

LATA BABURAO MANE & ANOTHER

v.

RAMACHANDRA BALASAHEB MANE (D) THROUGH
LRS.

(Civil Appeal No. 174 of 2007)

NOVEMBER 18, 2014

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

Partition – Partition of family property – Extent of entitlement – There was no partition at the time of death of the collateral and hence the ancestors of appellants as well as the respondent who were surviving at that time were entitled to 50% share – On the relation back principle the adopted son (respondent) as well as the appellant were entitled to 50% share.

Dismissing the appeal, the Court

HELD: As there was no partition, succession did not open at the time of death of the collateral in the year 1906. His widow had only a right of maintenance and never succeeded to the property. The ancestors of the appellants and respondents survived till the year 1909 and they were entitled to 50% share each in the properties and on the relation back principle the adopted son namely the respondent and the appellant are entitled to 50% share each in the suit properties. The findings of the courts below that the adoption of the respondent relates back to the death of his adoptive father and he is entitled to 50% share in the suit properties, are based on correct

A appreciation of facts and law and no interference is called for. [para 7] [180-C-F]

B *Bhubaneshwari Debi vs. Nilkomul Lahiri* 1885 (12) IA 137; *Shrinivas Krishnarao Kango vs. Narayan Devji Kango and Ors.* (1955 (1) SCR 1; *Krishnamurthi Vasudeorao Deshpande and another vs. Dhruwaraj* 1962 SCR 813 = AIR 1962 SC 59; and *Govind Hanumantha Rao Desai vs. Nagappa and Seven others* 1972 (3) SCR 200 = (1972) 1 SCC 515 – held inapplicable.

C

Case Law Reference:

	1885 (12) IA 137	held inapplicable	para 5
D	(1955 (1) SCR 1	held inapplicable	para 5
	1962 SCR 813	held inapplicable	para 5
	1972 (3) SCR 200	held inapplicable	para 5

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 174 of 2007.

F From the Judgment & Order dated 27.04.2005 of the High Court of Judicature at Bombay in Second Appeal Nos. 65 and 85 of 2003.

Vijay Hansaria, Rajeev B. Masodkar, Anil K. Jha for the Appellants.

G Shekhar Naphade, Anshuman Sinha, Naresh Kumar, Sudhanshu S. Choudhari, Shubhangi Tuli, Vatsalya Vigya for the Respondent.

The Judgment of the Court was delivered by

H C. NAGAPPAN, J.1. This appeal is preferred against

final common judgment and order dated 27.4.2005 passed by the High Court of Judicature at Bombay in Second Appeal Nos.65 of 2003 and 85 of 2003, whereby the High Court dismissed both the Second Appeals under a reasoned order. A

2. Baburao Marutrao Mane and his daughter Lata Baburao Mane filed Civil Suit No.203 of 1987 against the respondent Ramchandra Balasaheb Mane now deceased, for permanent injunction. Ramchandra Balasaheb Mane filed Civil Suit No.73 of 1988 against Baburao Marutrao Mane and others seeking for partition of the suit properties. The trial court by common judgment and decree dated 9.4.1999 dismissed suit No.203 of 1987, which was for grant of permanent injunction and decreed suit No.73 of 1988 which was for partition. Challenging the same Baburao Marutrao Mane and others preferred two civil appeals in Civil Appeal No.161 of 1999 and 162 of 1999 on the file of Additional District Judge, Satara. The Appellate Court dismissed both the appeals. Aggrieved by the same Baburao Marutrao Mane and others preferred two second appeals in Second Appeal Nos.65 of 2003 and 85 of 2003 on the file of the High Court. Both the Second Appeals came to be dismissed pursuant to which Baburao Marutrao Mane and others preferred the present appeal. B C D E

3. While issuing notice this Court by order dated 29.7.2005 restricted it in the following terms: F

“Issue Notice limited to the questions as to the share which Ramchandra had in the property whether the High Court was correct in holding that the adoption of Ramchandra is related back to the date of his father’s death.” G

4. A genealogical tree is relied upon and there is no dispute to it, and it is reproduced below: H

A

B

C

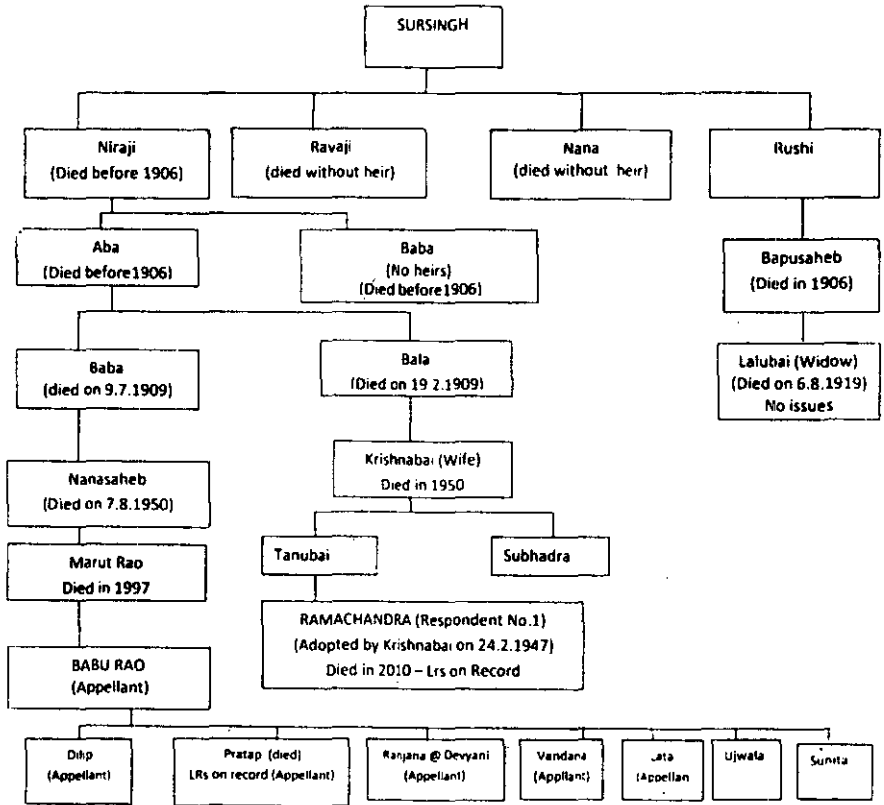
D

E

F

G

H



5. Mr. Vijay Hansaria, learned senior counsel appearing for the appellants contended that the appellants are entitled to 75% share and the present respondents namely the heirs of deceased Ramchandra Balasaheb Mane are entitled to only 25% share in the suit properties. It is further contended by him that the estate of Babusaheb was open to reversioners only in the year 1919 when his widow Lalubai died and not in 1906 when Bapusaheb died. The other contention raised by him is that on adoption of respondent Ramchandra Balasaheb Mane by Krishnabai in the year 1947, the said adoption will not relate back to the year 1909 to the extent of divesting the collateral Nanasaheb who by then succeeded to the estate of Babusaheb in the year 1919. In support of his submission the learned senior counsel placed reliance on the following decisions:

- (i) **Bhubaneshwari Debi vs. Nilkomul Lahiri [1885 (12) IA 137;** D
- (ii) **Shrinivas Krishnarao Kango vs. Narayan Devji Kango and ors. [(1955 (1) SCR 1;**
- (iii) **Krishnamurthi Vasudeorao Deshpande and another vs. Dhruwaraj [AIR 1962 SC 59]; and** E
- (iv) **Govind Hanumantha Rao Desai vs. Nagappa and Seven others (1972) 1 SCC 515**

6. Per contra Mr. Shekhar Naphade, learned senior counsel appearing for the respondents contended that the trial court, the appellate court and the High Court have arrived at a finding that there was no partition in the family and the suit properties were joint family properties and since the properties were not partitioned, succession never opened and Lalubai had only a right of maintenance and never succeeded to the property. It is his further contention that Babusaheb died in the year 1906 and after him Baba and Bala survived till the year 1909, and their branches are rightly found to be entitled to 50% share each, in the suit properties, on the basis of the principle

A that the adoption relates back to the death of the adoptive father and the concurrent findings are sustainable both in law and on facts.

B 7. The contention of the appellants is based on the premise that the dispute is with regard to the collateral's property and the relation back principle would not apply to the same. Though the plea of partition was raised by the appellants/ plaintiffs, the trial court categorically held that there was no evidence to prove partition and the properties remained joint family properties. The said finding was confirmed by the first appellate court and then by the High Court. As there was no partition, succession did not open at the time of death of Babusaheb Mane in the year 1906. As rightly contended by the respondents, his widow Lalubai had only a right of maintenance and never succeeded to the property. Baba and Bala survived till the year 1909 and they were entitled to 50% share each in the properties and on the relation back principle the adopted son namely respondent Ramchandra Balasaheb Mane and the appellant Baburao Mane are entitled to 50% share each in the suit properties. The properties by inheritance never went to a collateral. The contention of the appellants is fallacious and liable to be rejected and the decisions cited are also not applicable. The findings of the courts below that the adoption of respondent Ramchandra Balasaheb Mane relates back to the death of his adoptive father and he is entitled to 50% share in the suit properties, are based on correct appreciation of facts and law and no interference is called for.

F 8. There are no merits in the appeal and the same is dismissed. No costs.

G Kalpana K. Tripathy

Appeal dismissed.