases. However, those principles do not assist the plaintiff once the cumulative documentary evidence, particularly Exhibit 103 and the long-standing public recognition reflected in official records, renders the defendant's case more probable. Civil cases are decided on the basis of preponderance of probabilities and not proof beyond reasonable doubt.

67] Apart from this, there is one more circumstance that corroborates the theory of adoption of Anant and does not corroborate the theory of the plaintiff that the Chandrabhaga was the sole legal heir of Dhananjaya alias Babalo. The circumstance is like this.

Chandrabhaga herself filed an application on the basis of which Mutation Entry No. 5557 dated 14.07.2020 was prepared, allowed on 29.06.2010 by which she herself had stated that the five properties mentioned in that entry were ancestral and that the names of co-occupants were Anant Baburao Shirodkar and Chandrabhaga Manohar Bagkar. The word co-occupant is important. It is a kind of acquiescence of the co-occupancy of Anant Baburao Shirodkar. This means that Chandrabhaga was not the sold legal heir and that Anant was also a co-occupant.

68] In the totality of the circumstances, the plaintiff has failed to establish that Anant Baburao Shirodkar was not the son or adopted son of Dhananjaya alias Babalo. Consequently, she is not entitled to the declaration sought in the plaint. Hence, I answer Point No. 4 in the negative.

As to Point No. 5

69] Upon a reappraisal of the entire evidence on record, this Court finds that the judgment of the Trial Court is not wholly free from error and therefore warrants interference to a limited extent. The most significant infirmity lies in the manner in which the trial Court answered Issue Nos. 1 and 2 as "Partly Yes". The said issues pertained to the status and legal relationship of the parties and required clear and categorical findings. A finding regarding whether the plaintiff was the daughter of

Dhananjaya alias Babalo and whether Anant Baburao Shirodkar was his adopted son could not have been answered in a vague or qualified manner. The answers recorded by the trial Court are internally inconsistent and disclose an erroneous approach to the determination of the real controversy.

70] Furthermore, while discussing the evidence, the Trial Court resorted to certain conjectures, particularly regarding the age discrepancy appearing in the adoption deed and the possibility of rewriting or reconstruction of old records, despite there being no specific pleading or convincing evidence to support such assumptions. To that extent, the criticism advanced by learned Advocate for the appellant is justified. However, an appellate Court is concerned not merely with the correctness of the reasoning but also with the correctness of the ultimate conclusion.

71] Upon an independent assessment of the evidence, particularly Exhibit 103, being the school register recording Anant as “Anant Dhananjaya Shirodkar”, along with the heirship and revenue records showing long-standing recognition of his status, this Court is satisfied that the defendant has proved, on the touchstone of preponderance of probabilities, that Anant Baburao Shirodkar was the adopted son of Dhananjaya alias Babalo. This Court has also held that the suit instituted in the year 2010 is barred by limitation. Consequently, although the findings and reasoning

recorded by the trial Court on certain issues require correction and modification, the ultimate decree dismissing the suit does not suffer from any legal infirmity warranting reversal. Interference is therefore warranted only to the limited extent of correcting the erroneous findings and reasoning adopted by the trial Court, particularly its answers to Issue Nos. 1 and 2, while maintaining the final decree of dismissal. Accordingly, Hence, I answer point No. 5 partly in the affirmative.

ORDER

1. The Regular Civil Appeal No. 67 of 2019 is partly allowed.
2. The findings recorded by the learned Trial Court on Issues No. 1 and 2 are modified in accordance with the findings recorded in this judgment.
3. It is held that the plaintiff Chandrabhaga alias Leela was the daughter of Dhananjaya alias Babalo.
4. It is further held that the defendant has proved, on the basis of preponderance of probabilities, that Anant Baburao Shirodkar was the adopted son of Dhananjaya alias Babalo.
5. It is further held that Regular Civil Suit No. 62 of 2010 was barred by limitation.
6. Consequently, the plaintiff is NOT entitled to the declaration sought in the suit.
7. Subject to the aforesaid modification in findings and reasons, the Judgment and Decree dated 15.04.2019 passed by the learned Civil Judge, Junior Division,

Vengurla in Regular Civil Suit No. 62 of 2010 dismissing the suit are hereby confirmed.

8. In the facts and circumstances of the case, the parties shall bear their own costs throughout.
9. Draw decree accordingly.
10. Record and Proceedings be sent back to the Trial Court along with a copy of this judgment.

Sd/-
(Dr Sudhiir M Deshpande)
Principal District Judge
Sindhudurg at Oros

All concerned to act upon digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake v. Krushna Dhake**, MANU/MH0285/2018.