ÊÁITEM NO.102 COURT NO.9 SECTION IVA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.4365 OF 1999

BASAVARAJAPPA Appellant(s)

VERSUS

GURUBASAMMA & ORS. Respondent(s)

(With office report)

Date: 01/02/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE A.K.MATHUR

For Appellant(s) Mr. G.V. Chandrashekar, Adv.

Mr. P.P. Singh, Adv.

For Respondent(s) Mr. S.K. Kulkarni, Adv.

Mr. M.Gireesh Kumar, Adv.

for Ms.Sangeeta Kumar, Adv.

UPON hearing the Court made the following

O R D E R

The Appeal is allowed in terms of the signed order.

(Parveen Kr. Chawla) (Kanwal Singh)

Court Master Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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IVIL APPEAL NO. 4365 OF 1999

Basavarajappa .....

Appellant

- Versus -

Gurubasamma & Ors. .....Respondent

O R D E R

This appeal by grant of special leave is \directed against the final judgment and decree dated 19.12.1997 in Regular Second Appeal No. 454 of 1991 passed by the High Court of Karnataka at Bangalore.

The learned Single Judge with some modifications regarding the share to be inherited by the parties has affirmed the judgment and decree passed by the First Appellate Court in RA No. 31 of 1985. The First Appellate Court has reversed the judgment and decree passed by the Trial Court in OS No. 23 of 1983.

To appreciate the dispute between the parties, it would be useful to refer to the inter se relationship of the appellant and the respondents. The Genealogy Tree of the family is as under:-

Narasappa (Died)

| Shankarawwa (Died) | Gurbasamma | Mudamma (Def. 1) | Kasturi (Def.2) | Dhanna (Def.3) | Laxmibai (Def.4) | Sharnamma (Def.5) | Sidramawwa (Def.6) |
|---|---|---|---|---|---|---|---|

| Basawwa (Def. 7) | Baswarajappa (Def. 8) |
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Narasappa died intestate on 13.5.1982 leaving behind adopted son - appellant herein and seven daughters and a grand daughter. The

appellant is the son of Shankarawwa, daughter of Narasappa, who had pre-deceased him. Narasappa adopted the appellant on 9.5.1978. His natural father gave him in adoption. The ceremonies of giving and taking in adoption were performed in the house of Narasappa in the presence of their spiritual guru. Narasappa got the adoption registered as well on 14.12.1978 which has been signed both by Narasappa and the natural father of the appellant. Narasappa owned ancestral property consisting of land and houses described in Schedule 'A' attached with the plaint.

After the death of Narasappa, Gurubasamma (one of the daughters of Narasappa) - Respondent No. 1 herein, filed a suit claiming 8th share in the property left behind by Narasappa. Appellant who was the adopted son of Narasappa contested the suit. Others who had been arrayed as co-defendants with him did not contest the suit seriously.

On completion of the pleadings, Trial Court framed various issues. Parties led their evidence. Trial Court, on the evidence led by

the parties, came to the conclusion that the appellant had been validly adopted on 9.5.1978 and the adoption deed was got registered on 14.12.1978. Properties were held to be ancestral in nature. Trial Court on the basis of these findings concluded that the appellant became a coparcener with his adopted father Narasappa and after his death, half share of the property owned by Narasappa devolved on the appellant by survivorship and the remaining half fell to the share of Narasappa on a deemed partition under Section 6 of the Hindu Succession Act, 1956 (for short, 'the Act') and the half share which fell to the share of Narasappa was to be treated as self-acquired property. Narasappa had died without leaving a will. The half share which came to Narasappa under the deemed partition was held to be divisible in equal shares i.e. 9th each to the plaintiff and the defendants. Accordingly, plaintiff-Respondent No. 1 was held entitled to 1/18th share of the entire property left behind by Narasappa except the dwelling house which was given to the appellant in view of the provisions of Section 23 of the Act.

Aggrieved against the judgment and decree passed by the Trial

Court, plaintiff-Respondent No. 1 filed an appeal in the Court of Civil Judge, Yadgir which was numbered as RA No. 31 of 1985. Before the First Appellate Court, the counsel appearing for Respondent No. 1 did not contest the findings recorded by the Trial Court regarding the validity of adoption of the appellant and the nature of the property being ancestral. Findings on these two issues were affirmed. The First Appellate Court took the view that Narasappa had become the absolute owner of the properties being the sole surviving male member of the Joint Hindu Family and the adoption made by him did not divest him of the absolute ownership of the properties. This view was taken by the Court on the interpretation of Section 12(c) and Section 13 of the Hindu Adoption and Maintenance Act, 1956 (for short, 'the Adoption Act'). Section 12 of the said Act reads as under :-

> "12. An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family;
>
> Provided that -

(a) xx xx xx

(b) xx xx xx

(c) The adopted child shall not divest any person of any estate which vested in him or her before the adoption."

Accordingly, it was concluded that the appellant and the eight daughters of Narasappa will take equal share in the suit properties as successors and heirs of deceased Narasappa. Appellant and the eight daughters were held entitled to 9th share each in the suit properties.

Aggrieved against the judgment and decree passed by the First Appellate Court, the appellant filed Second Appeal in the High Court which has been disposed of by the impugned order.

The High Court affirmed the findings regarding the adoption of the appellant as well as the nature of the property being ancestral. These facts were not disputed in the High Court. The High Court broadly speaking agreed with the findings recorded by the First Appellate Court but modified the share to 7th share to each of the

successors instead of 9th share. After referring to the following recitals in the adoption deed\, the High Court held that the intention of the adopted father was that the adopted son would get the share of Narasappa alone i.e. 7th share and not more than that -

> "That the adoptor has no male issue and his wife is also expired and further there is no hope to have the issue, so far, the spiritual benefit and family of the adoptor may be continued for the performance of the religious duty and to get the relief of soul, the adoptor has taken in adoption his natural daughter's son i.e. Maternal grandson aged 14 years on 9.5.1977 and the deed came to be registered on 14.12.78."
>
> "That the adoptor has agreed at the time of adoption that the adopted son will be the owner of all the properties of the adoptor and he will be the absolute owner."

It was held :-

> "I am convinced on the reading of the adoption deed and appreciate the intention of the adopted father that the adopted son can have a share of Narasappa alone i.e. he is entitled to 7th share and not more than that."

Counsel for the parties have been heard at length.

We may straightaway say that the High Court as well as the First

Appellate Court erred in holding that the adoption of the appellant did not have the effect of divesting Narasappa of the properties to the extent of half share. The properties held by Narasappa were admittedly ancestral. On adoption, the adoptee gets transplanted in the family in which he is adopted with the same rights as that of a natural born son. The legal effect of giving a child in adoption is to transfer the child from the family of his birth to the family of his adoption. He severes all his ties with the family from which he is taken in adoption. Interpreting Section 12 and sub-section (vi) of Section 11, this Court in Smt. Sitabai & Anr. v. Ramchandra [(1969) 2 SCC 544] held that the adoptee ceases to have any ties with the family of his birth. Correspondingly, these ties are automatically replaced by those created by the adoption in the adopted family. The adopted child becomes a coparcener in the Joint Hindu Family property. It was observed:

> "5. It is clear on a reading of the main part of Section 12 and sub-section (vi) of Section 11 that the effect of adoption under the Act is that it brings about severance of all ties of the child given in adoption in the family of his or her birth. The child altogether ceases to have any ties with the family of his birth. Correspondingly, these very ties are automatically replaced by those created by the adoption in the adoptive

family. The legal effect of giving the child in adoption must therefore be to transfer the child from the family of its birth to the family of its adoption. The result is, as mentioned in Section 14 (1) namely where a wife is living, adoption by the husband results in the adoption of the child by both these spouses; the child is not only the child of the adoptive father but also of the adoptive mother. In case of there being two wives, the child becomes the adoptive child of the senior-most wife in marriage, the junior wife becoming the step-mother of the adopted child. Even when a widower or a bachelor adopts a child, and he gets married subsequent to the adoption, his wife becomes the step-mother of the adopted child. When a widow or an unmarried woman adopts a child, any husband she marries subsequent to adoption becomes the step-father of the adopted child. The scheme of Sections 11 and 12, therefore, is that in the case of adoption by a widow the adopted child becomes absorbed in the adoptive family to which the widow belonged. In other words the child adopted is tied with the relationship of sonship with the deceased husband of the widow. The other collateral relations of the husband would be connected with the child through that deceased husband of the widow. For instance, the husband's brother would necessarily be the uncle of the adopted child. The daughter of the adoptive mother (and father) would necessarily be the sister of the adopted son, and in this way, the adopted son would become a member of the widow's family, with the ties of relationship with the deceased husband of the widow as his adoptive father. It is true that Section 14 of the Act does not expressly state that the child adopted by the widow becomes the adopted son of the husband of the widow. But it is a necessary implication of Sections 12 and 14 of the Act that a son adopted by the widow becomes a son not only of the widow but also of the deceased husband. It is for this reason that we find in sub-section (4) of Section 14 a provision that where a widow adopts a child and

subsequently marries a husband, the husband becomes the "step father" of the adopted child. The true effect and interpretation of Sections 11 and 12 of Act No. 78 of 1956 therefore is that when either of the spouses adopts a child, all the ties of the child in the family of his or her birth become completely severed and these are all replaced by those created by the adoption in the adoptive family. In other words the result of adoption by either spouse is that the adoptive child becomes the child of both the spouses. This view is borne out by the decision of the Bombay High Court in Anukushi Narayan v. Janabai Rama Sawat [67 BLR 864]. It follows that in the present case Plaintiff No. 2 Suresh Chandra, when he was adopted by Bhagirath's widow, became the adopted son of both the widow and her deceased husband Bhagirath and, therefore, became a coparcener with Dulichand in the joint family properties. After the death of Dulichand, Plaintiff No. 2 became the sole surviving coparcener and was entitled to the possession of all joint family properties. The Additional District Judge was, therefore, right

> in granting a decree in favour of the Plaintiff No. 2 declaring his title to the agricultural lands in the village Palasia and half share of the house situated in the village."
>
> { Emphasis supplied }

The view taken by the First Appellate Court and the High Court that Narasappa even after the adoption continued to be the absolute owner of the property being the sole surviving coparcener is incorrect. On adoption, the appellant became a coparcener with Narasappa and entitled to his coparcenery interest in the ancestral properties held by

Narasappa. Appellant became entitled to half share in the Joint Hindu Family of his father as a coparcener like a natural son. The view which we are taking is in consonance with the view taken by this Court in Sitabai's case (supra) in which it was held that after considering the scheme of Section 11, 12 & 14 of the Adoption Act that on adoption the adopted child would become a coparcener in the adopted family after severing all his ties with the family from which he has been adopted.

As the appellant had been validly adopted, he became entitled to half share of the ancestral properties as a coparcener. On the death of Narasappa in the year 19\82, succession opened. Notional partition u/s. 6(2) of the Act took place between Narasappa and his adopted son of the Joint Hindu Family properties. Father and son became entitled to half share each. The half share of the property which fell to the share of Narasappa has to be treated as self-acquired property in terms of Section 6 of the Act and liable to be divided in equal shares amongst the adopted son and the daughters i.e. each one of them would get 9th share out of the half property which had fallen to the share of

Narasappa which would be equivalent to 1/18th share of the entire property held by Narasappa. In our opinion, the Trial Court had taken the correct view of the matter.

The ancestral house in which Narasappa was living with his adopted son would fall to the share of the adopted son as per Section 23 of the Act which provides -

> "23. Special provision respecting dwelling-houses
>
> Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:
>
> Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or has separate from her husband or is a widow."

The appellant would be entitled to the ancestral house in which he was living along with his adopted father during his lifetime unless he

chooses to divide the same and after his death, if there is no other coparcener, then the property would revert back to all the heirs of his father i.e. as per Schedule of the Act. The female heirs will have no right to claim partition. Narasappa had married off all his daughters during his lifetime. The right of the appellant in the dwelling house would be subject to the right of any of the female heirs if she becomes a widow or is separated from her husband. This Court in Narasimha Murthy v. Smt. Susheelabai & Ors. [AIR 1996 SC 1826] has taken a similar view. It was observed in para 33 :-

> "The second question does not present much difficulty. On literal interpretation the provision refers to male heirs in the plural and unless they chose to divide their respective shares in the dwelling house, female heirs have no right to claim partition. In that sense there cannot be a division even when there is a single male. It would always be necessary to have more than one male heir. One way to look at it is that if there is one male heir, the section is inapplicable, which means that a single male heir cannot resist female heir's claim to partition. This would obviously bring unjust results, an intendment least conceived of as the underlying idea of maintenance of status quo would go to the winds. This does not seem to have been desired while enacting the special provision. It looks nebulous that if there are two males, partition at the instance of female heir could be resisted, but if there is one male, it would not. The emphasis on the section is to preserve a dwelling-house as long as it is wholly occupied by some or all members of the intestate's family which includes male or males. Understood in

this manner, the language in plural with reference to male heirs would have to be read in singular with the aid of the provisions of the General Clauses Act. It would thus read to mean that when there is a single male heir, unless he chooses to take out his share from the dwelling-house, the female heirs cannot claim partition against him. It cannot be forgotten that in the Hindu male oriented society, where begetting of a son was a religious obligation, for the fulfilment of which Hindus have even been resorting to adoptions, it could not be visualized that it was intended that the single male heir should be worse off, unless he had a supportive second male as a Class I heir. The provision would have to be interpreted in such manner that it carried forward the spirit behind it. The second question would thus have to be answered in favour of the proposition holding that where a Hindu intestate leaves surviving him a single male heir and one or more female heirs specified in Class I of the Schedule, the provisions of section 23 keep attracted to maintain the dwelling-house impartible as in the case of more than one male heir, subject to the right of re-entry and residence of the female heirs so entitled, till such time the single male heir chooses to separate his share; this right of his being personal to him, neither transferable nor heritable."

{ Emphasis supplied }

For the reasons stated above this appeal is accepted.

Judgments and decree passed by the High Court as well as the First Appellate Court are set aside and the judgment and decree passed by the Trial Court is restored. It is held that the daughters would be entitled to 1/18th share each in the entire property except the dwelling house to which appellant alone would be entitled during his lifetime

unless he chooses to divide the same during his lifetime and after his death if there is no other coparcener, then, the property would revert back to the heirs of Narasappa as per Schedule of the Act. The right of the appellant to the house would be subject to the right given to the female heirs to a right of re-entry and residence in case they become a widow or are separated from their husband as per the proviso to Section 23 of the Act. No costs.

.....J.

(ASHOK BHAN)

.....J.

New Delhi; (A.K.MATHUR)

February 1, 2005