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Doctrine of relation back under old and modern Hindu Law

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The principle of Relation Back is subject to limitation by which if the property by inheritance goes to a collateral and a son is adopted after the death of the collateral, the adoption does not divest the property which has already been vested in the heir of the collateral. Under Mitakshara Law if a Hindu male adopted a son during its lifetime, such adoption is valid from the date of his adoption. In the case a widow of a Mitakshara husband adopts a son, such adoption would take effect from the date of death of her husband, which relates back to the earlier date. The new arrival (either by after-born or by legal adoption) can obtain a reopening of the partition and thereby get his share. According to the authority of Manu and Vashishtha, adoption of a son was considered as a gift by a family to another family, as a substitute for failure of the family to procreate a male issue, which has a religious sanctity behind it.

In other words according to this doctrine a son adopted by the widow was deemed to have come into existence in the adoptive family on the day her husband died, and the adopted son was put in the position of posthumous son and all his relations in the adoptive family related back to the date of the death of his adoptive father by legal fiction.

However, the rule had two exceptions:

- (1) Any lawful alienation effected by a female heir since the death of the adoptive father and before the date of adoption was binding on the adopted son¹.
- (2) If the property by inheritance went to a collateral, (relatives of one another who descend from a common ancestor) the adoption could not divest the property which was vested in the heir of the collateral².

The Hon'ble Supreme Court in *Sripad Gonjam v. Datta Rant Kashi Nath*³, observed that “when a widow adopts a son, doctrine makes sonship retrospective from the moment of the death of the late husband.”

In *K.R. Sankaralingam Pillai And Ors. vs Veluchami Pillai*⁴, Sir Lionel, C.J., summarised the law of relation back under Hindu Law as follows:—

- (1) It is a rule of Hindu law that an adoption dates back to the date of the death of the father.

¹ Anant vs. Shankar [(1943) 70 IA 232]

² Bhubaneswari Debi vs. Nilkomul [(1886) 12 IA 137-141]

³ 1974 AIR 878 SC

⁴ (1942) 2 MLJ 678

(2) There is no reason why an adopted son should be placed in position inferior to that of the posthumous son, the heir of a disqualified person and the absent coparcener.

(3) The right of the adopted son to demand partition, has been recognised.

(4) As adoption divests an estate of inheritance, it would be unjust to the adopted son the right of claiming repartition when the rule of survivorship applies. It is settled law that an adoption made by a widow to her deceased husband after the death of the collateral does not entitle the adopted son to come in as an heir of the collateral.

The principle of relation back applies only when the claim made by the adopted son relates to the estate at his adoptive father and it is the interest of the adoptive father which the adopted son is entitled to take as on the date of his death. This is based on the principle that the creation of filial relations is based on the notion of continuity of line, and it could apply and had been applied only to the estate of the adoptive father, and not of collaterals⁵.

However, after passing of the Hindu Adoption and Maintenance Act 1956 (hereinafter referred to as Act), this doctrine was abrogated, in light of Section 12 of the said Act. The Act was enacted to deal specifically with the legal process of adopting both male and female child by a Hindu adult (both by husband or wife) and with the legal obligations of a Hindu to provide 'maintenance' to various family members including their wife or parents and in-laws.

Section 12 talks about the effect of adoption and reads as follows:

"An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family".

Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

The object of this Section was to codify the old Hindu law qua adoption and maintenance, that considered the doctrine of "relation back". The Act does away with the theory of "relation back" and confers on the adopted child a status equivalent to that of a natural-born child, in the adoptive family, only from the date of adoption. The expression "effects of adoption" refers to all the legal consequences flowing from an adoption. It is pertinent to reiterate that the Act does not use the term son, but the term child, denoting that the provision applies to adoption of both son or daughter.

⁵ Venkalakshmi Ammal And Ors. vs Jagannathan (Minor) And Ors. [AIR 1963 Mad 316]

Section 12 of the Act, recognizes the absolute substitution of the adopted child in the adoptive family, alike to a natural born child, and on the date of adoption all the ties of relationship in the family of his birth becomes severed and replaced by those created by adoption in the adoptive family. Further, in the family of adoption the ties of blood relationship are created in both, paternal and maternal lines. As per Section 12(a) of the Act, the adopted child also cannot marry certain persons if the natural born child could not have married those persons. Further, Section 12(b) of the Act, protects the adopted child to retain the property which such a child inherited, or which was vested in the child, subject to the obligations if any attached to that property.

Section 12(c) of the Act, further expressly buries, the doctrine of relation back which involved the problem of vesting and divesting of property and involved multifarious litigation. A reading of Section 12 of the Act makes it clear that the adopted child becomes akin to a natural born child, in the family of adoption. It is the date of adoption which is material for the deciding, filial relations in the family of adoption and severance of relations in the family of birth. All the relational ties which are snapped from the family of birth are replaced in the family of adoption.

The Hon'ble Andhra Pradesh High Court, in *K. Venkata Somaiah vs. K Ramasubbamma*⁶, dealt with a case where a sole surviving coparcener had bequeathed all his properties absolutely to his wife. After the death of her husband she adopted a son, and under an adoption agreement she gave certain properties to her adopted son and retained the others for herself. The adopted son sought to divest his adoptive mother of all the properties. The Court observed that the doctrine of relation back could not be resurrected. After 1956, the Act, solved this problem by laying down an express and explicit rule that the adopted child shall not strip away any person of any estate which is vested in him or her before adoption.

A similar view was taken by the Hon'ble Supreme Court, long before, in *Sitabai vs. Ram Chandra* [AIR 1970 SC 343] wherein the Court observed that the effect of adoption under the Act is to bring about severance of all ties of the child given in adoption in the family of his or her birth. 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) of the Act, 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. 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 Act comes into picture, wherein, in 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.

The Act completely abrogates the theory of relation back and confers on the adopted child a status equivalent to that of a natural born child in the adoptive family only from the date of adoption. Though the essence of Section 12 of the Act is that on adoption all the ties of the adopted child (both boy or girl) of the family of his birth shall be deemed to be severed and replaced by those of

⁶ AIR 1984 A. P.313.

the adoptive family, only tie that he retains with his natural family is that he cannot marry any person in his natural family whom he could not have married before his adoption.

