IN THE HIGH COURT OF JHARKHAND, RANCHI

Second Appeal No.463 of 1990(P)

[Against the judgment and decree dated 06.08.1990 passed by Second Additional Judge, Santhal Parganas, Dumka in Title Appeal No.91 of 1974/ 3 of 1986, affirming the judgment and decree dated 29.06.1974 and 31.07.1974 passed by Second Additional Sub-Ordinate Judge, Dumka in Title Suit No.51/28 of 1973/1974]

1.Jhunia Mandalain, wife of Late Khiro Mandal
2(i)Janki Devi (Widow)
2(ii)Kailash Kotwal
2(iii)Anil Kotwal, both sons.

Residents of village Baradhawana, P.S. Jasidih, P.O. Saraighat, District Dumka

……. (Defendants in the Trial Court …..)
……. (Appellants in the Lower Appellate Court)

…… *Appellants*

--Versus--

1.Ayodhya Panjiara-Deleted
2.Lukman Panjiara
3.Fudali Panjiara

Both sons of Ayodhya Panjiara, resident of village Budi, P.S.-Jarmundi, Dumka
4.Ajorwa Mandalain, wife of Mahendra Mandal, resident of Gokul Manikpur, P.S. Saraiyahat, Dumka
5(i)Sukan Marik, H/o late Kaushalaya Marikayan
5(ii)Tulsi Marik
5(iii)Prabhu Marik

Both sons of late Kaushlaya Marikayan,
Village Kapasya, P.S. Jasidih, Deoghar

6.Sushila Mandalain, wife of Surin Mandal, resident of village Barakuron, P.S. Jasidih, Deoghar
7.Sundari Mandalain, wife of Sona Mandal, resident of village Hurhi Jhulwa, P.S. Saraiyahat, Subdivision Dumka, District Santhal Parganas.

....(Plaintiffs in the Trial Court)

....Respondents Ist Party in the Lower Court

8(i)Katra Kapri
8(ii)Hari Kapri, both sons of late Satni Kaprian
8(iii)Badnaya Devi, w/o Bhukhan Mandal, D/o late Satni Kaprian
8(iv)Kunti Devi, w/o Ravindra Manjhi, D/o late --- do ---
9(a)Babita Devi, w/o late Huro Kapri
9(b)Malti Devi
10(i)Mudrika Deve, w/o late Bachu Mandal
10(ii)Ramakant Mandal
10(iii)Umesh Mandal, both sons of late Bachu Mandal
10(iv)Basanti Devi, d/o late Bachu Mandal
10(v)Kushmi Devi, w/o Anil Marik, D/o late Bachu Mandal

...(Defendants in Trial Court)
...(Respondents 2nd Party in Lower Court)

..... Respondents.

P R E S E N T

CORAM : **HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

For the Appellants :Mr. Rajiv Sinha, Advocate
Mr. Bhupal Krishna Prasad, Advocate
For the Respondents :Mr. Rajiv Ranjan Mishra, Advocate

C.A.V. on 21.11.2019 ***Pronounced on : 20 /12/2019***

1. Mr. Rajiv Sinha, the learned counsel assisted by Mr. Bhupal Krishna Prasad, the learned vice-counsel appears on behalf of the appellants and Mr. Rajiv Ranjan Mishra, the learned counsel appears on behalf of the respondents.

2. This second appeal has been filed against the judgment and decree dated 06.08.1990 passed by Second Additional Judge, Santhal Parganas, Dumka in Title Appeal No.91 of 1974/ 3 of 1986, affirming

the judgment and decree dated 29.06.1974 and 31.07.1974 passed by Second Additional Sub-Ordinate Judge, Dumka in Title Suit No.51/28 of 1973/1974.

3. The suit was instituted for partition of 4.68 ½ acres of land described in Schedule-A of the plaint.

4. The defendant nos.2 to 4 filed a separate written statement in which they have virtually admitted the case of the plaintiffs and have pleaded that their share also may be partitioned. In one respect, however, they have been more categorical in their assertions then the plaintiffs. Defendant Nos. 2 and 4 have definitely denied that defendant No.5 was adopted by Niro and according to the defendant there was no actual adoption but only some paper was created by fraud and undue influence. In view of this categorical denial these defendants 1 to 4 have asserted that the share of each of the daughter of Niro is 1/6th and not 1/7th.

5. The defendant nos.1 and 5 have separately filed the written statement and have contended the suit. In their written statement they have taken *interalia* the following pleas. The suit as famed is not maintainable, that the plaintiffs have no cause of action for this suit, that suit is barred by the law of limitation and that the suit is barred by the principles of waiver, estoppel and acquiescence. It is further stated in the written statement that the plaintiffs are not entitled to any relief.

6. Their further defence is that Amrit Kotwar and Lilo Kotwar jointly inherited the lands appearing to Jamabandi no.25 and they joint possessed and cultivated the suit lands and Niro Kotwar in on the death of Amrit Kotwar in the year 1945 inheritted the interest of her husband

Amrit. But since Niro Kotwarin subsequently adopted defendant no.5 as a son to herself and to her deceased husband and in confirmation of the fact of this adoption she executed a registered deed of adoption (Ext.A), the defendant no.5 became the natural born son of Amrit Kotwar and obtained coparcenary interest in the joint Jamabandi No.25. In some paras of the written statement of the defendant nos.1 and 5 which appear to contain some arguments rather than material facts, these defendants have made out a case that on the death of Amrit Kotwar his interest in the land of Jamabandi no.25 would be deemed, due to the adoption of the defendant no.5, to have been jointly inherited by the widow Niro Kotwarin and defendant no.5 and they both would be deemed to have been in joint possession of the same, though it is also admitted that Niro had brought a Title Partition Suit no.29 of 1960 which was decreed in her favour and her 8 annas share was carved out, and she got delivery of possession in execution of the Final Decree. It is asserted by the defendants that the share that was allotted to Niro Kotwarin would be deemed to have belonged to Niro as well as to defendant no.5 because of the fact of adoption and both of them jointly continued in possession of the lands in suit and their respective share in the same was to the extent of half. According to this plea the defendant no.5 alone had interest to the extent of half in the Schedule-A lands and only the ret half belonged to Niro and although the left behind the plaintiffs and the defendants Nos.1 to 4 as her heirs, the other daughters had already disclosed their right had interest in favour of defendant no.1 a few months after the institution of Title Partition Suit No.29 of 1960. This family settlement had been arrived at between Niro

and her daughters before the Panches and a document was also executed in the presence of the Panches who also put their signature over the same. This according to these defendants nos.1 and 5 the plaintiffs or other defendants have no right, title and interest in the suit lands and only defendant nos.1 and 5 who lived with Niro Kotwarin since her life time, served and nursed her and performed her last rites have alone rights in the suit lands. An alternative plea of the defendants nos.1 and 5 is that the plaintiffs and defendants 2 to 4 are at best entitled to 1/14th share in the suit lands became half of it will be deemed to have belonged to defendant no.5 because of the adoption.

7. On the basis of the pleadings, the trial court framed six issues. The documents filed by the parties were also accepted and the trial court after discussing the issues and the evidences and exhibits came to the finding that section 12 of the Hindu Adoption & Maintenance Act, 1956 (hereinafter referred to as the Act of 1956) clear lays down that the adopted child be deemed to be the child of adoptive father and mother for all purposes with effect from the date of adoption and from such date all the time of the child in the family of his or her birth shall be deemed to be served and replaced by those created by the adoption in the adoptive family and the trial court ordered that the suit be decreed on contest with cost and it was directed to prepare the decree declaring 1/7th share of each of the plaintiffs in the properties described in the Schedule-A of the plaint by the judgment dated 29.06.1974.

8. Aggrieved with this judgment, the defendant nos.3 and 5 of Title Suit No.51/1973 filed the Title Appeal No.91 of 1974/ 3 of 1986 which was decided by Second Additional District Judge, Dumka, vide

judgment dated 06.08.1990. The appellate court re-casted the issue at the paragraph no.7 of the said judgment. The appellate court considered the registered deed of adoption (Ext.A) dated 18.12.1966 and came to the finding that the function of adoption was performed according to the Hindu rites on 07.12.1966, that the function of giving and taking of the boy was performed by both the ladies after performing Puja voluntarily and with free will of both the ladies. The appellate court further found that on account of partition of coparcenary property, one-half share in J.B.No.25 was allotted to the Takhta (vide map Ext.1) of the widow of Amrit Kotwar, while the other one-half has allotted to surviving coparcener Lilo Kotwar and this partition was effected before the date of adoption and discussing the judgment relied by the parties, the appellate court held that defendant no.5 could not be treated as coparcener in the joint family of his adoptive father and uncle. His claim of having succeeded to the ancestral property, having share equal to his adoptive mother, is untenable. After partition in 1960 the suit property became in the nature of self acquired property of the widow and, accordingly, on her death in 1969, all her six daughters and the adopted son would be entitled to 1/7th share each and the trial court came to the conclusion that the trial court is correct and accordingly, it was upheld by the appellate court. The appeal was dismissed on contest with cost vide judgment dated 06.08.1990.

9. Aggrieved with this judgment, the appellants have filed this second appeal.

10. By order dated 19.10.1995 this second appeal was admitted on the following substantial question of law:

> *"Whether in view of Section 10 of the Hindu Adoption and Maintenance Act, 1956 the adopted child (appellant no.2) would be a member of coparcenary, whether his adoption can date back to the stage of death of the adoptive father and whether appellant no.2 would be treated as coparcener in the joint family of the adoptive father."*

11. On that date, interim order of status-quo was also passed.

12. Mr. Rajiv Sinha, the learned counsel appearing for the appellants submits that in appeal the learned judge has in fact on the aforesaid case laws has accepted the "doctrine of relation back" and held the defendant no.5-Uchit Mondal who has been adopted by the widow Niro Kotwarin in the year 1966 became the son of late Amrit Kotwar and a coparcener of him. The learned judge also found that the "doctrine of relation back" has not undergone a change by the provisions of Hindu Adoption and Maintenance Act and thus he has disagreed with the findings of the trial court in this regard, but in view of the said Title (Partition) Suit No.29 of 1960 the learned 1st appellate court held that in view of this partition of the coparcenary properties allotted to the widow of Amrit Kotwar which was effected before the adoption of defendant no.5 and the joint consisting of Niro Kotwarin and Lilo Kotwar. The appellate court held that defendant no.5 therefore could not be treated as coparcener in the joint family of his adoptive father and uncle and submits that the appellate court was not correct in coming to that conclusion. He further submits that the 1st appellate court has gone into the errors of law. He submits that fiction of 'relation back' the judge having held the existence of defendant no.5 as a son of Amrit Kotwar at the time of death of Amrit Kotwar in the year 1945 ought to have held that he existed even in the year 1960 when Title (Partition) Suit No.29 of

1960 was filed and he was being represented by his widow mother Niro Kotwarin in the suit and both he and his mother got half of the lands compromised in Jamabandi No.25 and the suit lands also consisted the ½ share of the defendant no.5 which the six sisters cannot claim any share. It is submitted that the appellate court ought to have held that the defendant no.5 was notionally present in the said Title (Partition) Suit No.29 of 1960. The suit property should have been treated the joint family property of defendant no.5 and his widow mother Niro Kotwarin. He submits that if the fiction of doctrine of relation back is applicable as held by the hon'ble Court in the judgments relied by the appellants it does not appear why fiction shall not apply at the stage of Title (Partition) Suit No.29 of 1960 and why it cannot be held that the defendant no.5 was notionally or fictionally present in the suit and the suit property is to be held the joint property of defendant no.5 and the widow Niro Kotwarin despite the adoption having taken place in the year 1966. He submits that if the adoption by the widow has the force of relation back and if the provisions of Hindu Adoption and Maintenance Act have not modified or changed the doctrine of relation back, the appellate court was bound to held that the properties in the hands of widow Niro Kotwarin be joint family property of the defendant no.5 and the widow mother Niro Kotwarin. He further submits that the 1st appellate court has failed to consider that the suit property is the sole property of the widow Niro Kotwarin in which her daughters have no interest at all. He further submits that there is no question of devolution of interest since the widow is alive and the adoption of the defendant no.5 took place in the year 1966 before her death. According to him, the

property in the hands of Niro Kotwarin had no scope of devolution among the daughters at the time of adoption of defendant no.5. He further submits that it was in this regard that the proper order should have been that half of the suit lands belong to the defendant no.5 and should go to him and in the remaining half six daughters and the sons will each get 1/7th share. To buttress his arguments, Mr. Rajiv Sinha, the learned counsel appearing on behalf of the appellants relied in the case of ***" Govind Hanumantha Rao Desai v. Nagappa alias Narahari Laxman Rao Deshpande and Ors."*** reported in ***AIR 1972 SC 1401.*** Paragraph nos. 7 and 8 of the said judgment is reproduced hereinbelow:

> *"**7**. This leaves us with the question as to the share to which the plaintiff is entitled in the partible properties. Even before the plaintiff was adopted into the family, there was a partition between Krishna Rao and Lakshmana Rao. The genuineness of that partition is no more in dispute. After the partition Krishna Rao became absolutely entitled to his share of the properties and hence he was entitled to deal with that property in the manner he thought best. As mentioned earlier he had bequeathed his properties to others. But it was urged on behalf of the appellant that his adoption dates back to the date of the death of his adoptive father, Ranga Roa By a fiction of law, he must be deemed to have been in existence, when Krishna Rao and Lakshmana Rao divided the properties amongst themselves. The said partition having been effected without his joinder, the same has to be ignored. Hence he is entitled to a half share in the properties. Alternatively, it was contended that the plaintiff is entitled to get by succession half share in the properties that fell to the share of Krishna Rao.*
>
> ***8**. Before proceeding to examine the decided cases referred to at the time of the arguments, let us proceed to examine the question on first principles. It is true that by a fiction of law - well settled by decided cases - an adopted son is deemed to have been adopted on the date of the death of his adoptive father. He is the continuator of his adoptive father's line*

exactly as an aurasa son and an adoption, so far as the continuity of the line is concerned, has a retrospective effect. Whenever the adoption may be made there is no hiatus in the continuity of the line. From that it follows that the appellant must be deemed to have been adopted in 1912. Consequently he is deemed to have been a coparcener in his adoptive father's family when Krishna Rao and Lakshmana Roa partitioned the properties. The partition having been effected without his consent, it is not binding on him. But from this it does not follow that Kirshna Roa and Lakshmana Rao did not separate from the family at the time of the partition. It was open to Krishna Rao and Lakshmana Rao to separate themselves from the family. Once they did separate, the appellant and his adoptive mother alone must be deemed to have continued as the members of the family. It is true that because the plaintiff's adoptive mother was alive, the family cannot be said to have come to an end on the date of partition. But that does not mean that Krishna Rao and Lakshmana Rao did not separate from the family. When the partition took place in 1933, the appellant even if he was a coparcener on that day could have only got 1/3rd share. We fail to see how his position can be said to have improved merely because he was adopted subsequent to the date of partition. It is true that because he was not a party to the partition, he is entitled to ask for reopening of the partition and have his share worked out without reference to that partition. But so far as the quantum of his share is concerned, it must be determined after taking into consideration the fact that Krishna Rao and Lakshmana Rao separated from the family in 1933. The alternative contention of the appellant referred to earlier is also untenable firstly because Krishna Rao disposed of his share of the properties by means of a will and secondly even if he had not disposed of his share of the property, the same would have devolved on Lakshmana Rao by succession and the property that had once vested by succession cannot be divested as in that property the plaintiff's adoptive father had no right of his own. The doctrine of relation back is only a legal fiction. There is no justification to logically extend that fiction. In fact the plaintiff had nothing to do with his adoptive father's family when Krishna Roa died. On that day his adoptive father was not alive. The devolution of Krishna Rao's property must be held to have taken

place at the very moment Krishna Rao died. We know of no legal fiction under which it can be said to have been in a suspended animation till the plaintiff was adopted."

13. On the basis of the judgment he submits that with regard to the defendant no.5 adoption took place sometime in 1966 whereas the partition between the widow mother and another coparcener Lilo Kotwar took place by Title (Partition) Suit No.29 of 1960 whereby the half share was carved out in favour of the widow and the learned courts below have taken into account that the adoption of defendant no.5 in 1966 will date back retrospectively to 1945 and therefore the defendant no.5 is entitled to equal share with the other daughters of the widow. He submits that since the doctrine of relation back theory as decided by the Hon'ble Supreme Court is in favour of the appellants. The judgment of the trial court as well as the appellate court will not survive. He further relied in the case of ***"Smt. Sitabai and Another v. Ramchandra"*** reported in ***AIR 1970 S.C 343.*** Paragraph nos.4 and 6 of the said judgment is reproduced hereinbelow:

*"**4**. The question next arises whether Suresh Chandra, plaintiff No. 2, when he was adopted by Bhagirath's widow he became a coparcener of Dulichand in the Hindu joint family properties. The High Court has taken the view that Suresh Chandra became the son of plaintiff No. 1 with effect from 1958 and plaintiff No. 2 would not become the adopted son of Bhagirath in view of the provisions of the Hindu Adoptions and Maintenance Act, 1956 (Act No. 78 of 1956). It was argued on behalf of the appellant that the High Court was in error in holding that the necessary consequence of a widow adopting a son under the provisions of Act 78 of 1956 was that the adoptee would be the adopted son of the widow and not of her deceased husband. In our view the argument put forward on behalf of the appellant is well founded and must be accepted as correct. Section 5 (1) of Act 78 of 1956 states:*
"(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter...."

***6**. It is clear on a reading of the main part of Section*

12 and sub-section (vi) of Section 11 that the effect of adoption under the Act is that it brings about severance of all ties of the child given in adoption in the family of his or her birth. The child altogether ceases to have any ties with the family of his birth. Correspondingly, these very ties are automatically replaced by those created by the adoption in the adoptive family. The legal effect of giving the child in adoption must therefore be to transfer the child from the family of its birth to the family of its adoption. The result is, as mentioned in Section 14 (1) namely where a wife is living, adoption by the husband results in the adoption of the child by both these spouses; the child is not only the child of the adoptive father but also of the adoptive mother. In case of there being two wives, the child becomes the adoptive child of the senior-most wife in marriage, the junior wife becoming the step-mother of the adopted child. Even when a widower or a bachelor adopts a child, and he gets married subsequent to the adoption, his wife becomes the step-mother of the adopted child. When a widow or an unmarried woman adopts a child, any husband she marries subsequent to adoption becomes the step-father of the adopted child. The scheme of Sections 11 and 12, therefore, is that in the case of adoption by a widow the adopted child becomes absorbed in the adoptive family to which the widow belonged. In other words the child adopted is tied with the relationship of sonship with the deceased husband of the widow. The other collateral relations of the husband would be connected with the child through that deceased husband of the widow. For instance, the husband's brother would necessarily be the uncle of the adopted child. The daughter of the adoptive mother (and father) would necessarily be the sister of the adopted son, and in this way, the adopted son would become a member of the widow's family, with the ties of relationship with the deceased husband of the widow as his adoptive father. It is true that Section 14 of the Act does not expressly state that the child adopted by the widow becomes the adopted son of the husband of the widow. But it is a necessary implication of Sections 12 and 14 of the Act that a son adopted by the widow becomes a son not only of the widow but also of the deceased husband. It is for this reason that we find in sub-section (4) of Section 14 a provision that where a widow adopts a child and

subsequently marries a husband, the husband becomes the "step-father" of the adopted child. The true effect and interpretation of Sections 11 and 12 of Act. No. 78 of 1956 therefore is that when either of the spouses adopts a child, all the ties of the child in the family of his or her birth become completely severed and these are all replaced by those created by the adoption in the adoptive family. In other words the result of adoption by either spouse is that the adoptive child becomes the child of both the spouses. This view is borne out by the decision of the Bombay High Court in Ankush Narayan v. Janabai Rama Sawat, 67 Bom LR 864=(AIR 1966 Bom 174). It follows that in the present case plaintiff No. 2 Suresh Chandra, when he was adopted by Bhagirath's widow, became the adopted son of both the widow and her deceased husband Bhagirath and, therefore, became a coparcener with Dulichand in the joint family properties. After the death of Dulichand, Plaintiff No. 2 became the sole surviving coparcener and was entitled to the possession of all joint family properties. The Additional District Judge was, therefore, right in granting a decree in favour of the Plaintiff No. 2 declaring his title to the agricultural lands in the village Palasia and half share of the house situated in the village."

14. He further submits that the defendant no.5 in his capacity as coparcener since 1945 became entitled to joint family properties and in the partition suit of 1960 he being represented by his widow mother was entitled to his coparcenary share along with the widow mother' right becoming absolute by virtue of coming into effect of Hindu Succession Act, 1956 and submits that the view taken by both the courts below are not tenable. He further relied in the case of ***"Vasant and Another v. Dattu and Others"*** reported in ***AIR 1987 SC 398.*** Paragraph no.4 of the said judgment is quoted hereinbelow:

*"**4**. We are concerned with proviso (c) to S. 12. The introduction of a member into a joint family, by birth or adoption, may have the effect of decreasing the share of the*

rest of the members of the joint family, but it certainly does not involve any question of divesting any person of any estate vested in him. The joint family continues to hold the estate, but, with more members than before. There is no fresh vesting or divesting of the estate in anyone."

15. He further submits that in the light of the above settled principle it is to be considered that in this second appeal that the appellant's son, defendant no.5 is present on the date of death of his adopted father in 1945 therefore acquires coparcenary rights in the joint family property. He further submits that this right cannot be divested and therefore his coparcenary right is protected even in the partition suit in 1960 and as such is entitled to half of the suit land and the remaining half shall be partitioned in the light of Hindu Succession Act.

16. Per contra, Mr. Rajiv Ranjan Mishra, the learned counsel appearing for the respondents submits that Hindu Adoption and Maintenance Act, 1956 in its section 8 gave capacity to a female Hindu to adopt a son or daughter in adoption. Section 8(c) included widow in the category of Hindu female. He submits that this law applies to Niro Kotwarin. For the sake of brevity, the said section is quoted hereinbelow:

"8 Capacity of a female Hindu to take in adoption. —Any female Hindu—
(a) who is of sound mind,
(b) who is not a minor, and
(c) who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption."

17. He further submits that this section makes a radical change in

the old Hindu law under which a woman had no right to take in adoption at all during the life time of the husband except with his consent. Even in such a case the adoption would be husband's act and not the wife's and she would be only an agent on his behalf. He further submits that this Act confers on the female Hindu a right to adopt for herself. He submits that the Act of 1956 in its section 12 categorically states in first portion that adoption will be effective from the date of adoption. He further submits that section 12(c) does away with the theory of relation back and confers on the child adopted a status equivalent to that of a natural born child in the adoptive family only from the date of adoption. He submits that the main object of the present section is to modify the old Hindu law. He submits that this applies in the case of defendant no.5, namely, Uchit. He further submits that another radical change introduced by the Act of 1956 that adoption takes effect only from the date of adoption and not prior to adoption. The fiction of relation back as a result of the adoption has been done away with section 12. He further submits that section 14 of the Hindu Succession Act, 1956 provides that any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not limited owner. He submits that Explanation (2) to this section included acquisition under a decree or order of civil court. He submits that this applies to Niro Kotwarin who acquired the property after the commencement of the Act through decree passed in partition suit and she became absolute owner. He further submits that the object of present section is two fold; firstly, to remove the disability of a female to acquire and hold property as an absolute owner; secondly, to convert

any estate already held by a woman on the date of commencement of the Act as a limited owner, into an absolute estate. In case of her death intestate, she become a fresh stock of descent and property devolves by succession on her own heirs. Niro Kotwarin acquiring the property after the commencement of the Act by virtue of execution of decree passed in partition suit brought at her instance (being T.S.No.29 of 1960). She died intestate. Property held by her becomes a fresh stock of descent, i.e. six daughters and an adopted son, and the property devolves by succession on her own heirs. He further submits that rightly both the courts below partitioned 1/7th share to all the heirs.

18. To buttress his argument, Mr. Rajiv Ranjan Mishra, the learned counsel appearing for the respondents relied upon a Full Bench judgment of Hon'ble Bombay High Court in the case of ***"Kesharbai Jagannath Gujar v. The State of Maharashtra and Others"*** reported in ***AIR 1981 Bombay 115 Full Bench***. Paragraph no.21 of the said judgment is quoted hereinbelow:

> *"**21**. Viewed in that manner, it appears that the full ownership conferred upon a Hindu female would have all the attributer of full ownership as is understood normally in law. In our view the first consequence is that there is no question of reversion after the death of the Hindu female and she would constitute a fresh stock. Succession to this property will be governed by the provisions of the Hindu Succession Act and not by the Shastric Hindu Law. Being full owner she is entitled to dispose of the property by transfer inter vivos or by Will. In other words, according to us this property of the Hindu female can well be compared with the self-acquired property of a Hindu male. If a son adopted by a Hindu male person could not claim any right in the self acquired property, how can a son adopted by the Hindu female now claim a right by birth in this independent property of the female which is akin to the self-*

acquired property! It is being conceded on all hands that the adoption after the Succession Act operates prospectively and not retrospectively. There is no relation back. On the date of the adoption there is no joint family property in existence in which he could claim any interest by birth. In doing so, the adopted son is not deprived of the status given to him of a natural born son as Section 12 of the Hindu Adoptions and Maintenance Act, 1956 provides. Where the natural born son could get a right by birth, the adopted son would. If the natural son had no right by birth, the adopted son cannot also claim any such right. According to us, the effect of vesting of the full title in the Hindu female by the provisions of Section 14(1) is to substantially change the nature of the property and the status of the adopted son. All this seems to be obvious and has been assumed by this Court as well as by the Supreme Court when the judgments were delivered either in Yamunabai's case (AIR 1960 Bom 463) or in Punithavalli Ammal's case (AIR 1970 SC 1730)."

19. He submits that there is no relation back. On the date of adoption there is no joint family property in existence in which the appellant could claim any interest by birth. He further relied in the case of ***"Namdev Vyankat Ghadge and Another v. Chandrakant Ganpat Ghadge and Others"*** reported in ***AIR 2003 SC 1735***. Paragraph nos.15, 19 and 23 of the said judgment is quoted bereinbelow:

"***15****. On the date of death of Vyankat the properties of the joint family in his hands devolved on his heirs, i.e., his sons and daughters as per Section 6 of the Hindu Succession Act, 1956, subject to rights of maintenance of defendant No. 2 Krishnabai. Opening of succession and devolving of properties operated immediately on the death of Vyankat and the joint family properties stood vested in the heirs of Vyankat. Defendant No. 6 was adopted by defendant No. 2 about four months after the death of Vyankat by which time the properties had already been vested in his heirs as stated above.*

19*. But on the death of Vyankat, in the present case,*

property in his hands devolved and vested in his heirs. In view of proviso (c) of Section 12 of the Act defendant No. 6 Dattatraya by virtue of his adoption four months after the death of Vyankat could not divest the properties vested in the heirs of Vyankat so as to claim his share.

***23**. This being the legal position defendant No. 6, having been adopted after the death of Vyankat and after the properties vested in his heirs, is not entitled for share in the suit properties. In this view the impugned judgment and decree of the High Court affirming the decrees of both the Courts below cannot be upheld. Consequently and necessarily they are set aside and the suit of the plaintiffs-appellants stands decreed."*

20. With regard to the law point framed, the appellate court has considered the deposition of D.W.3. and D.W.3 admitted that she has never paid rent for the suit lands and all other sisters excepting defendant no.1 live out side village Kakania where the suit properties are situated and that suit lands are cultivated by defendant no.1 and 5 since the death of Niro Kotwarin. The D.W.3 admitted that her sister Jhunia, defendant no.1 lived with their mother at village kakania and helped her in cultivation of the suit land and that defendant no.1 had also helped her in fighting the said partition suit i.e. Title (Partition) Suit No.29 of 1960. D.W.3 denied to have relinquished their title and right of possession over the suit properties in favour of the defendant no.1. In fact no document of relinquishment was filed and proved in the court below. The appellate court has rightly come to the conclusion that no title over immovable property would legally be passed on the strength of unregistered document. As Amrit Kotwar had died between 1943-45 i.e. before 1956, his daughters did not have right to succeed to this properties as his heirs and therefore, during the life time of their mother, there was nothing for them to relinquish. Niro Kotwarin admittedly died in 1969 and the suit in

question was filed in 1973, and therefore, there is no scope of defendant nos.1 and 5 having perfected their title on the strength of adverse possession. After the death of Niro Kotwarin in 1969 possession of one co-sharer shall be held to be the possession of all the co-sharers as members of joint Hindu family. This Court also finds that there is no illegality in the findings of the learned trial court as well as the appellate court that there exists unity of title and possession of all the parties over the suit land. The registered deed of adoption (Ext.A) dated 18.12.66 shows that the function of adoption was performed according to Hindu rites on 07.12.66 i.e. by way of function of giving and taking of the boy was performed by both the ladies after performing Puja voluntarily and with free will of both the ladies and the essentials of valid adoption is laid down in sections 6 to 12 of Hindu Adoption and Maintenance Act, 1956 were complied with and the presumption of Ext.A i.e. registered adoption deed not rebutted by any evidence in the light of section 16 of the said Act. The appellate court has rightly distinguished the judgment relied by the learned counsel appearing for the appellants.

21. In A.I.R 1970 S.C. 343 it was held that it is necessary implication of section 12 and 14 of the Hindu Adoption and Maintenance Act, 1956 that a son adopted by the widow becomes a son not only of the widow but also of deceased husband. In that case, the Hindu undivided family consisted of two brothers, on death of one brother his widow begot an illegitimate son from surviving brother, thereafter, the widow adopted a male child. In the circumstance, it was held that the adopted son becomes coparcener and he is entitled to joint property in preference to the illegitimate child. But, one distinguishing feature in that case was

that at the time when plaintiff no.2, Chandra was adopted the joint family still continued to exist and the disputed properties retained their character of coparcenary properties. On the other hand, in the case at hand, admittedly, there as partition of coparcenary property by court-decree in Title (Partition) Suit No.29 of 1960, and therefore, since then the erstwhile joint family consisting of the widow (Niro Kotwarin) and the surviving coparcener, Lilo Kotwar also ceased to exist. And, subsequently, the adoption was held in 1966. Thus, the facts of the case at hand are quite different to those of A.I.R 1970 S.C. 343.

22. In A.I.R 1972 S.C. 1401 it was held thus, a long line of decision has firmly laid down that adoption dates back to the stage of the death of the adoptive father. In that case, long after partition between A and his younger son C, his elder son B died, and long after that partition widow of B adopted D as adopted son to her husband B. In the circumstances, it was held that the adopted son was entitled to 1/3rd share therein as his adoptive father if alive at the time of aforesaid partition could not have obtained more than one third share. But, in that case, the adoption was held on September, 18, 1955, i.e. before the Hindu Adoption and Maintenance Act, 1956, came into force on Dec. 21, 1956.

23. In A.I.R 1987 S.C 398 it was held that the introduction of a member into a joint family, by birth or adoption, may have the effect of decreasing the share of the rest of the members of the joint family, but it certainly does not involve any question of divesting any person of any estage vested in him. To interpret section 12 to include cases of devolution of survivorship on the death of a member of the joint family would be to deny any practical effect to the adoption made by the widow

of a member of the joint family. But, it is also ruled at para 6 of the said judgment thus, the learned counsel for the appellants argued that there was a partition in 1956 and that as consequence of the partition the properties had become vested in Ramchandra and the heirs of Raoji and they could not be divested of those properties by adoption. The learned counsel would be right in this submission if the partition was true. To repeat, in the case at hand on account of partition of the coparcenery property one half share in J.B. No.25 was allotted to the Takhta (vide map Ext.1) of the widow of Amrit Kotwar, while the other onehalf has allotted to surviving coparcener Lilo Kotwar and this partition was effected before the date of adoption.

24. It is well settled provision of law that the adopted son became a member of the coparcenary and is entitled to claim one half share in the joint family properties excluding the allienations made before he was adopted. In the case in hand, the coparcenary case to an end on the partition decree in T.S. (Partition) No.29 of 1960 and since then, the joint family consisting of Niro Kotwarin and Lilo Kotwar also ceased to exist. Thus, the trial court as well as the appellate court rightly came to the conclusion that the defendant no.5 could not be treated as coparcener in the joint family of his adoptive father and uncle and accordingly, claim of having succeeded to the ancestral property, having share equal to his adoptive mother, is untenable. In view of partition of 1960, the suit property became in the nature of self-acquired property of the widow and, after her death in 1969, all her six daughters and the adopted son are rightly to be held entitled to 1/7th share each. Thus, this Court finds that there is no illegality in the judgment of the appellate court as well as the

trial court. The law point framed in the second appeal is answered accordingly.

25. This Court further finds that two fact finding courts have come to a concurrent finding and this Court finds that there is no illegality in the facts of the case as the law point has been answered in negative. No relief can be extended in the second appeal and accordingly, Second Appeal No.463 of 1990(P) stands dismissed.

26. The office is directed to send back the L.C.R along with this judgment to the court below, forthwith.

(**Sanjay Kumar Dwivedi, J.**)

Jharkhand High Court, Ranchi
Dated, the 20th of December, 2019
SI, AFR.,