

**Ramkrishna Krishnarao Kulkarni** - - - - - *Appellant*

v.

**Ramchandra Shrinivas Kulkarni and Others** - - - *Respondents*

FROM

**THE HIGH COURT OF JUDICATURE AT BOMBAY**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 14TH NOVEMBER, 1949

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*Present at the Hearing:*

LORD GREENE

LORD SIMONDS

LORD RADCLIFFE

SIR JOHN BEAUMONT

SIR LIONEL LEACH

[*Delivered by* SIR JOHN BEAUMONT]

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This is an appeal from a judgment and decree of the High Court of Judicature at Bombay dated the 23rd March, 1943, allowing the respondents' appeal against a judgment and decree of the First Class Subordinate Judge of Dharwar dated the 27th July, 1940.

The suit out of which this appeal arises was filed on the 10th January, 1936, by the appellant as plaintiff in the Court of the First Class Subordinate Judge of Dharwar wherein he claimed as the adopted son of one Krishnaji to be entitled to a half share of the coparcenary property described in the schedules to the **Plaint**.

The facts giving rise to the suit are these. Shrinivas and his two sons Ramchandra, who was the second defendant in the suit and is the first respondent in this appeal, and Krishnaji were members of an undivided joint Hindu family. Ramchandra had two sons who are respondents two and three, and a daughter who is respondent four. Krishnaji died on the 6th January, 1930, leaving a widow, Radhabai, but no issue. On the 16th December, 1932, Radhabai adopted the appellant to her deceased husband Krishnaji, and on the same day Shrinivas and Ramchandra entered into a partition deed (Exhibit 150) partitioning the coparcenary property between them in the shares shown in the deed. Thereafter Shrinivas by a deed (Exhibit 151) made a gift of items 15 and 16 in schedule A to the **Plaint**, which formed part of his share on the partition, to his grandsons, respondents two and three, and by a deed (Exhibit 153) he made a gift of item 14 in the said schedule A, which was other part of his share on the partition, to his granddaughter, respondent four. By his will dated the 22nd August, 1933 (Exhibit 152), Shrinivas gave all his residuary estate to his grandsons, respondents two and three. Shrinivas died on the 13th December, 1934.

At the trial the learned First Class Subordinate Judge held that the adoption of the appellant, which was challenged, in fact took place and was valid; that the partition took place after the adoption and did not affect the rights of the plaintiff. By his decree the learned judge declared

the plaintiff to be entitled to a half share of the coparcenary property other than watan property, with certain exceptions which have not been challenged before the Board. He held, however, that the properties specified in schedule C to the Plaint and items 1-4 and 7 in schedule B were watan properties which could not be dealt with in the suit and he left open the title to such properties.

In appeal the High Court at Bombay held that the partition took place before the adoption, and that at the date of the adoption there was no coparcenary in existence. Accordingly the Court held that the adoption by the plaintiff, though valid, did not divest the former coparcenary properties from those in whom they had vested on the partition, a view which the judges were bound to take on the authority of the decision of a Full Bench of the said High Court in *Balu Sakharam v. Lahoo* (1937 Bombay 508). However, since the decision of the High Court it has been held by this Board in the case of *Anant Bhikappa Patil v. Shankar Ramchandra Patil* (70 I.A. 232) that the view taken of the law in *Balu Sakharam's* case was erroneous, and on the basis of the Board's decision it is clear that the appellant on his adoption became entitled to share in the coparcenary property notwithstanding that the coparcenary had come to an end before the date of his adoption.

Mr. Parikh for the respondents did not dispute that in view of the decision of the Board this appeal substantially would have to succeed, but he challenged certain aspects of the decree of the Subordinate Judge if that decree was to be restored. In particular he claimed that the partition of December, 1932, though ineffective as a partition by metes and bounds since it ignored the share of the appellant as a son of Khishnaji, nevertheless operated to disrupt the joint family, that thereafter Shrinivas was entitled to an undivided share of the family property, and that he effectively disposed of this undivided share by his will in favour of respondents two and three, and that accordingly the appellant is entitled to a third share and not to a half share in the coparcenary property. Mr. Dingle Foot for the appellant contended that this point was never raised in India but was relied on for the first time in argument before the Board. This contention their Lordships think is not well-founded. In the written statement of respondents two and three the gift to them made by the will of Shrinivas is mentioned and it is pleaded that the moveable and immoveable property comprised therein belonged to those respondents and that the plaintiff's suit in respect of those properties is not maintainable. In the judgment of the Subordinate Judge the point is not mentioned, and probably had not been argued, but the memorandum of appeal to the High Court after alleging that the lower Court was wrong in finding that the partition took place after the plaintiff's adoption concluded:

“At any rate, the plaintiff is not entitled to more than  $\frac{1}{3}$  share in the suit properties.”

In their Lordships' opinion had the High Court taken the view that the plaintiff was entitled to a share in the coparcenary property the question whether he was entitled to one-half or one-third would have been open to the respondents. It is regrettable that this point was not specifically raised in the respondents' case, but the case does state the facts on which this claim rests, namely the partition and the subsequent gift by the will of Shrinivas, and the final reason for rejecting the appeal, namely that “the appellant is not entitled to any share at all in the properties described in schedules A, B, C and D to the plaint” is wide enough to cover the claim that he is entitled to a smaller share than the one given to him. In their Lordships' view this question is open to the respondents, but there is not sufficient material on the record to enable their Lordships to decide it. It would be necessary to determine whether the joint family was disrupted, and if so at what date; whether after such disruption Shrinivas was competent to dispose by will of his undivided third share in the joint family property; and if so whether he effectively did so. None of these matters are discussed by the Courts in India, and

on some of them further evidence may be required. Their Lordships think therefore that the appeal will have to be referred back to the High Court, which will be free to exercise the powers of calling fresh evidence or remanding an issue to the lower Court conferred by the Code of Civil Procedure.

The respondents raised other objections to the judgment of the Subordinate Judge based on the contention that items 14, 15 and 16 in schedule A to the Plaint and the structures on items 1-4 and 7 in schedule B were the self-acquired property of Shrinivas. These questions present no great difficulty, but as the case will have to be remitted to the High Court their Lordships think it better to leave to that Court the determination of the whole matter of the plaintiff's share in the suit property.

Their Lordships will therefore humbly advise His Majesty that this appeal be allowed and that the decree of the High Court at Bombay dated the 23rd March, 1943, be set aside and that the appeal be remitted to the High Court to determine to what share in the suit property the appellant is entitled on the basis that by his adoption he became entitled to the share of his adoptive father Krishnaji in the coparcenary property. The costs of the proceedings in India will be in the discretion of the High Court. The respondents must pay the costs of this appeal.

In the Privy Council

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RAMKRISHNA KRISHNARAO KULKARNI

v.

RAMCHANDRA SHRINIWAS KULKARNI  
AND OTHERS

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[DELIVERED BY SIR JOHN BEAUMONT]

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,  
DRURY LANE, W.C.2.  
1949