



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 1115 of 1999**

Order Reserved On : 04/12/2018

Order Passed On : 17/05/2019

- Ramkumar Tiwari S/o Bhagwat Prasad Tiwari Aged About 64 Years R/o Chandanu Tahsil Bemetara, District Durg, Chhattisgarh.

---- Petitioner

Versus

1. Board Of Revenue Madhya Pradesh Gwalior Madhya Pradesh
2. Additional Commissioner Raipur, Division Raipur, Chhattisgarh.
3. Sub Divisional Officer Bemetara District Durg, Chhattisgarh.
4. Naib Tahsildar Bemetara, District Durg, Chhattisgarh.
5. Pachkaur Since (Dead) Through LRs
5.1 - (A) Smt. Rukmani Bai Widow Of Pachkaur
5.2 - (B) Badri Prasad S/o Pachkaur
5.3 - (C) Kaushal Kumar S/o Pachkaur
5.4 - (D) Vyas Narayan (Since Dead Through Lrs.)

- (i) Smt. Sarita, widow of Vyas Narayan;
- (ii) Nilay Kumar, son of Vyas Narayan;
- (iii) Gaurav Kumar, son of Vyas Narayan;
- (iv) Ku. Neelam, Daughter of Vyas Narayan;
- (v) Ku. Sujata, Daughter of Vyas Narayan;

All resident of village Chandanu, Tehsil Bemetara, District Durg (CG)

- 5.5 - (E). Smt. Ahilya Sharma W/o Neel Kamal Sharma
- 5.6 - (F) Nandni Sharma W/o Goverdhan Prasad Sharma

Both resident of village Chandanu, Tehsil Bemetara, District Durg (CG)

---- Respondent

**SA No. 555 of 2003**

1. Bandhu Prasad S/o Pachkod Prasad Pandey Aged About 42 Years R/o Village Chandnu, Tehsil Bemetara, District- Durg, Chhattisgarh.
2. Badri Prasad S/o Pachkod Prasad Pandey Aged About 45 Years R/o Village Chandnu, Tehsil Bemetara, District- Durg, Chhattisgarh.
3. Smt. Savita Pandey W/o Late Vyasnarayan Aged About 38 Years R/o Village Chandnu, Tehsil Bemetara, District- Durg, Chhattisgarh.
4. Nilay Pandey S/o Vyas Narayan Aged About 22 Years R/o Village Chandnu, Tehsil Bemetara, District- Durg, Chhattisgarh.
5. Kumari Neeni Pandey D/o Vyas Narayan Aged About 20 Years R/o Village Chandnu, Tehsil Bemetara, District- Durg, Chhattisgarh.
6. Golu Pandey S/o Vyas Narayan Aged About 7 Years Minor Through Their Natural Guardian Mother, Smt. Savita Pandey, Wd/o Late Vyas Narayan Pandey R/o Chandnu Tehsil Bemetara, Presently B.T.I. Training Centre, Bemetara.
7. Kumari Poonam D/o Vyas Narayan Aged About 5 Years Minor Through Their Natural Guardian Mother, Smt. Savita Pandey, Wd/o Late Vyas Narayan Pandey R/o Chandnu Tehsil Bemetara, Presently B.T.I. Training Centre, Bemetara.
8. Kumari Sujata D/o Vyas Narayan Aged About 13 Years Minor Through Their Natural Guardian Mother, Smt. Savita Pandey, Wd/o Late Vyas Narayan Pandey R/o Chandnu Tehsil Bemetara, Presently B.T.I. Training Centre, Bemetara.
9. Smt. Sunita D/o Pachkod Prasad Pandey Aged About 30 Years R/o Village Chandnu, Tehsil Bemetara, District- Durg, Chhattisgarh.
10. Smt. Babli @ Nandni D/o Pachkod Prasad Pandey Aged About 35 Years R/o Village Chandnu, Tehsil Bemetara, District- Durg, (CG)

---- Appellants

Versus



1. Ramkumar S/o Bhagwat Prasad Tiwari Aged About 42 Years R/o Naoghat, Tehsil Bemetara, District- Durg, Chhattisgarh.
2. Collector Durg, District- Durg, Chhattisgarh.

---- Respondent

For Petitioner in WP : Shri Dinesh Tiwari, Advocate.
For Respondents 2 to 4 : Shri Anand Dadriya, GA.
For Appellant in SA and Res No.5 in WP : Shri Awadh Tripathi, Adv.
For Respondent No.1 in SA : Shri Dinesh Tiwari, Advocate.

Hon'ble Shri Prashant Kumar Mishra, J

C A V Order

1. Parties to the proceeding in both the matters i.e. WP No. 1115 of 1999 and SA No. 555 of 2003 are contesting right, title and interest over same piece of land, therefore, both the matters having been heard analogously are being decided by this common order.
2. In WP No. 1115 of 1999 preferred by Ram Kumar Tiwari, challenge is to the order (Annexure-P/13) passed by the Board of Revenue on 14.1.1999 directing mutation of names of all the legal heirs of late Hirondi Bai. Thus, this proceeding pertains to the contest over claim for mutation of their names in the revenue Records.
3. The other matter i.e. SA No.555/2003 has been preferred by

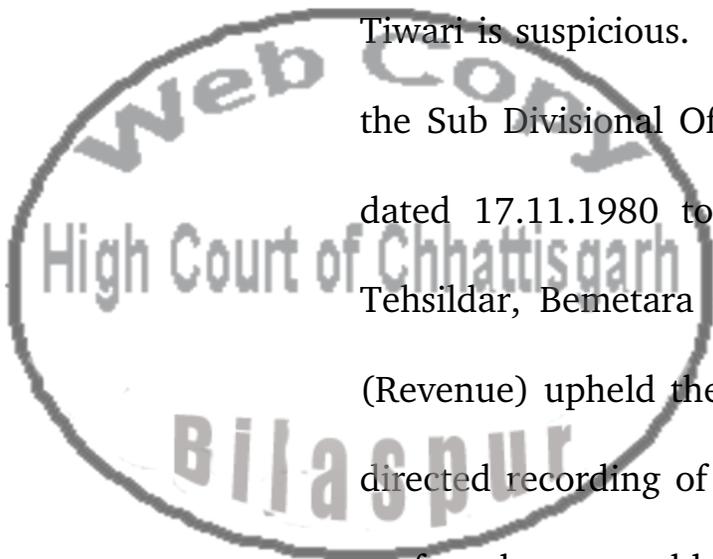


Bandhu Prasad and others (including some parties in whose favour the Board of Revenue has passed mutation order) challenging the judgment and decree passed by the 3rd ADJ (FTC), Bemetara, whereby the appeal preferred by Ram Kumar Tiwari was allowed and it was declared that the order dated 19.8.1976 passed by the competent authority under the Chhattisgarh Ceiling on Agricultural Holdings Act, 1960 (henceforth 'the Ceiling Act') in Case No.1324-A/91(B)(3)/74-75 is illegal and ineffective for the reason that the said order has been passed without impleading Ram Kumar Tiwari and examining his rights, title and interest over the property.

4. Facts necessary for disposal of the matters are that Hirondi Bai @ Kunjan Bai, widow of Dau Ram was recorded Bhoomiswami of lands ad measuring 47.33 acres situate at Moja Chandan, Tehsil Bemetara, District Durg (now District Bemetara). Hirondi Bai died at village Chandan on 22.11.1979. One Pachkod (since deceased) represented by his legal heirs moved an application for mutation on 12.12.1979 in the Court of Naib Tehsildar, Bemetara claiming himself to be adopted son of Hirondi Bai and her husband Dau Ram. He claimed that he being the sole legal heir inherited estate of his adopted mother Hirondi Bai, the original Bhoomiswami.



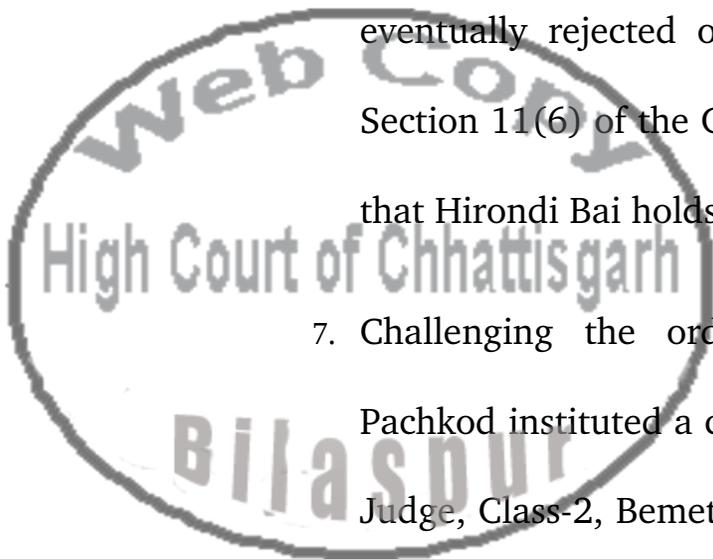
5. Ram Kumar Tiwari, the petitioner in the writ petition, raised an objection to the application made by Pachkod claiming under the registered Will dated 14.2.1979 duly executed in his favour by Hirondi Bai. The Naib Tehsildar, Bemetara passed an order on 17.6.1980 directing recording of Panchkol's name in the revenue papers, recognizing him to be an adopted son and at the same time holding that the registered Will in favour of Ram Kumar Tiwari is suspicious. On appeal preferred by Ram Kumar Tiwari, the Sub Divisional Officer (Revenue), Bemetara passed an order dated 17.11.1980 to set aside the order passed by the Naib Tehsildar, Bemetara on 17.6.1980. The Sub Divisional Officer (Revenue) upheld the WILL in favour of Ram Kumar Tiwari and directed recording of his name in the revenue records. Pachkod preferred an appeal before the Commissioner, Durg Division, who by its order dated 24.8.1981 set aside both the orders of Naib Tehsildar as well as Sub Divisional Officer (Revenue) and directed that no-one be recorded in the revenue record till adjudication of title by the civil Court. Both the parties namely, Pachkod and Ram Kumar Tiwari preferred separate revision application before the Board of Revenue, who by its common order dated 17.6.1982 set aside the order passed by the Commissioner and remitted the matter for decision afresh in accordance with law.





6. In the meanwhile, the competent authority under the Ceiling Act passed an order on 6.1.1976 declaring that the original holder Hirondi Bai holds 17.33 acres as surplus land. The competent authority also found that Pachkod is not an adopted son of Hirondi Bai. A draft statement pursuant to the competent authority's order dated 6.1.1976 was served upon the erstwhile Bhoomiswami Hirondi Bai inviting objections, which were eventually rejected on 19.8.1976 and a final statement under Section 11(6) of the Ceiling Act was passed on 19.8.1976 holding that Hirondi Bai holds 17.33 acres of surplus land.

7. Challenging the order passed by the competent authority, Pachkod instituted a civil suit No.24-A/1977 in the Court of Civil Judge, Class-2, Bemetara, re-numbered as Civil Suit No.197-A/82 on transfer to the Court of Civil Judge, Class-I, Bemetara, claiming declaration that the draft statement order rejecting Hirondi Bai's objection and final statement of the Ceiling Authority be declared nullity and injunction be issued restraining the State from interfering with his possession. In the said suit, Hirondi Bai was joined as defendant No.2, however, she died during the pendency of the suit, hence her name was deleted. Ram Kumar Tiwari was also joined in the suit as one of the defendants. By a judgment dated 15.3.1984, rendered by the





Civil Judge, Class-I, Bemetara in Civil Suit No.197-A/82, Pachkod's claim was decreed, inter alia, holding that he was an adopted son of Hironi Bai, therefore, he was entitled to hold the land as provided under Section 7 of the Ceiling Act and on such computation, there was no surplus land of Hironi Bai or her son Pachkod. Consequently, the plaintiff Pachkod's title was declared and injunction was issued against the State for not interfering in his possession. Challenging the judgment and decree passed by the Civil Judge, Class-I, Bemetara, State of Chhattisgarh as well as Ram Kumar Tiwari preferred two separate civil appeals in which judgment was rendered by the 3rd ADJ (FTC) Bemetara on 30.6.2003, which is the subject matter of challenge in the Second Appeal No.555/99.

8. During the pendency of the civil suit, the matter was not taken up by the Commissioner to whom the Board of Revenue had remitted the matter for re-consideration of the respective claims of the parties for mutation of their names. When the matter was taken up by the Commissioner on 20.12.1985, the judgment rendered by the civil Court on 15th March, 1984 has already been delivered, therefore, the parties made a statement that no further proceeding is now necessary. Accepting the statement, the Commissioner vide its order dated 20.12.1985 filed the



proceeding. Thereafter, Ram Kumar Tiwari, moved an application on 15.1.1990 for mutation of his name on the ground that the earlier order of Sub Divisional Officer (Revenue) in his favour has attained finality. The Tehsildar took cognizance of the application and issued notice to Pachkod whereupon Pachkod appeared and questioned the legality of the proceeding initiated upon Ram Kumar Tiwari's application and prayed for closure of the proceeding. Pachkod's objection was rejected on 25.7.1992 holding that the Sub Divisional Officer (Revenue)'s earlier order has attained finality, except the land ad measuring 17.33 acres which was earlier declared surplus but has been set aside by the civil Court in its judgment dated 15.3.1984. In revision application preferred by Pachkod before the Board of Revenue, it was held that the civil Court's judgment in his favour is decisive of the rights, inter se, between the parties, therefore, the name of Pachkod be recorded in the revenue records.

9. Since any decision in the civil suit between the parties would have supremacy over the order passed by the Board of Revenue in mutation proceeding, I shall first take up SA No. 555 of 2003 for decision. In the suit preferred by Pachkod, he claimed that he was closely related to Hirondi Bai as her husband Dau Ram's nephew. However, he was adopted by Dau Ram and Hirondi Bai



about 50 years ago (from 26th July, 1977 when the suit was filed). He claimed that after the death of Dau Ram, the plaintiff along with Dau Ram's two widow namely, Mst. Ramwati and Mst. Hirondi Bai succeeded his estate. However, out of respect, the plaintiff did not insist for partition of the property left behind by Dau Ram albeit the plaintiff had half interest in the suit lands, described in Schedule A & B appended to the plaint. It is pleaded that Hirondi Bai accepted the plaintiff as her adopted son before the ceiling authorities, but still the competent authority did not accept the plaintiff as Hirondi Bai's adopted son and declared that she holds 17.33 acres surplus land. The plaintiff claimed that competent authority under the Agricultural Ceiling Act did not make proper enquiry and fails to exercise the jurisdiction, therefore, the final order dated 19.8.1976 of the competent authority is void and does not affect the plaintiff's right, title and interest in the suit land. The plaintiff claimed reliefs that the final order of the competent authority under the Agricultural Ceiling Act passed on 19.8.1976 is not binding upon him, as the same is void, as also for issuance of permanent injunction restraining the defendant No.1/State from interfering in his possession.

10. Hirondi Bai was joined as defendant No.2 in the suit whereas after the death of Hirondi Bai, Ram Kumar Tiwari was



renumbered as defendant No.2 in place of Hirondi Bai. Hirondi Bai had herself filed her written statement before the trial Court on 24.9.1979 denying that the plaintiff was adopted by Dau Ram and herself. She also denied that she had gifted any part of the suit land to the plaintiff and further that on much prior date, she had gifted 16.50 acres of land in favour of defendant No.3 Ram Kumar Tiwari but since his name was not mutated in the revenue records, excess land was found by the competent authority.

11. In his written statement before the trial Court, the original defendant No.3 subsequently re-numbered as defendant No.2, Ram Kumar Tiwari categorically stated that plaintiff Pachkod Prasad being *Bhanja* of Dau Ram, he could not have been adopted by Pachkod and Hirondi Bai. He also denied that any ceremony for taking him on adoption was ever undertaken or held by Pachkod and Hirondi Bai. He states that about 15 acres of land was gifted to him by Dau Ram's two widows after the death of Dau Ram. He denied that any property was ever gifted by Hirondi Bai to the plaintiff. Defendant No.3 also made a prayer in the form of counter claim by praying in his written statement that the final order passed in the ceiling proceeding be set aside and declared to be not binding on defendant No.3.

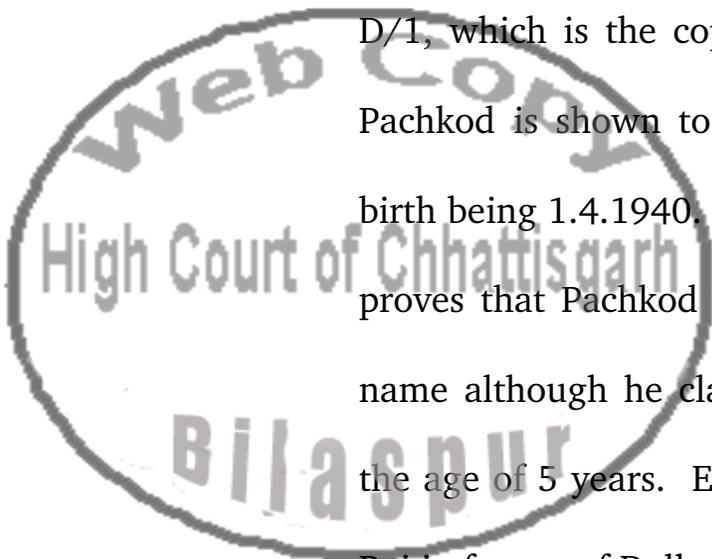
12. In course of trial, the plaintiff filed copy of the gift deed executed



by Hironi Bai in his favour on 17.12.1974 as Ex.-P/1 gifting 12.96 acres of land at village Chandanu. The plaintiff has also filed Ex.-P/2 which is the sale deed executed by Hironi Bai in favour of one Babulal on 15.7.1961 for 1 acre of land.

13. On the other hand, the defendant has filed the document (Ex.-D/1) which has been proved by DW-1 Dhruwnarayan, a teacher of the Primary School, Simga, District Raipur stating that in Ex.-D/1, which is the copy of the school register of the year 1931, Pachkod is shown to be son of Ramdayal Brahmin, his date of birth being 1.4.1940. This document, according to the defendant, proves that Pachkod was never mentioning his adoptive father's name although he claims to have been adopted by Dau Ram at the age of 5 years. Ex.-D/2 is the sale deed executed by Hironi Bai in favour of Dallu.

14. In another document filed by the defendant vide Ex.-D/4, Hironi Bai has executed the gift deed in favour of plaintiff Pachkod on 17.12.1974. The document being titled as “बक्शीश का मनसुख नामा” (Bakshish Ka Mansukhnama). In this document, she states that she, her *Saut* Ramwati or their husband Dau Ram has never adopted the plaintiff Pachkod Prasad and that Pachkod has cheated on her by obtaining a gift deed on 17.12.1974. This document titled as “बक्शीश का मनसुख नामा” (Bakshish Ka





Mansukhnama) to mean cancellation of gift deed was executed on 12.10.1979. Ex.-D/5 is another document executed on 24.12.1947 in which Hirondi Bai has gifted certain share of her property to Ram Kumar Tiwari. On the basis of this gift deed, Ram Kumar Tiwari moved mutation application which was initially rejected by the Tehsildar, however, the appellate authority, Shri B.M. Neolekar, EAC Durg allowed Ram Kumar Tiwari's appeal by order dated 23.7.1948, the certified copy of order being Ex.-D/6, holding that Ram Kumar Tiwari be recorded as Proprietor of --/--/6 pies share out of --/7/6 pies share held by Mst. Hirondi Bai.

15. Now considering the oral evidence, Pachkod (PW-4) would state that Dau Ram and Hirondi adopted him when he was 5 years old. He would not speak about any such custom under which adoption is permissible merely by putting him on the lap of adoptive father. In para-6 of his examination-in-chief, this witness would state that at the time of death Hirondi Bai was not suffering from any illness which would mean that written statement filed by Hirondi Bai denying the fact of adoption of plaintiff Pachkod, was submitted by her out of her own free will, in a fit state of mind. Pachkod would further admit the fact of he having studied at Primary School, Simga till class 4th and that he was admitted in the said



school by Dau Ram. Thus, the fact of Dau Ram having adopted Pachkod when he was 5 years of age stands falsified by the plaintiff's statement because if Dau Ram had admitted him in the school, there was no reason for Dau Ram having already adopted the plaintiff to inform the school authorities that Pachkod's father is Ram Dayal. Nothing prevented Dau Ram to have stated to the school authorities that he is the adoptive father of Pachkod. This witness would further name the villagers who were present at the time of alleged adoption, but none of them have been examined by the plaintiff in support of his case. It is important to bear in mind that the plaintiff has not filed any document like school register, mark sheet or certificates or voter list etc. in which his father's name is mentioned as Dau Ram.

16. The plaintiff's witness Keshav Prasad (PW-5) admits that plaintiff Pachkod is the Bhanja of Dau Ram. This witness was aged about 80 years on the date of his examination on 24.2.1984. According to him, adoption took place about 15-16 years back. This is contrary to what the plaintiff himself speaks that he was adopted at the age of 5 years. When the plaintiff was examined in February, 1984, he stated his age to be 57 years. Therefore, if he was adopted at the age of 5 years, his adoption took place about 52 years back and not 15-16 years, as PW-5 would state.



Considering from another angle, if PW-5 is to be believed, at the time of adoption, Pachkod was more than 15 years of age, which is not permissible under the provisions contained in Section 10 (iv) of the Hindu Adoptions and Maintenance Act, 1956 (henceforth 'the Act of 1956'). Under the said provision, a person being more than 15 years of age is not capable of being taken in adoption.

17. It is admitted position that as per the evidence available in the record, Hirondi Bai was aunt (**Badi Maa**, being the wife of elder brother of Ram Kumar Tiwari) of Ram Kumar Tiwari. Statement to this effect by DW-4 (of defendant No.2) has not been challenged in his cross-examination. This witness would further state that in the gift deed which has been found proved by the document (Ex.-D/6), Hirondi Bai has referred him as her legal heir. Thus it is found proved that Ram Kumar Tiwari is the legal heir of Hirondi Bai.

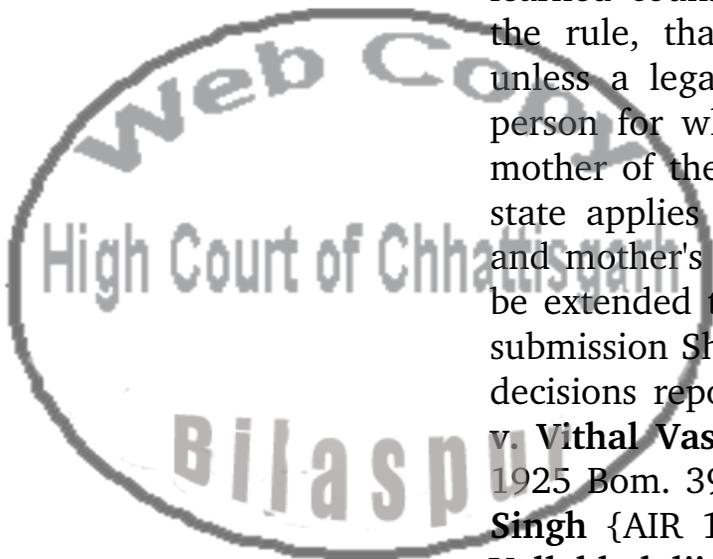
18. In the backdrop of evidence available on record, as discussed in the preceding paragraphs, the finding recorded by the first Appellate Court that plaintiff Pachkod was not adopted or rather he could not have been adopted under the then prevailing law does not suffer from any infirmity. It is established from the plaintiff's own pleading and evidence that the adoption has taken



place before coming into force of the Act of 1956. Therefore, as per the then prevailing Hindu Law, the plaintiff who happens to be *Bhanja* of Dau Ram could not have been adopted.

19. In the matter of **Tilokchand Babulal Mahajan Vs. Bhagirath Puna and Another** {1979 MPLJ 375}, the High Court of Madhya Pradesh has held thus in paras-8, 9 & 10:-

“8. As regards the invalidity of the adoption learned counsel for the appellant submitted that the rule, that there can be no valid adoption unless a legal marriage is possible between the person for whom the adoption is made and the mother of the boy who is adopted in her maiden state applies only to daughter's son, sister's son and mother's sister's son and that the rule cannot be extended to other relations. In support of this submission Shri Mahajan placed reliance upon the decisions reported in **Shripad Dattatraya Kamat v. Vithal Vasudevsmet Parker and others** {AIR 1925 Bom. 399.} and **Abhiraj Kuer v. Debendra Singh** {AIR 1962 SC 351} and **Goswami Shree Vallabhalalji v. Goswami Shree Mahalaxmi Bahuji Maharaj and another** {AIR 1962 SC 356}. The decision in **Shripad Dattatraya Kamat v. Vithal Vasudevsmet Parker and others** (supra) no doubt supports the appellant in which it has been held that adoption of a brother is not invalid. However, in that case reliance was placed upon **Jai Singh Pal Singh v. Bijai Pal Singh** {ILR 27 All 417}, **Ramkrishna Gopal Joshi v. Chimnaji Vyankatesh** {21 Indian Cases 34}, **Puttulal and others v. Parbati Kunwar and another** {42 Indian Appeals 155}, **Yamnaya v. Laxman Bhimrao** {ILR 36 Bom. 533}, **Gajanan Balkrishna v. Kashinath Narayan** {ILR 39 Bom. 410} and **Mallappa Parappa v. Gangava** {ILR 43 Bom. 209}, but in none of these cases the adoption of a brother was involved. In **Jai Singh Pal Singh v.**





Bijai Pal Singh (supra) the adoption was of widow's brother's grand son; in Ramkrishna Gopal Joshi v. Chimnaji Vyankatesh (supra) the adoption was of father's sister's son, in Puttulal and others v. Parbati Kunwar and another, the adoption was of brother's son, in Yamnaya v. Laxman Bhimrao the adoption was of mother's brother's son, in Gajanan Balkrishna v. Kashinath Narayan the adoption was of the half brother and in Mallappa Parappa Vs. Gangaya the adoption was of father's first cousin. It is thus clear that in none of the cases on which reliance was placed by the Bombay High Court in holding the validity of adoption of a brother in Shripad Dattatraya Kamat v. Vasudevsmet Parker and another (supra) the adoption of a brother was involved. I am unable to persuade myself to agree with the view taken in Shripad Dattatraya Kamat v. Vasudevsmet Parker and another. It is difficult to appreciate that if the prohibitory rule applies to mother's sister's son how it will not apply to a brother who is mother's son. Mother's son (brother) is nearer in relationship to mother's sister's son.

9. Mayne in his treatise of Hindu Law and Usage (eleventh edition) in para 175 has discussed the law as follows:

“ There is another rule that no one can be adopted whose mother in her maiden state the adopter could not have legally married”.

After discussing the controversy about this rule at the end of the para he has observed as follows:

“ In Raghavendra Rao v. Jayarama Rao the Court treated it as the settled law, except where there is usage to the contrary, that the natural mother of the boy to be adopted, should be a person who, in her maiden state, might lawfully have been married to the man for whom the adoption is made. A judgment of the Judicial Committee reversing a Full Bench of the Allahabad High Court has finally established the invalidity of adoptions contravening this rule in all cases to



which the general Hindu Law applies in the absence of a custom to the contrary. On the same ground, it is unlawful to adopt a brother, a step-brother or an uncle, whether paternal or maternal.”

10. The rule that there can be no legal adoption unless a legal marriage is possible between the person for whom the adoption is made and the mother of the boy who is adopted in her maiden state, is stated to have been accepted by almost all the High Courts except the Bombay High Court in *Abhiraj Kuer Vs. Debendra Singh* (supra). Their Lordships of the Supreme Court have assumed the correctness of this rule in the above case but held the adoption valid on the ground that a marriage with wife's sister's daughter was not invalid. Now it cannot be questioned that a marriage between Babulal and his mother whose son Tilokchand is said to have been adopted for him is impossible. Such a marriage is unthinkable. In my opinion a brother would fall within the purview of the said rule and adoption of a brother in the absence of a custom to the contrary is invalid. The custom was pleaded but the lower Court on appreciation of evidence has found that no such custom has been established. I have gone through the evidence about the custom alleged by the appellant. In my opinion the finding of the learned Judge that the alleged custom has not been established is unassailable.”

20. In the matter of **Damodar Lal Vs. Lalli Lal and Others** {AIR 1985 Rajasthan 55}, the Rajasthan High Court held thus at para-10:-

“10. In Hindu Law by Mulla, Fifteenth Edition, 1982 by Sunderlal T. Dasai, Part III relating to persons who may be lawfully taken in adoption, Sec.480, deals with “who may be adopted”. One of the rules stated is that he must not be a boy whose mother the adopting father could not have



legally married; but this rule had been restricted in many recent cases to the daughter's son, sister's son, and mother's sister's son. This prohibition, however, does not apply to Shudras. Even as to the three upper classes, it has been held that an adoption though prohibited under this rule, may be valid, if sanctioned by custom. At page 598 under the heading "Relationship of adoptive father to natural mother", the aforesaid rule is dealt with as under:-

"The rule laid down in sub-s. (3) refers to the relationship of the parties prior to marriage. It is founded upon the fiction "that the adopting father has begotten the boy upon his natural mother, therefore, it is necessary that she should be a person who might lawfully have been his wife." For this reason a man cannot adopt his daughter's son, or his sister's son, or his mother's sister's son for he cannot marry his daughter, his sister, or his mother's sister; such an adoption cannot be validated by the application of the doctrine of factum valet. If the prohibition referred to above were to be interpreted literally, there would be many other relations incapable of being adopted. But this prohibition has been confined in recent cases to the specific cases of the daughter's son, sister's son, and mother's sister's son, and it has been held that it does not extend to other relations."

21. In view of the above settled legal position, the plaintiff was not capable of being adopted by Dau Ram and Hirondi Bai. Moreover, the plaintiff's adoptive mother Hirondi Bai has herself denied the fact of adoption in her written statement, therefore, there could not be any better proof of the fact that the plaintiff was not adopted by Hirondi Bai. In addition to this evidence, the first Appellate Court has rightly referred to the fact that in his



registered address filed at the time of filing of the suit, the plaintiff has himself described him as son of Ram Dayal Brahmin. It is also to be seen that the plaintiff would never said that after adoption his relationship with his natural parents and family was completely severed and he has not succeeded any property from his natural parents. Neither the name of Pachkod was ever recorded in the revenue record of the land belonging to Dau Ram, which could have been natural consequence after the demise of Dau Ram. **The first substantial question of law** as to whether the lower appellate Court was not justified in reversing the finding that late Pachkod was adopted son of Dau Ram is answered by holding that the first Appellate Court's finding is in accordance with law and that Pachkod was not the adopted son of Dau Ram.

22. The second substantial question of law framed in this Second Appeal is whether the lower appellate Court was not justified in holding that Ram Kumar Tiwari gets title in the land by virtue of gift deed dated 24.12.1947 as execution of same was not duly proved in accordance with law? I have already considered the effect of Ex.-D/5 recognizing which Shri B.M. Naolekar, EAC, with Revenue Appellate powers in Durg District has allowed Ram Kumar Tiwari's name to be recorded in the revenue records on the



basis of said gift deed. This order has attained finality and there is no contrary evidence on record to the assertion of Ram Kumar Tiwari that based on this order (Ex.-D/7) he was allowed compensation in the same proportion at the time of abolition of Proprietary Rights. If Ram Kumar Tiwari's name was mutated in the revenue records and was also allowed compensation, he will hold the land belonging to Hironi Bai in the same proportion. Therefore, the first Appellate Court's finding that any order in the ceiling proceeding could not have been passed without impleadment of Ram Kumar Tiwari is in accordance with law. Ram Kumar Tiwari was otherwise also entitled to succeed to the property of Hironi Bai being her nephew, as it has already been found that Hironi Bai was “**Badi Maa**” of Ram Kumar Tiwari.

23. There is one more aspect of the matter, which would make the first Appellate Court's order final, inasmuch as, the first Appellate Court has held that the order in the ceiling case was made without following the principles of natural justice, as the same was passed without noticing Ram Kumar Tiwari, he having share in the property, has not been assailed by the State of Chhattisgarh by preferring any separate Second Appeal nor any Cross Appeal has been filed in the present Second Appeal. Thus, this part of decree passed by the lower Appellate Court has attained finality



because no substantial question of law has been framed while admitting the present Second Appeal which would touch upon the validity of the first Appellate Court's order on this aspect of the matter.

24. In view of the above discussion, I hold that the **second substantial question of law** again deserves to be answered against the appellant and in favour of Ram Kumar Tiwari holding that the first Appellate Court's order recognizing the gift deed in view of the certified copy of the order passed by Shri B.M. Naolekar, having revenue appellate powers, has been decided in accordance with law.

25. Ex-consequenti, the Second Appeal preferred by Pachkod, now prosecuted by his legal heirs deserves to be and is hereby dismissed. Once the Second Appeal is decided in favour of Ram Kumar Tiwari, the order of mutation in favour of pachkod and his legal heirs deserves to be and is hereby set aside. The Writ Petition preferred by Ram Kumar Tiwari is allowed.

Sd/-
Judge
(Prashant Kumar Mishra)