IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 13 OF 1994

Nivritti Pandurang Nale
Age 44 years, Occupation:
Agriculture, Resident of Vidani,
Taluka Phaltan, District: Satara .....Appellant

Vs.

1. Uttam Ganu Nale
Age 42 years

2. Kantilal Ganu Nale
Since Decd. Thr. LRS

2A Samita Kantilal Nale

2BYavlesh Kantilal Nale

2C Baye Kantilal Nale

All: adult, All R/o At post: Vidani,
Taluka: Phaltan, District: Satara .....Respondents

Mr. V. S. Talkute Advocate for the Appellant
Mr. Ajit Kenjale a/w Mr. Suraj Bansode, Mr. Sohil Gulabani and Mr. Kaustubh Kandpile for the respondents

CORAM : GAURI GODSE, J.

RESERVED ON : 12th DECEMBER 2024

PRONOUNCED ON: 8th APRIL 2025

JUDGMENT:

1. This appeal is preferred by defendant no. 2 to challenge the

judgment and decree passed by the first Appellate Court allowing the plaintiffs' appeal. The trial court had dismissed the suit for partition and separate possession. However, in an appeal preferred by the plaintiffs, the suit is decreed against defendant no. 2, thereby declaring that plaintiff nos. 1 to 3 and defendant no. 2 have 1/4th share each in the suit property. Hence, this appeal by defendant no. 2.

2. The second appeal is admitted vide order date 21st February 1994 on the following substantial questions of law:

> *"(1) Whether Defendant no. 2 was the adopted son of Pandurang?*
>
> *(2) What is the legal effect of writing of adoption dated 18th July 1985 Exhibit 62 executed by the adoptive mother?*
>
> *(3) Whether the finding of the First Appellate Court to the effect that the defendant no. 2 was not the adopted son of Pandurang is perverse?"*

Basic facts:

3. The parties are Gopala's heirs and legal representatives. Gopala had two sons, Ganu, who died on 25th December 1953 and Pandurang, who died on 26th March 1978. The plaintiff no. 3 is Ganu's

wife, and plaintiff nos. 1, 2 and defendant no. 2 are sons of Ganu and plaintiff no. 3. Defendant no. 1 is Pandurang's wife. Pandurang and defendant no. 1 had no issues. Defendant no. 2, i.e. Nivrutti, biological son of Ganu and plaintiff no. 3 claims that Pandurang and defendant no. 1 adopted him. The plaintiffs claim that the suit properties are tenanted properties originally cultivated by Gopala. Defendants claimed that the suit properties were self-acquired by Pandurang, as he was a tenant in respect of the suit properties. Defendant no. 2 claims that he, being the adopted son of Pandurang and defendant no. 1, is exclusively entitled to the ownership of the suit property after the death of defendant no. 1.

4. The plaintiffs claim that the suit properties are ancestral joint family properties. They claim 1/4th share in the suit property as Pandurang and defendant no. 1 died issueless, and thus, plaintiffs nos. 1 to 3 and defendant no. 2, being heirs of Ganu, were entitled to 1/4th share each. The trial Court dismissed the suit by holding that the suit properties belonged to Pandurang and defendant no. 2, being the adopted son of defendant no. 1, was entitled to the suit properties. The first Appellate Court reversed the trial Court's findings and disbelieved Defendant no. 2's claim of being the adopted son of Pandurang and

defendant no. 1. Defendant no.1 died pending the suit. Hence, the plaintiffs and defendant no. 2 are held entitled to equal shares.

Submissions on behalf of the appellant (defendant no. 2):

5. The submissions on behalf of the appellant are summarised as follows:

(a) Defendant no. 2's adoption had already taken place during the lifetime of Pandurang. After Pandurang's death, defendant no. 1 executed an adoption deed and confirmed the adoption that had already taken place during the lifetime of Pandurang. The adoption deed was admitted and marked as Exhibit 62 by accepting the oral evidence of the defendant's witness no. 3 Janabai. Janabai had witnessed the adoption that had already taken place during Pandurang's lifetime. Hence, the adoption was validly proved as taken place during the lifetime of Pandurang, which was confirmed by defendant no. 1 by executing the adoption deed.

(b) The adoption had taken place 30 years prior to the recording of evidence of Janabai. Hence, the narration of the adoption process as deposed by Janabai may not have been accurate,

but the oral evidence supports defendant no. 2's contentions that adoption had taken place during the lifetime of Pandurang. All the documents produced on record indicated that defendant no. 2's name was recorded on all the documents as the adopted son of Pandurang. The suit was filed for partition without any challenge to the adoption deed of defendant no. 2. In view of section 16 of The Hindu Adoption and Maintenance Act, 1956 ('Adoption Act') there was a presumptive value to the valid adoption deed executed and registered by defendant no. 1.

(c) Defendant no. 2's biological mother, i.e. plaintiff no. 3 and his biological brothers, plaintiff nos. 1 and 2, had abandoned defendant no. 2 in 1953, and thus, he was adopted by defendant no. 1 and Pandurang. Plaintiff no. 3, the biological mother of defendant no. 2, did not step into the witness box to deny the adoption theory pleaded by defendant no. 2 and supported by the oral evidence of Janabai. The substantive oral evidence of Janabai could not have been ignored or discarded in view of the presumptive value under section 16 of the Adoption Act. Thus, the oral evidence of Janabai and the execution of the adoption deed by defendant no. 1 support defendant no. 2's contention

that Pandurang and defendant no. 1 validly adopted him. If the adoption is not accepted as valid, three sons of Ganu would be entitled to 1/3rd share each.

(d) In view of the ceremony performed of giving and taking during the lifetime of Pandurang supported by the adoption deed executed by defendant no. 1; defendant no. 2 was a validly adopted son of Pandurang and defendant no. 1. Thus, defendant no. 1 was entitled to claim exclusive rights being the only son of Pandurang and defendant no. 1. The suit property was purchased by Pandurang, which was confirmed by issuance of the certificate under section 32M of The Maharashtra Tenancy and Agricultural Lands Act, 1948 ('Tenancy Act') on 25th May 1971. The certificate under section 32M indicated the exclusive right of Pandurang, and thus, in view of defendant no. 2's adoption by Pandurang and defendant no. 1, the suit property exclusively devolved upon defendant no. 2.

(e) In view of section 10 of the Adoption Act, the adoption process performed 30 years ago could not have been disbelieved because it was in non-compliance with the provisions of section 11 (iv) of the Adoption Act.

(f) Apart from Janabai's oral evidence and the adoption deed executed by defendant no. 1, defendant no. 2 produced various documents to support his submissions that the adoption was acted upon. Defendant no. 2’s name was entered in the record as the adopted son of Pandurang and defendant no. 1.

(g) The subsequent deed executed by defendant no. 1 supported defendant no. 2’s contention about the valid process performed for adoption by Pandurang. Thus, the presumption of valid adoption is supported by executing the adoption deed in compliance with the provisions of the Adoption Act. In view of the confirmation of the adoption by Pandurang by executing the adoption deed by defendant no. 1, coupled with the oral evidence of Janabai, according to the learned counsel for the appellant, the consent of the biological parents could be rightly inferred. Subsequent execution of the adoption deed supported by oral evidence from Janabai was sufficient to infer consent from the biological parents for the adoption of defendant no. 2 during the lifetime of Pandurang. Once the two important conditions are fulfilled regarding the consent of the biological parents and proof of the ceremony performed of actual giving

and taking in adoption, the adoption can be held as a valid adoption in view of sections 7 and 11(vi) of the Adoption Act.

(h) The legal principles settled by the Hon'ble Apex Court in the case of ***L. Debi Prasad (Dead) by LRS Vs. Smt. Tribeni Devi and Others***[1] are relied upon by the learned counsel for the appellant to support his submissions that the evidence of the persons witnessing the process of adoption can be accepted if the essential requirements of the valid adoption are pleaded and proved by the person claiming the right based on the adoption. He relied upon the decision in the case of ***Kamla Rani Vs. Ram Lalit Rai Alias Lalak Rai (Dead) through legal representatives and others***[2] to support his submissions that the oral evidence supporting the performance of the basic requirements of valid adoption can be accepted in support of the valid adoption.

(i) In the absence of any document of valid adoption, the supporting evidence can be considered, which would indicate that the adoption was acted upon and, accordingly, the adopted child was accepted as the child of the adoptive parents, as indicated in supporting documentary evidence led by the person claiming

1 (1970) 1 Supreme Court Cases 677
2 (2018) 9 Supreme Court Cases 663

valid adoption. The performance of the requirements of the valid adoption is supported by the oral evidence that shows that defendant no.2 was accepted as the adopted son of Pandurang and defendant no. 1. To support his submissions, learned counsel for the appellant relied upon the decision of this court in the case of ***Gangadhar @ Dewaji Paraye Vs Vasant*** [3].

(j) The trial court correctly appreciated Janabai's oral evidence to believe the valid adoption. The legal principles settled by the Hon'ble Apex Court in the case of ***Jagdish Singh vs. Madhuri Devi***[4] were relied upon by the learned counsel for the appellant to support his submissions that the evidence led by Janabai was erroneously disbelieved by the first Appellate Court.

(k) Thus, according to the learned counsel for the appellant, the legal effect of the adoption deed executed by the adoptive mother, i.e. defendant no. 1, the suit property would devolve upon defendant no. 2, and the plaintiffs would not be entitled to seek any share in the suit property. Thus, the questions of law must be answered in favour of the appellant.

6. Learned counsel for the respondents supported the impugned

3 2008 SCC Online Bom 556
4 (2008) 10 Supreme Court Cases 497

judgment and decree. His submissions are summarised as follows:

(a) The suit property was an ancestral joint family property, as Gopala was the original tenant. The certificate under section 32M issued in the name of Pandurang was on behalf of the joint family, and thus, it would not confer any exclusive right on Pandurang or defendant nos. 1 and 2. No material particulars regarding the alleged adoption process performed by Pandurang is pleaded and proved by defendant no. 2. The attesting witness, Janabai examined by defendant no. 2, did not support the adoption during the lifetime of Pandurang. The evidence produced on record does not support the important condition of giving by biological parents and taking by the adoptive parents.

(b) If the document executed by defendant no. 1 was to be considered, then it was not in compliance with the provisions of the Adoption Act. Defendant no. 2 cannot be said to be a person capable of taking in adoption in view of section 10 of the Adoption Act. Thus, in the absence of evidence to prove the valid adoption during the lifetime of Pandurang, execution of the adoption deed by defendant no. 1 would not validate the alleged adoption during the lifetime of Pandurang. In the event the

adoption alleged to have taken place during the lifetime of Pandurang is not accepted as valid adoption, the deed executed by defendant no. 1 would not validate the earlier adoption as the deed is not in conformity with the provisions of the Adoption Act. To support the submissions on Section 10 of the Adoption Act, the learned counsel for the respondents relied upon the decision of this Court in the case of ***Nemichand Shantilal Patni Vs. Basantabai w/o Nemichand Phade***[5].

(c) Learned counsel for the respondents relied upon the decision of the High Court of Orissa in the case of ***Raghunath Beheri Vs. Balaram Behera***[6]. He submitted that the High Court of Orissa held that if the earlier adoption was not proved, the document acknowledging the earlier adoption could not be accepted if the conditions under the Adoption Act were not satisfied.

(d) The documents produced on record by the defendants to support adoption cannot be accepted as valid proof in the absence of other cogent evidence to show that defendant no. 2 was adopted son of Pandurang and defendant no. 1. To support his submissions on the documents produced to prove valid adoption,

5 1994 Mh.L.J. 1078
6 1996 0 AIR(Ori) 38

learned counsel for the respondents relied upon the legal principles settled by the Hon'ble Apex Court in the case of ***Nilima Mukherjee Vs. Kanta Bhushan Ghosh***[7].

(e) The mere registration of an adoption deed cannot raise the presumption under Section 16 of the Adoption Act without the essential requirement of the give and take. To support his submissions that the presumption is rebuttable, the learned counsel for the respondents relied upon the decision of the Hon'ble Apex Court in the case of ***Jai Singh Vs. Shakuntala***[8].

(f) The consent of biological parents is a must for a valid adoption. Learned counsel for the respondents relied upon the legal principles settled by the Hon'ble Apex Court in the case of ***Ghisalal Vs. Dhapubai (Dead) by LRs and Ors***[9]. In the present case, the defendants failed to plead and prove the consent of the biological parents, which is an essential ingredient of a valid adoption.

(g) The learned counsel for the respondents relied upon the decisions of the Hon'ble Apex Court in the case of ***M Vanaja vs.***

7 (2001) 6 Supreme Court Cases 660
8 (2002) 3 Supreme Court Cases 634
9 (2011) 2 Supreme Court Cases 298

M. Sarla Devi(dead)[10] and in the case of *Lakshman Singh Kothari Vs Rup Kanwar*[11] to support his submissions that the first appellate court rightly disbelieved the adoption theory in the absence of consent of the biological parents and proof of a ceremony of give-and-take.

(h) The burden to prove valid adoption is on the defendants as the ordinary course of succession is deflected. To support his submissions, learned counsel for the respondents relied upon the decision of the Orissa High Court in the case of *Krushna Chandra Sahu Vs Pradipta Das*[12].

(i) Therefore, in the absence of evidence to indicate the performance of the adoption ceremony during the lifetime of Pandurang, a subsequent document executed by defendant no. 1 would not be sufficient to hold that defendant no. 2 was adopted by Pandurang during his lifetime. Therefore, the first Appellate Court rightly disbelieved the adoption theory and, thus, granted 1/4th share to the plaintiffs and defendant no. 2.

(j) Pandurang and defendant no. 1 died issueless; hence, the first Appellate Court has rightly determined the shares of the parties.

10 2020(5) Mh.L.J. 507
11 AIR 1961 SC 1378
12 1982 (0) AIR (Ori) 114

Thus, the questions of law must be answered in favour of the plaintiffs.

Consideration of submissions and analysis:

7. The trial Court accepted defendant no. 2 as the validly adopted son of Pandurang and defendant no. 1. Thus, defendant no. 2 was accepted as the only heir and legal representative of Pandurang and defendant no. 1. In view of the certificate under section 32M issued in the name of Pandurang, and the sale deeds in his name he was alone held entitled to the suit property. In the absence of evidence to support the plaintiffs' contention that Pandurang had acted as Karta or manager of the joint family, the suit property was held to be the exclusive property of Pandurang. Thus, the trial Court held that in view of the adoption of defendant no. 2, the suit property devolved upon defendant no. 2 exclusively after the death of Pandurang and defendant no. 1.

8. The first Appellate Court disbelieved defendant no. 2's theory of adoption. Defendant no. 2's pleading that he was adopted during the lifetime of Pandurang was disbelieved for want of any evidence. The oral evidence led by Janabai was disbelieved as oral evidence did not

support the basic ingredients for valid adoption. The first appellate court held that no evidence supports the basic ingredients of giving and taking; hence, disbelieved the theory of adoption during the lifetime of Pandurang. The subsequent adoption deed executed by defendant no. 1 was not accepted as a valid adoption for want of any compliance under the provisions of the Adoption Act. The presumption under section 16 was not accepted in the facts of the present case as the adoption deed was executed only by defendant no. 1, and the documents relied upon by defendant no. 2 were not accepted as valid documents to indicate that defendant no. 2 was treated as adopted son of Pandurang and defendant no. 1.

9. The first Appellate Court held that the evidence on record showed that till 1979, plaintiffs were residing in the village Late. The first Appellate Court further held that the suit property might have been acquired by Ganu and Pandurang jointly, but as the family members of Ganu were residing in another village, the possession of the property was with the defendants. The first Appellate Court recorded reasons for disbelieving the theory of adoption. Hence, the first appellate court held that after the death of defendant no. 1, the plaintiffs and defendant no. 2 shall get an equal share. Therefore, the first appellate

court decreed the suit granting 1/4th share each to the plaintiffs and defendant no. 2.

10. I have perused the record and proceedings. The plaintiffs claim that the suit property is an ancestral property of Gopala. Admittedly, Gopala had only two sons, Ganu and Pandurang. There is no dispute that plaintiff no. 3 is Ganu's widow, and plaintiff nos. 1, 2 and defendant no. 2 are sons of Ganu and plaintiff no. 3. Admittedly, Pandurang and his wife, defendant no. 1, had no children. Hence, according to the plaintiffs, they and the defendants will get an equal share in the suit property. The defendants claimed that defendant no. 2 is the adopted son of Pandurang, and defendant no. 1. Defendants further claimed that the suit properties are self-acquired properties of Pandurang. Hence, the plaintiffs will not get any share.

11. In the written statement of defendant no. 1, she pleaded that there was a partition between Ganu and Pandurang around ten to twelve years before Ganu's death. She pleaded that some of the suit properties were purchased by Pandurang after the partition. She, thus, admitted that there was an ancestral joint family property. She also admitted that there was no evidence to support the partition. However,

she pleaded that after the death of Ganu on 25th December 1953, plaintiff no. 3, along with plaintiff nos. 1 and 2, started residing in her maternal village. She further pleaded that defendant no. 2, the eldest son of Ganu and plaintiff no.3 was four years old when Ganu died. However, defendant no. 2 resided along with her and Pandurang after Ganu's death. She, thus, pleaded that the plaintiffs were not residing in the village and the entry of plaintiff no. 3's name in some of the properties was a hollow entry. Defendant no. 1 further pleaded that she and Pandurang adopted defendant no. 2.

12. Though there was controversy on whether the suit properties were ancestral joint family properties or independent properties of Pandurang, the first appellate court held that the real controversy to be decided was about the adoption. The first appellate court held that the properties might have been purchased jointly by Pandurang and Ganu. However, the first appellate court did not reverse the trial court's findings, holding that the defendants proved partition and separate possession of ancestral property and thus refused to grant partition. The trial court also accepted that after partition, Pandurang acquired the suit properties. In the present appeal, nothing is shown on behalf of the respondents to support their contentions that the suit properties

are ancestral joint family properties. Thus, the question to be decided in this appeal is the plea of adoption and whether the plaintiffs would be entitled to partition, and if yes, they would be entitled to what share. Defendant no. 1 expired pending the suit. Plaintiff no. 3 expired pending this appeal. Thus, if the adoption is disbelieved, the determination of shares must be decided.

13. The questions framed to be decided in this second appeal are about the validity of the adoption theory claimed by the defendants. Though the defendants relied upon the adoption deed executed after the Adoption Act came into force, there is no clarity in the defendants' theory of adoption as to whether the adoption took place prior to coming into force of the Adoption Act or whether the provisions of the Adoption Act govern the adoption. However, it is argued on behalf of the appellant that the adoption took place during the lifetime of Pandurang, and defendant no.1 executed the adoption deed to confirm the adoption that had already taken place. A perusal of the pleadings and the evidence on record indicates that the relevant dates are not disputed. Ganu died on 25th December 1953. Pandurang died on 26th March 1978. The adoption deed relied upon by the defendants is dated 18th July 1985. According to defendant no. 1's pleadings, when

Ganu died, defendant no. 2 was four years old, and he was adopted during the lifetime of Pandurang. However, material particulars about the exact year or date of adoption are neither pleaded nor proved.

14. The adoption deed dated 18th July 1985 records that defendant no. 2 was adopted twenty five years back; thus, it has to be sometime in 1960. The adoption deed further records that Ganu gave defendant no. 2 in adoption. However, there is no dispute that Ganu died in 1953. Therefore, it cannot be believed that defendant no. 2 was given in adoption by his biological father, Ganu. It is not the defendant's case that plaintiff no.3, who is the biological mother of defendant no. 2, anytime gave him in adoption. Thus, even if the defendants' pleadings and evidence are accepted, there is nothing to indicate that there was giving by the biological parents and taking by the adoptive parents of defendant no. 2 in adoption, which is an essential ingredient of a valid adoption.

15. None of the documents on record indicate that defendant no. 2's name was entered as Pandurang's adopted son during Pandurang's lifetime. Even the oral evidence relied upon by the defendants does not reveal whether the adoption was during the lifetime of Ganu or

whether, after Ganu's death, the biological mother gave defendant no. 2 in adoption. Thus, the mere execution of the adoption deed cannot be accepted as valid proof to support the adoption theory. In the decision of the Hon'ble Apex Court in the case of ***L. Debi Prasad***, defendant no. 1 therein was neither able to establish the custom pleaded by him nor was able to prove actual adoption by adducing satisfactory evidence; however, considerable evidence was produced to prove that for a quarter of a century, he was treated as an adopted son. Hence, the Hon'ble Apex Court held that in judging whether an adoption pleaded has been satisfactorily proved or not, the lapse of time between the date of the alleged adoption and the date on which the concerned party is required to adduce proof has to be considered as an important aspect.

16. Even in the decision of ***Kamla Rani***, there was ample evidence produced to show that the party claiming adoption was treated as the adopted child. In the present case, the material particulars of the actual adoption are not pleaded, and there are discrepancies between the pleadings and the contents of the adoption deed. Thus, in the absence of the material pleadings, the oral evidence would not be of any assistance. Hence, the legal principles in the decisions of ***L. Debi***

Prasad and *Kamla Rani* would not be of any assistance to the appellant's arguments.

17. In the decision of this court in the case of *Gangadhar Paraye*, there was sufficient evidence to show that adoption had taken place; hence, this court held that if the words "giving and taking" are not stated while tendering evidence, it would be enough if it is proved that natural parents have given the child in adoption and the adoptive parents have taken the child. However, in the present case, it is neither pleaded nor proved that the natural parents had given the child in adoption. Hence, even the legal principles in the case of *Gangadhar Paraye*, are not of any assistance to the appellant.

18. The appellant relied upon the oral evidence of Janabai and Chandrabai to show that adoption had already taken place during Pandurang's lifetime. It was submitted that their evidence was disbelieved on the erroneous ground that the admissions given by them in cross-examination falsified their case. It was submitted that due to a lapse of time of around thirty years, the witness to the actual adoption is not expected to give accurate details. It was further submitted that the trial court had the occasion to appreciate the

demeanour of the witnesses and their evidence to believe the adoption theory; however, the first appellate court reversed the finding without valid reasons. Learned counsel for the appellant, therefore, relied upon the decision of the Hon'ble Apex Court in the case of ***Jagdish Singh*** and submitted that the Apex Court held that the appellate court needs to apply mind to the reasons recorded by the trial court and then record cogent and convincing reasons to disagree with the trial court, as the appeal court has no advantage of seeing and hearing the witness. In the present case, in the absence of any particular pleadings and proof of the essential ingredient of giving in adoption by the biological parents and taking by the adoptive parents, the first appellate court has rightly disbelieved the oral evidence. In view of the different facts of the present case, the legal principles settled in the decision of ***Jagdish Singh*** would not be applicable.

19. It is necessary to refer to the relevant provisions of the Adoption Act. In view of Section 6, no adoption shall be valid unless the person adopted is capable of being adopted and the adoption is made in compliance with the other conditions mentioned in Chapter II. Clause (iv) of Section 10 is relied upon by the learned counsel for the respondents to point out that a person who has completed the age of

fifteen shall not be capable of being taken in adoption unless there is a custom or usage applicable to the parties that permit such adoption. This said clause is relied upon by the learned counsel for the respondents as on the date of execution of the adoption deed, defendant no. 2 was thirty years old. Hence, it is contented on behalf of the respondents that defendant no. 2 was not capable of giving in adoption. In my opinion, the said clause is not relevant to the facts of the present case, in as much as the appellant contends that the deed of adoption was executed by defendant no. 1 to confirm the adoption that had already taken place during the lifetime of Pandurang. Hence, defendant no.2's age on the date of execution of the adoption deed is not relevant to decide the validity of the plea of adoption in the present case.

20. However, Section 11(vi) provides that the child to be adopted must be actually given in adoption by the parents with the intent to transfer the child from the family of his birth to the family of his adoption and has to be taken in adoption by the family of his adoption. In the present case, it is not pleaded and proved that biological parents gave defendant no. 2 in adoption. The adoption deed dated 18th July 1985 relied upon to support the plea of adoption during the lifetime of

Pandurang, records that adoption took place twenty five years back. Thus, it must be sometime in 1960. There is no dispute that Ganu, the biological father of defendant no. 2 died on 25th December 1953. Hence, the contention that defendant no. 2 was given in adoption by Ganu is not believable. Thus, in the absence of any pleading and proof that defendant no. 2 was given in adoption by his biological father with the consent of the biological mother and that he was taken in adoption by Pandurang and defendant no. 1, the plea of adoption cannot be accepted as a valid adoption. Hence, in view of non-compliance with clause (vi) of Section 11 read with Section 6 (iv) the adoption cannot be accepted as a valid adoption.

21. The Hon'ble Apex Court, in the decision of ***M. Vanja***, held that if the important condition of proof of actual giving and taking in adoption is not satisfied, the adoption cannot be held to be valid. Thus, in view of Section 6 (iv) read with Section 11(vi) of the Adoption Act, if the condition of actually giving in adoption by the biological parents with the intent to transfer the child from the family of his birth to the family of his adoption is not proved, the plea of valid adoption cannot be accepted. In the present case, there is nothing pleaded and proved that the biological parents had given him in adoption. Thus, executing

the adoption deed cannot be accepted as a valid adoption. In the absence of any particulars about the prior adoption in compliance with the essential ingredients of a valid adoption, the adoption theory is rightly disbelieved by the first appellate court.

22. The Hon'ble Apex Court, in the decision of ***Lakshman Singh Kothari***, held that the nature of the ceremony of adoption may vary depending upon the circumstances of each case, but for a valid adoption, there has to be a ceremony of giving and taking of the child in adoption. The decision in the case of ***Lakshman Singh Kothari*** is followed by the High Court of Orissa in the case of ***Krushna Chandra Sahu,*** and it is held that the burden of establishing that there was a valid adoption that deflected the ordinary course of succession is on the party who pleads the case of adoption. In the present case, the ceremony of giving in adoption by the biological parents is not proved. The defendants opposed the partition on the grounds that there was a prior partition, between Pandurang and his only brother Ganu, and the suit properties were self-acquired by Pandurang. Admittedly, Pandurang and defendant no. 1 had no biological children. Thus, after the death of Pandurang and defendant no. 1, the plaintiffs and defendant no. 2 would be entitled to inherit the properties, even if the

properties are held to be self-acquired by Pandurang. Thus, the ordinary course of succession would be deflected only if the valid adoption of defendant no. 2 by Pandurang and defendant no.1 is proved. Thus, in the facts of the present case, the burden to prove the valid adoption by giving by the biological parents and taking by the adoptive parents is upon the defendants, which they failed to prove. Hence, the legal principles settled by the Hon'ble Apex Court in the decision of ***Lakshman Singh Kothari*** and the legal principles settled in the case of ***Krushna Chandra Sahu*** are applicable in favour of the respondents' arguments.

23. The legal principles settled by the Hon'ble Apex Court in the decision of ***Lakshman Singh Kothari***, are followed in the decision of ***Nemichand Patni***, by this court. This court was dealing with the arguments on the difference in the age of the adoptive mother and the adopted son, less than 21 years, as a breach of the conditions for a valid adoption as envisaged in Section 11 (iv) of the Adoption Act, in the absence of proof of a prevailing custom. This Court was also dealing with the breach of the condition of clause (vi) of Section 11, which mandates actual giving and taking in adoption by the parents with intent to transfer the child from the family of his birth to the family

of his adoption. This court held that only the proviso regarding the performance of *datta homan* is provided to be not essential for a valid adoption. Thus, this court held that the actual giving and taking is essential for a valid adoption, in view of Section 11 (vi) of the Adoption Act. Thus, even these legal principles are applicable in the present case to hold that in the absence of proof of giving and taking, the adoption theory is rightly disbelieved by the first appellate court.

24. The Hon'ble Apex Court, in the decision of ***Nilima Mukherjee***, followed the legal principles settled in the decision of ***L. Debi Prasad*** and ***Lakshman Singh Kothari*** and held that the plea of adoption could not be accepted based on the production of some documents to prove the adoption if the party claiming adoption fails to prove giving and taking.

25. The Hon'ble Apex Court, in the decision of ***Ghisalal***, was dealing with the validity of adoption in the absence of consent by the wife of the alleged adoptive father, as contemplated under Section 7 of the Adoption Act. In the case of ***Raghunath Beheri,*** the Orissa High Court was dealing with the issue of whether a reference of adoption in a gift deed can be considered to support a valid adoption. Thus, these

decisions relied upon by the learned counsel for the respondents are not relevant to decide the controversy in the present case.

26. Only because the adoption deed is a registered document it cannot be accepted as having presumptive value under Section 16. The presumption under Section 16 is applicable only if the document records the particulars of the adoption made and it is signed by the person giving and the person taking the child in adoption. In the present case, admittedly, the document is not signed by the person giving in adoption. On the date of the adoption deed, the biological mother was alive; thus, in the absence of her signature, the presumption under Section 16 shall not be applicable. Thus, in the facts of the present case, the presumption under Section 16 would not assist the appellant's arguments. The Hon'ble Apex Court, in the decision of ***Jai Singh***, held that the presumption under Section 16 is rebuttable, and the wording in the document itself may give a cause for suspicion and should be carefully examined. I have already recorded findings on the contents of the adoption deed. There are discrepancies in the pleadings and the contents of the adoption deed. The contents of the adoption deed create serious doubt on the adoption theory. In view of the contents of the documents, it appears that according to the

defendants, adoption had taken place sometime in 1960, i.e. after Ganu's death. Hence, it cannot be believed that Ganu had consented to the adoption. The consent by plaintiff no. 3, i.e. the biological mother, is not even pleaded. Section 9 of the Adoption Act provides that the biological father or mother can give the child in adoption with the consent of the other. The adoption deed does not record the give and take of the child in adoption. The document is admittedly not signed by plaintiff no.3. Hence, the legal principles settled by the Hon'ble Apex Court regarding rebuttal of the presumption are squarely applicable in the present case.

27. Thus, in view of the well-established legal principles as discussed above, the defendants' plea of adoption of defendant no. 2 by Pandurang and defendant no. 1 is correctly disbelieved by the first appellate court. In the absence of proof of valid adoption, satisfying the essential condition of giving and taking as discussed above, defendant no.2 cannot be said to be the adopted son of Pandurang. For the reasons recorded above, the adoption document dated 18th July 1985 executed by defendant no. 1 would neither have any legal effect to support the plea of adoption by Pandurang nor will it have any legal effect to hold that defendant no. 1 validly adopted defendant no. 2.

Thus, defendant no. 2 would have no exclusive right in the suit properties on the ground that he is the adopted son of Pandurang and defendant no.1. I have already held that the first appellate court has not reversed the trial court's findings in accepting the defendants' case of prior partition and acquisition of the properties by Pandurang after the partition. In this appeal, the respondents failed to substantiate their contention that the suit properties are ancestral joint family properties. Hence, the suit properties cannot be accepted as ancestral joint family properties. The adoption plea of defendant no. 2 is not accepted. Therefore, irrespective of the properties being ancestral joint family properties or self-acquired by Pandurang, the suit properties would not devolve upon defendant no. 2 exclusively. Pandurang and defendant no. 1 admittedly had no biological children. Hence, after the death of Pandurang, the property would devolve upon defendant no. 1, his widow, in view of Section 8 of the Hindu Succession Act 1956 read with the Schedule, being the only Class I heir. Upon the death of defendant no.1, the properties would devolve upon plaintiffs nos. 1 and 2 and defendant no. 2 equally, in view of clauses (a) and (b) of sub-section (1) and clause (b) of sub-section (2) of Section 15 read with Section 16 and the entry IV(1) of Class II of the Schedule of the Hindu

Succession Act 1956, as they are the only surviving heirs of Pandurang and defendant no. 1. Hence, the impugned decree of partition granting 1/4th share each to the plaintiffs and defendant no. 2 needs to be modified to the extent of determination of shares.

28. Thus, for the reasons recorded above, all the questions of law are answered in favour of the respondents. However, the second appeal is partly allowed only to the extent of determining shares. The second appeal is, therefore, partly allowed by passing the following order:

(a) The judgment and decree dated 25 August 1993 passed by the learned Additional District Judge, Satara, in Regular Civil Appeal No. 139 of 1988, is modified only to the extent of determining shares.

(b) It is declared that plaintiffs nos. 1 and 2 and defendant no. 2 are entitled to 1/3rd share each in the suit properties.

(c) The suit properties be partitioned by granting 1/3rd share each to plaintiffs nos. 1 and 2 and defendant no. 2, by sending the decree for partition to the Collector, Satara under Section 54 of the Code of Civil Procedure 1908.

(d) After partition, the parties be put in possession of their respective shares in the suit properties.

(e) Parties to bear their own costs.

(f) Decree to be drawn up accordingly.

[GAURI GODSE, J.]

IRESH MASHAL Digitally signed by IRESH MASHAL Date: 2025.04.08 16:45:32 +0530