PETITIONER:
GOVIND HANUMANTHA RAO DESAI

Vs.

RESPONDENT:
NAGAPPA ALIAS NARAHARI LAXMAN RAO DESHPANDE AND & 7 ORS.

DATE OF JUDGMENT25/01/1972

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
REDDY, P. JAGANMOHAN
PALEKAR, D.G.

CITATION:
1972 AIR 1401 1972 SCR (3) 200
1972 SCC (1) 515
CITATOR INFO :
R 1974 SC 878 (6,12)

ACT:
Hindu Law--Adoption--Theory of relation back--Adoption by widow of deceased coparcener--Before adoption partition of property by surviving coparceners--Share which adoptive son entitled to.

HEADNOTE:
The appellant was adopted in 1955 by R's widow after R's death in 1912. In 1933, there was a partition between K (R's father) and his third son L, the only two coparceners existing at that time. Thereafter, K. bequeathed his properties by will to some of his relations. Later, there was a further partition between L and his son. L died in 1952.
A suit was filed in 1956 by the- appellant, claiming half of the family properties. The trial court granted the appellant half share in the family properties. The High Court reduced the share awarded to the appellant from 1/2 to 1/3 of the properties held by it to be partible. The High Court also set aside the trial court's decree awarding a sum of Rs. 1500 to the appellant as his share of the consideration received under a sale deed;
In appeal to this Court the appellant contended that his adoption related back to the date of death of his adoptive father; by a fiction of law, he must be deemed to have been in existence when K and L divided the properties between them; the partition, having been effected without his joinder, the same had to be ignored; and, therefore, he was entitled to a half share in the properties. Alternatively, it was urged that the appellant was entitled to get by succession, half share of the properties that fell to the share of K.
Dismissing the appeal,
HELD. (i) The appellant must be deemed to have been adopted in 1912 when R died. Therefore, he must be deemed to have been a coparcener in his adoptive father's family when K and L partitioned the properties in 1933. The partition having been effected without his consent, it is not binding on him; but from this it cannot be said that K and L did not

separate from the family. So far as the quantum of his share is concerned it must be determined after taking into consideration the fact that K & L separated from the family in 1933. The appellant can ignore the actual partition,by meters and bounds effected by K and L and ask for a repartition of the properties but his adoption by itself cannot reunite the divided family. The rights of an adopted son cannot be more than that of his adoptive father. The fiction that an adoption relates back to the date of the death of the adoptive father applies only when the claim of the adopted son relates to the estate of the adoptive father. If the appellant's adoptive father was alive in 1933, when the partition took place, he could not have obtained anything more than 1/3rd share in the family properties. Therefore, the appellant's claim for a half share in the family properties is unsustainable. T204 G; 207 B]

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The alternative claim of the appellant is also not tenable because K disposed his share by a will and secondly, even if he had not disposed of his share, the same would have developed on L by succession and the property once vested cannot be divested as in that property the plaintiffs adoptive father had no right of his own. The doctrine of relation back is-only a legal fiction. When K. died, plaintiff's adoption father was not alive. The revolution of K's property must be held to have taken place as soon as K died. The property could not have remained in a suspended animation till the appellant was adopted. [2O4G]

Shrinivas Krishnarao Kango v. Narayan Devji Kango and ors., [1955] 1 S.C.R. 1; Anant Bhikappa Patil, Minor v. Shankar Ramchandra Patil, 70 I.A. 232; Bajirao and Ors. v. Ramkrishna, I.L.R. [1941] Nag. 707 and K. R. Sankaralingam Pillai and Anr. v. Veluchami Pillai, Minor, I.L.R. [1943] Mad. 309, referred to.

Ramachandra Srinivas v. Ramakrishna Krishna Rao, A.I.R. 1952 Bom. 453, disapproved.

(ii) Both the courts below found the sale in question valid as the same was effected to meet family necessities. As the appellant did not seek an accounting from the 2nd defendant, and as no case was made out for requiring the second defendant to account in respect of moneys received by him as Karta and as the plaint did not state that there was any cash in the hands of the 2nd defendant, the High Court was justified in reversing the decree of the trial court directing the payment of Rs. 1500 to the appellant. [203 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 527 of 1967.

Appeal from the judgment and decree dated August 2nd/3rd, 1965 of the Mysore High Court in Regular First Appeal No. 147 of 1958.

M. Natesan and K. Jayaram, for the appellant.

S. S. Shukla, for respondents Nos. 1 to 4.

The Judgment of the Court was delivered by

Hedge, J. This appeal by certificate arises from the decision of the Mysore High Court in R.A. No. 147 of 1958 on its file. The plaintiff is the appellant. The main question that arises for decision in this appeal is as to the share to which the plaintiff is entitled in the properties held to be partible by the High Court. One other minor contention had also been urged which will be referred to and dealt With at the appropriate stage.

The facts as found by the High Court and which are no more in dispute may now be stated.

The appellant is the adopted son of one Ranga Rao alias Ramachandra Rao who died in 1912. He was adopted by the
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said Ranga Rao's widow Seethabai on September 18, 1955. The geneology of the family of Ranga Rao is as follows

KRISHNA RAO DESHPANDE (Died 1934)
MARRIED RADHABAI (Died 1935)

Ranga Rao alias Ramchandra Rao (died 1912) Married Seethabai (Defendant No. 1) Govinda (Adopted on 18-9-1955) Plaintiff

Hanumantha Rao (went out of the family by adoption).

Lakshmana Rao (died 6-9-1952) Married

Venkubai lst wife (died 1904)

Ambabai 2nd wife

Napppa (Nagesh) Deft. 2

Nagamma

Ansuyabai Deft. 7

Krishnaji Deft.3

Lakshamana (Deft. 4)

Gundappa Deft. 5.

Hanumantha Rao went out of the family having been adopted into some other family. There was a partition between Krishna' Rao and Lakshmana Rao, the only two existing coparceners at that time, in 1933. After partition Krishna Rao is said to have bequeathed his properties to some of his relations as per his will dated November 8, 1934. Subsequently there was a further partition between Lakshmana Rao and defendant No. 2 Nagappa on
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February 14, 1946. Lakshmana Rao died in 1952. Asmentioned earlier, the plaintiff was adopted on September 18, 1955 and the suit from which this appeal arises was instituted in1956 by the plaintiff-appellant represented by his natural father ashis' next friend as he was a minor on the date of the suit. The trial court granted the plaintiff half share in the properties that were held to be that of the family. The High Court modified the decree of the trial court in certain respects. It is not necessary to refer to all the modifications made by the High Court. We shall refer only to those modifications which are challenged in this appeal. The High Court reduced the share awarded to the plaintiff from half to 1/3rd of the properties held by it to be partible. The correctness of this decision is questioned. The only other question is whether the High Court was justified in setting aside the trial court's decree awarding a sum of Rs. 15001- to the plaintiff.

Before proceeding to examine the appellant's contention that he is entitled to a half share in properties held to be partible, it would be convenient to dispose of his contention relating to the money decree.

The trial court came to the conclusion that out of the consideration of Rs. 6500/- received under the sale deed Exh. 177, the second defendant had not accounted for Rs. 3000/-. Hence the plaintiff is entitled to a half share therein. The trial court as well as the High Court have found that the sale in question is valid as the same was effected to meet family necessities. The appellant did not

seek an accounting from the 2nd defendant. No case was made out for requiring the 2nd defendant to account in respect of the amounts received by him as the karta of the family, nor did the plaintiff aver in his plaint that there was any cash in the hands of the 2nd defendant. Hence the High Court was justified in reversing the decree of the trial court directing the defendant to pay to the plaintiff a sum of Rs. 1500/-.

This leaves us with the question as to the share to which the plaintiff is entitled in the partible properties. Even before the plaintiff was adopted into the family, there was a partition between Krishna Rao and Lakshmana Rao. The genuineness of that partition is no more in dispute. After the partition Krishna Rao became absolutely entitled to his share of the properties and hence he was entitled to deal with that property in the manner he thought best. As mentioned earlier he had bequeathed his properties to others. But it was urged on behalf of the appellant that his adoption dates back to the date of the death of his adoptive father, Ranga Rao. By a fiction of law, he must be deemed to have been in existence, when Krishna Rao and Lakshmana Rao divided the properties amongst themselves. The said partition having been effected without his joinder, the same has to be

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ignored. Hence he is entitled to a half share in the properties.Alternatively, it was contended that the plaintiff is entitled to get by succession half share in the properties that fell to the share of Krishna Rao.

Before proceeding to examine the decided cases referred to at the time of the arguments, let us proceed to examine the question on first principles. It is true that-by a fiction of law-well settled by decided cases-that an adopted son is deemed to have been adopted on the date of the death of his adoptive father. He is the continuator of his adoptive father's line exactly as an aurasa son and an adoption, so far as the continuity of the line is concerned, has a retrospective effect. Whenever the adoption may be made there is no hiatus in the continuity of the line. From that it follows that the appellant must be deemed to have been adopted in 1912. Consequently he is deemed to have been a coparcener in his adoptive father's family when Krishna Rao and Lakshmana Rao partitioned the properties. The partition having been effected without his consent, it is not binding on him. But from this it does not follow that Krishna Rao and Lakshmana Rao did not separate from the family at the time of the partition. It was open to Krishna Rao and Lakshmana Rao to separate themselves from the family. Once they did separate, the appellant and his adoptive mother alone must be deemed to have continued as the members of the family. It is true that because the plaintiff's adoptive mother was alive, the family cannot be said to have come to an end on the date of partition. But that does not mean that Krishna Rao and Lakshmana Rao did not separate from the family. When. the partition took place in 1933, the appellant even if he was a coparcener on that day could have only got 1/3rd share. We, fail to see how. his position can be said to have improved merely because he was adopted subsequent to the date of partition. It is true that because he was not a party to the partition, he is entitled to ask for reopening of the partition and have his share worked out without reference to that partition. But so far as the quantum of his share is concerned, it must be determined after taking into consideration the fact that Krishna Rao and Lakshmana Rao separated from the family in

1933. The alternative contention of the appellant referred to earlier is also untenable firstly because Krishna Rao disposed of his share of the properties by means of a will and secondly even if he had not disposed of his: share of the property, the same would have devolved on Lakshmana Rao by succession and the property that had once vested by succession cannot be divested as in that property the plaintiffs adoptive father had no right of his own. The doctrine of relation back is only a legal fiction. There is no justification to logically extend that fiction-. In fact the plaintiff had nothing to do with his adoptive father's family when Krishna Rao died. On that day
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his adoptive father was not alive. The devolution of Krishna Rao's property must be held to have taken place at the very moment Krishna Rao died. We know of no legal fiction under which it can be said to have been in a suspended animation till the plaintiff was adopted.

This takes us to the decided cases. A long line of decisions has firmly laid down that an adoption dates back to the date of the death of the adoptive father. It is not necessary to refer to the catena of decisions on this point. Suffice it to refer to the decision of this Court in Shrinivas Krishnarao Kango v. Narayan Devji Kango and Ors.(1). But that fiction by itself does not help the plaintiff. That fiction merely enables him to establish that he must be deemed to have been in existence on the date of the death of his adoptive father. Division of status need not be effected by bilateral agreement. It can be effected by an unilateral declaration by a coparcener if the same is properly communicated. Therefore it was within the power of Krishna Rao and Lakshmana Rao to separate themselves from the family and in fact they did so in 1933. We see no basis for the contention of the appellant that he can ignore the events that took place in 1933. He can no doubt ignore the actual partition by metes and bounds effected by Krishna Rao and Lakshmana Rao and ask for a repartition of the properties but his adoption by itself does not and cannot re-unite the divided family. It is one thing to say that an adopted son can ignore a partition effected prior to his adoption, which affects his rights and it is a different thing to say that his adoption wipes out the division of status that had taken place in his family. Reliance was placed on the decision of the Bombay High Court in Ramchandra Shrinivas and Ors. v. Ramkrishna Krishnarao (2 ) in support of the proposition that the plaintiff can enter into the adoptive family on the basis that the family is a joint and undivided Hindu family and his rights in the property of the family must be decided on that basis. It is true that this decision lends some support to the argument that despite the partition effected in 1933, the plaintiff can work out his rights on the basis that the family remains joint. The conclusion of the High Court that the adopted son is entitled to enter his adoptive family on the basis that the family continues as a joint and undivided Hindu family and that his rights in the family property must be decided on that basis does not appear to be supported by any Hindu law text or by any decision of this Court or the Judicial Committee. The decision of the Judicial Committee in Anant Bhikappa Patil, Minor v. Shankar Ramchandra Patil(3), relied on by the High Court did not consider that question. It is true that some of the observations of Chief Justice Stone in Bajirao and Ors. v. Rant-

(1) [1955] 1 S.C.R. 1. (2) A.I.R. 1952 Bam.463
(3) 70 I.A. 232.

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krishna(1), does support the view taken by the Bombay High Court. But the question that arose for decision in that case was whether a person adopted, after a partition in his adoptive father's family cannot divest the properties that had vested in the other coparceners. It may be noted that in the course of his judgment, the learned Chief Justice observed :

> "There can, in our opinion, be no question of a partition whereby the partitioning male members take away all the family property from a joint Hindu family unless the family can be wholly disrupted and finally brought to an end. We regard it as clear that a Hindu family cannot be finally brought to an end while it is possible in nature or law to add a male member to it. The family cannot be at an end while there is still a potential, mother if that mother in the way of nature or in the way of law brings in a new male member. The existing male members can separate off; they can take away their share. They cannot prejudice by partitioning the rights of the after-bom male member whether the birth is natural or legal. If in point of fact, before his arrival, the existing coparceners have partitioned the new arrival can obtain a re-opening of the partition and thereby get his share. How that share is to be calculated in various circumstances need not be decided here."

These observations in our opinion lay down the ratio of the decision and that ratio does not support the conclusion reached by the Bombay High Court. The decision of the Full Bench of the Madras High Court, in K. R. Sankaralingam Pillai and anr. v. Veluchami Pillai, Minor (2) , relied on by Bombay High Court merely laid down that an adopted son is entitled to reopen partition entered into in the family of his adoptive father, before his adoption. That position is no more open to question and was not questioned in this appeal. We are only concerned with the quantum of share to which the plaintiff is entitled. Our attention has not been invited to any decision which supports the view taken by the Bombay High Court. We see no justification to accept that view.

Further the interest of the society is not advanced by engrafting one more fiction to the already existing fiction that an adopted son is deemed to have been born on the date of death of his adoptive father. Acceptance of the new fiction canvassed on behalf of the plaintiff is bound to create various complications. Hindu widows in the past were proverbially long lived because of 'the child marriage system. Adoptions might take place and have taken place more than half a century after the death of the adoptive

(1) I.L.R. [1941] Nag. 707.
(2) I.L.R. [1943] Mad. 309.

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father. Meanwhile the other coparceners might have dealt with the family property on the basis of the then existing rights. They might have alienated the property. We see no justification to create chaos by inventing a new fiction unknown to Hindu law texts nor authorised by stare decisis. This Court in Shrinivas Krishnarao Kango's case(1) has laid down that the fiction that an adoption relates back to the date of the death of the adoptive father applies only when

the claim of the adoptive son relates to the estate of the adoptive father. But where the succession to the property of a person other than the adoptive father is involved, the principle applicable is not the rule of relation back but the rule, that inheritance once vested cannot be divested. It is true that the question that arose for decision in that case was whether an adoptive son can claim to succeed to a collateral's estate, divesting the property that had already vested in someone else. But the rule laid down by this Court in that case is much wider than the limited question that arose for decision and the reasons given in support of that rule support our conclusion. The rights of an adopted son cannot be more than that of his adoptive father. If the plaintiff's adoptive father was alive in 1933 when the partition took place, he could not have obtained anything more than 1/3rd share in the family properties. It passes our comprehension how the plaintiff could acquire a greater right than his adoptive father could have had if he had been alive on the date of partition and that he could have got if he had been adopted prior to that date. In our judgment the plaintiff's claim for a half share in the family properties is unsustainable.

In the result ibis appeal fails and the same, is dismissed with costs.

S.C. Appeal dismissed.

(1) [1955] 1.S.C.R. 1.

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