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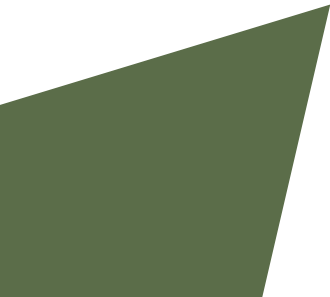
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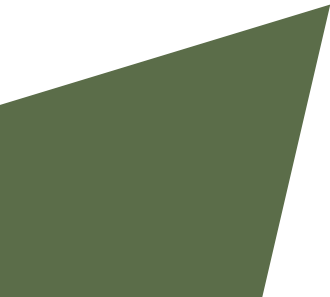
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CASE COMMENTARY ON SIDDARAMAPPA AND ORS. V. SMT.

GOURAVVA

(AIR 2004 KANT 230)

Mitali Khatri

INTRODUCTION

In family law “The HAMA, 1956, has given extensive rights to females in the matter of adoption, though still not equal rights with males. A significant right is the duty of the husband to seek her consent”¹. The case Siddaramappa and Ors. V. Smt. Gourava² was decided by a single judge bench of Justice N. Kumar of Karnataka High Court on 09/12/2003. It was brought as an appeal from the lower court by the defendants. This case is based on sections 6³, 7⁴ and 16⁵ of Hindu Adoption and Maintenance Act, 1956. Laws of Adoption and Inheritance deals with many intricacies and also require clear understanding of the same. This judgment is a good example of how such cases are dealt with utmost cautiousness and intensity. It is also an example of providing justice to a widow. It basically deals with wife’s consent for Adoption and with non-execution of the last Will under suspicious circumstances. The question arises as to which circumstance can be termed as suspicious. It was decided in Smt. Indu Bala Bose v. Manindra Chandra Bose⁶ that a suspicious circumstance is the one when it is not normal, not expected from a normal person or which is not normally expected in a normal scenario.

Based on the judgment of the lower court, the issues which were framed by the High Court in this case were whether the defendants could prove the adoption and the Will, whether the adoption deed is valid, whether the third defendant bequeathed the property because of his affection or because of the fact of being an adopted son. Based on the given facts and situations and the probable circumstances, the court of law dismissed the appeal and delivered the judgment in favour of plaintiff. The next of the case comment deals with facts of the case in brief, the arguments put up by both the parties and the final judgment delivered by the High Court. Then the judgment is analysed in depth. Finally, the case comment is concluded along with some suggestions.

¹ K. KUSUM , “Cases and materials on family law” pg. no.222, published by Universal Law Publishing Co. Pvt. Ltd., 2nd Ed. 2010

² Siddaramappa and Ors. V. Smt. Gourava AIR 2004 KANT 230

³ SECTION 6 IN THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, <https://indiankanoon.org/doc/497207/> (last visited Mar 26, 2020).

⁴ SECTION 7 IN THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, <https://indiankanoon.org/doc/1698417/> (last visited Mar 26, 2020).

⁵ SECTION 16 IN THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, <https://indiankanoon.org/doc/1100213/> (last visited Mar 26, 2020).

⁶ Smt. Indu Bala Bose v. Manindra Chandra Bose 1982 AIR 133

BACKGROUND/FATCS AND ARGUMENTS

The facts of the case are as follows. Mr. Mallapa and his two sons Basavanneppa and Sidramappa constituted a Hindu Undivided Family. After the father's death, the brothers effected a partition of all joint family properties. Smt. Gourava [plaintiff] is the wife of Basavanneppa. After her husband's death, Gourava became his sole legal heir. The plaintiff mentioned that the defendants took advantage of her husband's illness and created an adoption deed through which the third defendant [Manjunath] was adopted by the deceased without latter's wife's consent. Now the defendants were bothering and interfering in her peaceful possession of succeeded properties. Therefore, she moved to the court to seek relief, for cancellation of adoption deed and the Will and for restraining the interference of defendants.

Considering the facts, the Trial Court decided upon the set issues and stated that the evidences show that the defendants were in possession of the suit properties. Since the Will was not proved by the defendants, the court granted relief to the plaintiff and declared the Will and adoption as illegal and void. Unhappy from the judgment, the defendants appealed before Karnataka High Court.

JUDGMENT

It was adjudged by the Karnataka High Court that section 7 of HAMA, 1956⁷ mentions about certain contingencies where the consent of wife for adoption is not necessary. But adding other such events would amount to adding words to the statute. Therefore the consent of wife in the present case is mandatory. When the defendants side relied on the maxim '*lex non cogit and impossibilia*'⁸ by relying on the case of Mohammad Gazi v. State of Madhya Pradesh⁹, the court ruled out that the evidence does not show that the deceased husband sought consent of the plaintiff and then the plaintiff refused. The bench ruled that since wife's consent was not taken, therefore, the adoption is void ab initio. The judge considered and even mentioned the statements of the witnesses in the final judgment. The case of the defendants points out many inconsistencies and so the judge realized that no adoption ceremony has taken place. As a result, the decision of trial court judge was upheld.

With regards to the issue of the Will, the court stated that since the evidence regarding adoption are rejected, therefore, the Will does not stand the test to judicial scrutiny as Will was

⁷ SECTION 7 IN THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956, <https://indiankanoon.org/doc/1698417/> (last visited Mar 26, 2020).

⁸ The law does not compel a man to do what he cannot possibly perform

⁹ Mohammad Gazi v. State of Madhya Pradesh AIR 2000 SC 1806

contemporaneous with the adoption. The Will was declared as not properly executed and the evidence of witnesses was declared as unbelievable. Also, disinheriting wife completely raises suspicion which the defendants have failed to explain. For deciding the issue of whether the third defendant was mentioned in the Will in capacity of adopted son or as Basavanneppa's brother's son, the court relied on two judgments namely Rekapalli Satyanarayanmurthy v. Rekapalli Ramanna¹⁰ and Ranganathan Chettiar v. Periakaruppan Chettiar¹¹. Finally the court came to the conclusion that the Will was made in favour of the third defendant as being the adopted son. Therefore, since the adoption fails, the Will cannot be deemed to be executed. Hence, the High Court upheld the judgment of the lower court and so, dismissed the appeal.

ANALYSIS

Such cases also point that how a woman is subdued easily and her rights are taken away. Therefore, by deciding in favour of the plaintiff wife, the court has taken a great step towards preserving the rights of women and imparting justice to them. Section 7 of HAMA, 1956 is justified in making the provision of consent of wife as mandatory. It is so because adoption actually refers to admission of stranger as own child and granting him/her interest in the property of the adoptive parents. Since a wife has absolute right over her husband's property, therefore, her consent should be kept mandatory for the process of adoption. Therefore, the provision should not be interpreted differently so that the object behind the law is achieved and the principle of equality remains intact. Now, if we apply the principle of 'Lex non cogit ad impossibilia' in the present case, we should understand that when no request was made to the plaintiff, we cannot say that it was impossible and the husband could not move ahead for adoption without the plaintiff's consent.

Talking about the Will, we can say that the genuineness of a Will be identified with the help of trustworthy evidences. The court should consider all the circumstances and probabilities brought out in the evidence. It was pointed out in the case of Kalyan Singh v. Smt. Chhoti¹². It was rightly decided in the case of Ram Piari v. Bhagwant¹³ that 'the finding as to genuineness of Will recorded by the Court by erroneous application of principle of law could be interfered with under Article 136'. Also, when the heirs of equal degree are disinherited without proper reason, then the standard of scrutiny can be raised. Before a document is accepted as the last Will, the court expects it to be

¹⁰ Rekapalli Satyanarayanmurthy v. Rekapalli Ramanna (1958) 2 AWR 50

¹¹ Ranganathan Chettiar v. Periakaruppan Chettiar [1958] 1 SCR 214

¹² Kalyan Singh v. Smt. Chhoti AIR 1990 SC 396

¹³ Ram Piari v. Bhagwant [1990] 1 SCR 813

free from all the suspicions. The propounder has to prove the same. The court in the present case took care of these things.

In the present case, the legally wedded wife was disinherited by the testator without any reason. The defendants said that the testator lived with a mistress. But her name was also not mentioned in the Will. All the evidences like no claim for maintenance by the plaintiff, etc. show that the claim of defendants is not established. After such findings, there arises a doubt on genuineness of the Will. Also, looking carefully at the facts, we can see that in this case where just 2-3 attesting witnesses are required, in actual eight people have attested the document to make sure that it becomes admissible. This shows that the propounders of the Will had intention that the property should not go to the plaintiff. Another point which springs up here is that if the testator had to give the property to brother's son to anyone other than his own son and wife, then why he had to wait till last 45 days of his life. The evidence clearly shows that the testator was not of sound state of mind when the Will was claimed to be executed.

Also, when the Will is not found to be executed and when the suspicious circumstances are not explained, the Will cannot be considered independent of Adoption. This would lead to commission of a major error knowingly. The court has rightly decided that to find out the intention of the testator, the words of the Will have to be carefully read. Keeping this principle in the mind, if we look at the facts of the present case the Will combined with the adoption deed clearly mentioned that since the testator had no successor, he had adopted a son. This clarifies that the testator was willing to give his entire property to the third defendant because of adoption.

CONCLUSION AND SUGGESTIONS

This case has clearly made us understand certain aspects of Adoption and also the Will. Chapter I of HAMA, 1956 mentions some mandatory requirements which have to be fulfilled for considering an adoption as a valid one. Consent of wife and proper ceremony are some essentials.¹⁴ Since in this case, the consent of plaintiff wife was not taken and since there was no proper evidence of adoption ceremony, the adoption was held invalid. Also, the Will executed in this case was not proved. Finally both the Will and the Adoption deed were held to be invalid. This decision is fully satisfactory because if the defendants would have won the case, it would be a great injustice to a woman like the plaintiff who is helpless and on the top of that, a widow. There was clear and

¹⁴ Ashok Kini, [HINDU ADOPTION AND MAINTENANCE ACT] CONSENT OF WIFE, ACTUAL CEREMONY OF ADOPTION ESSENTIAL FOR VALID ADOPTION: SC [READ JUDGMENT] LIVE LAW (2020), <https://www.livelaw.in/top-stories/actual-ceremony-of-adoption-essential-for-valid-adoption-153574> (last visited Mar 26, 2020).

literal interpretation of law. All the points, circumstances and probabilities were appropriately considered by the court. With regards to suggestions, I believe that the court should have ordered for compensation to the plaintiff by the defendants because due to this illogical and unreasonable case, she had to suffer physical and mental strain. If the defendants had to prove their stand, then they must have brought few more essential evidences and clarified all the doubts. This judgment should be used as precedent for further cases so that such false appeals are not filed.