

M.Vanaja vs M.Sarla Devi (Dead) on 6 March, 2020

Equivalent citations: AIR 2020 SUPREME COURT 1293, AIR ONLINE 2020 SC 330

Author: L. Nageswara Rao

Bench: Deepak Gupta, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8814 OF 2010

M. Vanaja Appellant(s)

Versus

M. Sarla Devi (Dead) Respondent(s)

JUDGMENT

L. NAGESWARA RAO, J.

1. The Appellant filed a civil suit for a declaration that she is the adopted daughter of the Respondent and Late Narasimhulu Naidu. She sought for partition of the suit schedule property. The suit was dismissed and the judgment of the trial court was upheld by the High Court of Andhra Pradesh at Hyderabad. Aggrieved by the judgment, the Appellant has filed the above Appeal.

2. O.S. No. 190 of 2004 was filed by the Appellant in the City Civil Court, Hyderabad. It was averred in the plaint that both the natural parents and the Appellant died when she was very young. Her mother is the sister of the original Respondent– M. Sarla Devi (died)- Respondent herein. Appellant pleaded in the suit that she was brought up as the daughter of the Respondent– M. Sarla Devi and her husband Late Narasimhulu Naidu. In the records of School and College, the names of the original Respondent and her husband were entered as the parents of the Appellant. Even in the government records like ration card, etc., the Appellant was mentioned as the daughter of the original Respondent and her husband.

3. Narasimhulu Naidu worked as a Lift Operator in the Andhra Pradesh State Electricity Board (APSEB) and retired on 30.06.1999. In his service record, the Appellant is referred to as his daughter. The Appellant has been nominated in the application for pension of Narasimhulu Naidu. It was the case of the Appellant in the plaint that her adoptive parents initially did not approve the

marriage of the Appellant with the person of her choice, but later arranged a grand reception at Hotel Swagat, Ameerpet, Hyderabad. Narasimhulu Naidu was the absolute owner of a building situated at Srinivas Nagar East, Gayatri Nagar, Ameerpet, Hyderabad. He also purchased certain other properties. Narasimhulu Naidu supplied textile materials and clothes to the employees of the APSEB and the Appellant was looking after the business. Narasimhulu Naidu died intestate on 19.08.2003. According to the Appellant, she along with the Respondent succeeded to the entire estate of Narasimhulu Naidu and that she is entitled to half share of his properties. It was submitted that due to the ill-advice of relatives, the original Defendant- M. Sarla Devi turned against the Appellant and was making an attempt to alienate the properties. As the negotiation for an amicable settlement failed, the Appellant was constrained to file a suit for a declaration that she is the adopted daughter of the original Respondent and Narasimhulu Naidu, and for partition of the properties belonging to Narasimhulu Naidu.

4. The original Respondent filed a written statement in which it was stated that the Appellant is the daughter of her younger sister Manjula. As the Appellant's biological parents died when she was very young, the Respondent and her husband Narasimhulu Naidu brought her up. They ensured that she had good education but the Appellant was never adopted by the Respondent and her husband. As such, it was contended by the Respondent that the Appellant does not have any right in the properties belonging to the Defendant's husband.

5. By a judgment dated 15.09.2006, the City Civil Court dismissed the suit. The principal issues that were framed by the City Civil Court relating to the relief of declaration that the Appellant is the daughter of the Respondent and deceased Narasimhulu Naidu and her right for partition of the suit scheduled properties were answered in favour of the Defendant. Relying upon Sections 7 and 11 of Hindu Adoptions and Maintenance Act 1956 (hereinafter referred to as the 'Act of 1956'), the trial court held that the Appellant could not prove the ceremony of adoption. The High Court dismissed the Appeal filed against the judgment of the trial court. The High Court re-appreciated the evidence on record and held that except the statement of the Appellant that she was adopted by the Respondent and (Late) Narasimhulu Naidu, there is no other evidence to show that the actual adoption took place in accordance with the procedure prescribed in the Act of 1956. The evidence that was adduced on behalf of the Appellant was brushed aside by the High Court which held that the Appellant cannot succeed unless she proves the adoption took place in accordance with the provisions of the Act of 1956.

6. We have heard Mr. Kedar Nath Tripathy, learned counsel appearing for the Appellant and Mr. T.V. Ratnam, learned counsel appearing for the Respondent. The learned counsel for the Appellant strenuously submitted that there is overwhelming evidence brought on record to show that the Appellant was treated as the daughter of Narasimhulu Naidu and the Respondent husband for all practical purposes. He relied upon the School and College records apart from service record of Narasimhulu Naidu in support of his submission. He stated that it is not possible for the Appellant to prove the manner in which the adoption took place as she was very young at that time. He relied upon the judgment of this Court in L. Debi Prasad (Dead) by Lrs. v. Smt. Tribeni Devi & Ors.¹ to argue that the subsequent events can be taken into account for the purpose of proving adoption.

7. Learned counsel for the Respondent urged that the mandatory requirement of proving the factum of adoption under Sections 7 and 11 of the Act of 1956 has not been complied with by the Appellant. He argued that there is no pleading in the plaint regarding the particulars regarding the ceremony of giving and taking over. Any amount of evidence without the actual adoption being proved cannot assist the Appellant in 1 (1970) 1 SCC 677 getting relief. He also relied upon the evidence of the grand-mother (PW-3) of the Appellant i.e. mother of the Respondent, who also supported the case of the Respondent and deposed in Court that the Appellant was never adopted.

8. The undisputed facts of this case are that the Appellant is the daughter of the original Defendant's sister. The parents of the Appellant died when she was very young. As the Appellant was very young, she was brought by her grand-mother and given to the Respondent and her husband to be taken care of. The Appellant was brought up by the Respondent and her husband, Narasimhulu Naidu. The School and College records and other documents that were filed in Court by the Appellant would show that the Respondent and her husband were shown as the parents of the Appellant. Eventually, the Appellant married and started living separately. After the death of Narasimhulu Naidu, the Respondent was residing in the suit schedule property and was in enjoyment of the properties of Narasimhulu Naidu. The request made by the Appellant for partition of the properties was turned down by the Respondent leading to the filing of the Civil Suit.

9. The only points that arises for our consideration are whether the Appellant has proved that she has been adopted by the Respondent and Respondent's husband, whether she is entitled to a declaration that she is the daughter of the Respondent and Narasimhulu Naidu, and whether the Appellant is entitled to partition of the properties belonging to Narasimhulu Naidu.

10. Section 6 of the Act of 1956, prescribes the pre- requisites for a valid adoption, which are :-

“6 Requisites of a valid adoption – No adoption shall be valid unless –

(i) the person adopting has the capacity, and also the right, to take in adoption,

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter”

11. Section 7 provides that the male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. The consent of his wife has been made mandatory by the proviso to Section 7. Section 9 deals with persons who are capable of giving a child in adoption. The other conditions for a valid adoption are stipulated in Section 11 of the Act of 1956. One such condition is 11 (6) which is as under:-

“11. Other conditions for a valid adoption.

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(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of his birth (or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up) to the family of its adoption:

Provided that the performance of data homam shall not be essential to the validity of adoption”

12. A plain reading of the above provisions would make it clear that compliance of the conditions in Chapter I of the Act of 1956 is mandatory for an adoption to be treated as valid. The two important conditions as mentioned in Sections 7 and 11 of the Act of 1956 are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption. The Appellant admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption. Admittedly, there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. That apart, the Respondent who is the adoptive mother has categorically stated in her evidence that the Appellant was never adopted though she was merely brought up by her and her husband. Even the grand- mother of the Appellant who appeared before the Court as PW-3 deposed that the Appellant who lost her parents in her childhood was given to the Respondent and her husband to be brought up. PW 3 also stated in her evidence that the Appellant was not adopted by the Respondent and her husband. Therefore, the Appellant had failed to prove that she has been adopted by the Respondent and her husband Narasimhulu Naidu.

13. The Appellant relied upon a judgment of this Court in L. Debi Prasad (Dead) by Lrs. (supra) to submit that abundant evidence submitted by her before Court would point to the fact that she was brought up as the daughter of the Respondent and her husband (Late) Narasimhulu Naidu. Such evidence can be taken into account to draw inference that she was adopted by them. The facts in L. Debi Prasad (Dead) by Lrs. (supra) case are similar to those in the instant case. In that case, Shyam Behari Lal was adopted by Gopal Das in the year 1892 when he was an infant. Shyam Behari Lal was unable to establish the actual adoption but has produced considerable documentary evidence to show that he was treated as the son of Gopal Das for a quarter of century. This Court accepted the submission of Shyam Behari Lal and held that there was sufficient evidence on record to infer a valid adoption. Though the facts are similar, we are unable to apply the law laid down in L. Debi Prasad (Dead) by Lrs. (supra) to the instant case. L. Debi Prasad (Dead) by Lrs. (supra) case pertains to adoption that took place in the year 1892 and we are concerned with an adoption that has taken place after the Act of 1956 has come into force. Though the Appellant has produced evidence to show that she was treated as a daughter by (Late) Narasimhulu Naidu and the Defendant, she has not been able to establish her adoption. The mandate of the Act of 1956 is that no adoption shall be valid unless it has been made in compliance with the conditions mentioned in Chapter I of the Act of 1956. The two essential conditions i.e. the consent of the wife and the actual ceremony of adoption have not been established. This Court by its judgment in Ghisalal v. Dhapubai (Dead) by Lrs. & Ors.2 held that the consent of the wife is mandatory for proving adoption.

14. In view of the aforementioned facts and circumstances, we find no error in the judgment of the High Court. Therefore, the Appeal is dismissed.

.....J. [L. NAGESWARA RAO]J. [DEEPAK GUPTA] New
Delhi, March 06, 2020.

2 (2011) 2 SCC 298