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Case Comment: Arumugha Udayar vs Valliammal

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INTRODUCTION: STATEMENT OF FACTS

¹Balayee Ammal, the wife of Nallathambi, succeeded in his properties. She transferred the title of the properties of Nallathambi. The sisters of Nallathambi, who are the petitioners in the present litigation, instituted proceedings against Balayee in 1951. As a result of the proceedings, they obtained a declaration, as per which, the alienation of estate by Balayee, would not be binding on them after her death. Balayee passed away on 17th January 1960, and the present litigation is filed by Nallthambi's sisters to obtain the possession of all his estate, in furtherance of the declaration obtained in the 1951 litigation. Balayee, on 31st December 1959, had adopted her small sister's son named Ganapathi. Her act of adoption was acknowledged by a registered deed, which she executed on the same day she adopted Ganapathi. The alienees of Nallathambi's estate, the defendants in the present litigation, claimed that Nallathambi's sisters have no title to sue because of the execution of the registered deed of Ganapathi's adoption, which naturally made him the closer heir to Nallathambi's estate. The Sub-Judge held that certainly there has been valid adoption of Ganapathi, however, he

¹ Arumugha Udayar vs Valliammal, AIR 1969 MAD 72

disagreed with the Trial Court judge, holding that Ganapathi would only be heir to the estate of only Balayee and not Nallathambi.

ISSUES

- Whether the Adoption of a Hindu son by a Hindu Widow, entitles him to inherit the properties of the deceased husband, which were inherited by the adoptive mother?
- Whether the adopted child is regarded as the heir of the widow and deceased husband?
- Whether the widow can adopt to the deceased husband under the Doctrine of Affiliation, after the enforcement of HAMA, 1956?
- Whether the Representative Principle under Hindu Customary Law stands abrogated after HAMA, 1956?

RULE OF LAW

- **Section 4²** - *Overriding Effect of the Act*

(a) Any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) Any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

- **Section 8³** - *Capacity of a female Hindu to take in Adoption*

(i) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

- **Section 11⁴** - *Other Conditions for a Valid Adoption*

² Hindu Adoption and Management Act, 1956, s 4

³ Hindu Adoption and Management Act, 1956, s 8

⁴ Hindu Adoption and Management Act, 1956, s 11

Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified.

- **Section 12⁵** – *Effect of Adoptions*

(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds:

[(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in the marriage of the petitioner [was required under section 5⁶ as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)*], the consent of such guardian was obtained by force¹⁴ [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

- **Section 14⁷** – *Determination of Adoptive Mother in Certain Cases*

(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, : Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any

⁵ Hindu Adoption and Management Act, 1956, s 12

⁶ Hindu Adoption and Management Act, 1956, s 5

⁷ Hindu Adoption and Management Act, 1956, s 14

misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

ANALYSIS

Section 4 of HAMA provides the act with an overriding effect over any conflicting Hindu customary law principle. As per Hindu customary law, a widow could only adopt in a representative capacity. This has been changed by the enforcement of HAMA 1956, which through **Section 8** seeks to make adoption a non-discriminatory institution. Thus, under Section 8, the adoption of Ganapathi by Balayee is valid. The validity of adoption has ruled the possibility of no collateral rights or affiliation to the family of the deceased husband, on the ground of the adoption's void nature. **Section 5** establishes that adoptions, after HAMA, must be made as per the provisions in Chapter II. Any adoption in violation of Chapter II is directly void. As per the Judge, Chapter II does not cover a widow adopting her deceased husband. Hence, there is an underlying conclusion that a widow can only adopt to herself. In *Ankush Narayan Shingate v Janabai Sawat*⁸, Bombay HC held,

“Section 5 does not subscribe to the view that a widow cannot adopt the child to the deceased husband. If this view is upheld, the adopted child, after adoption by a widow, will not have any ties with his family as well as the new adoptive family.”

In my opinion, Justice Ramamurti is correct in interpreting Section 5 restrictively because it is a definite provision, whose scope cannot be expanded without due process of law. While **Section 14(3) and 14(4)**⁹ provide for parents from subsequent marriage to attain the status of stepmothers and stepfathers of the adopted child, no such provision or deceased husband is inserted. I concur that it is a deliberate omission by the legislature to reject the **doctrine of affiliation**, as per Hindu Customary law. If we apply this doctrine to adoption by the widow, in light of Section 8, then even after the express prohibition of adoption by the husband prior

⁸ *Ankush Narayan Shingate v Janabai Rama Sawant* AIR 1966, Bom 174

⁹ Hindu Adoption and Management Act, 1956, ss 14(3), 14(4)

to his death, the widow can adopt the adopted child to the deceased husband. Thus, accepting the rival view will be in violation of Chapter II, as per which affiliation cannot be forced on the deceased husband, except in case of a mutual agreement.

Justice Ramamurti comments on the language of **Section 12**, he says that not all ties of the adopted child in his family of birth are severed and replaced. Hence, he concludes this provision is not decisive in ascertaining the affiliation to the deceased husband. Here, I disagree with the judge. Section 12 categorically mentions the severance of all ties with the family of birth. In *Subhash Misir v Thagai Misir*¹⁰, Allahabad HC held, “An adopted son has all rights of a natural son. In upholding the rival view, all ties with his family of birth will be severed and he will also not get anything from the adoptive family, as he is heir only to the widow.” On the question of severance of ties, **Section 11(6)**¹¹ states that a child must be given or taken into adoption by the parents or guardian, with the intention to transfer the child from the family of birth or where it grew up to the adoptive family. As held in, *Sitabai v Ramchandra*¹², “Using the *Doctrine of Necessary Implication*, it is implied that under Section 12 and 14, the adopted son becomes a son of a widow and deceased husband.” Hence, the severance of ties with the family of birth ascertains adoption to be a process of complete transfer to the new adoptive family.

Section 12(c)¹³ clearly bars the adoption of a child to divest another person from their estate vested prior to the child’s adoption. The purpose of the fiction of affiliation gets diluted when the adopted child does not have inheritance right over the deceased husband’s estate. So, the adopted child only has inheritance right over the adoptive mother’s property. This is contrary to the explanation of this provision given by the SCI in *Sawan Ram & Ors v Kalawanti & Ors*¹⁴. The SCI held, “Under Shastric Law, a child adopted by a widow could divest other members of the adoptive family of their estate rights vested before his adoption. The aim of Section 12(c) is solely to prevent such an outcome of adoption.” Hence, by no means, this restriction leads to holding the adopted son not to be the son of the deceased husband.

¹⁰ *Subhash Misir v Thagai Misir* AIR 1967, All 148

¹¹ Hindu Adoption and Management Act, 1956, s 11(6)

¹² *Sitabai & Anr v Ramchandra* AIR 1970, SC 343

¹³ Hindu Adoption and Management Act, 1956, s 12(c)

¹⁴ *Sawan Ram & Ors v Kalawanti & Ors* (1967), AIR 1761

CONCLUSION

Justice Ramamurthi held that accepting a widow adopting to her deceased husband would amount to a continuation of the Hindu Customary Law principle, wherein a widow adopts in a mere representative capacity of the husband. Hence, he confirmed the judgment of the Sub-Judge and dismissed the second appeal. I concur with the judge on the abrogation of the **representative principle** and the definite scope of Section 5, pertaining to the exclusion of widow adopting to the deceased husband. However, I agree with the SC and HC judgments and thus disagree with the Judge's view concerning severance of ties. The adopted son would be losing ties and inheritance right in both families if the adopted son is not considered the son of the deceased husband as well. Thus, Ganapathi has the right to inherit the estate of Nallathambi from Balayee.