HIGH COURT FOR THE STATE OF TELANGANA

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LETTERS PATENT APPEAL NO.204 OF 2001

Between:

Anumolu Nageswara Rao,

.... Appellant/appellant

And

A.V.R.L.Narasimha Rao

..... Respondents/Respondents

JUDGMENT PRONOUNCED ON : 27.6.2023

HONOURABLE SRI JUSTICE P.NAVEEN RAO
HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

1. Whether Reporters of Local Newspapers may be allowed to see the Judgments ? : YES

2. Whether the copies of judgment may be marked to Law Reporters/Journals : YES

3. Whether their Ladyship/Lordship wish to see fair Copy of the Judgment ? : No

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO**
HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

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Anumolu Nageswara Rao

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..... Respondents/Respondents

!Counsel for the appellant : Sri Vedula Srinivas

Counsel for the Respondents : Sri E.V.V.S.Ravi Kumar for respondent no.1; Sri Y.Srinivasa Murthy, appearing for Sri M.V.B.S.N.Anudeep for the respondents 2 and 3

<Gist :

>Head Note:

? Cases referred:
AIR 1981 AP 19; (2005) 12 SCC 290; AIR 1967 SC 1761; 1969 (2) SCC 544; AIR 2001 Patna 125; AIR 1992 Bombay 189; 1990 SCC Online Bom 72; 2022 (5) ALT 9 (SC) ; AIR 1987 SC 398; AIR 1988 SC 845; (1985) 1 SCC 591; 1980 (2) APLJ DB 194; 2016 SCC Online Cal 1659; 2013 SCC Online Cal 610; 1905 SCC Online Mad 51; (1991) Supp (2) SCC 228; (2003) 1 SCC 6 ; (1996) 9 SCC 516; 1935 SCC Online All 365; 1896 SCC OnLine Mad 51; 2000 SCC Online Pat 721 : AIR 2001 Pat 125;

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LETTERS PATENT APPEAL NO.204 OF 2001

JUDGMENT: *(Per Hon'ble Sri Justice P.Naveen Rao)*

When L.P.A.No.204 of 2001 came up for consideration before the Division Bench, on behalf of appellant, it was contended that on adoption by adoptive family, the person ceases to have any relationship with the family of his/her birth and is not entitled to claim share in the ancestral property of family of birth. It was further contended that the decision of Division Bench of the then High Court of Andhra Pradesh in **Yarlagadda Nayudamma vs. The Government of Andhra Pradesh, rep.by the Authorized officer, Land Reforms, Ongole**[1] is not a good law. Reliance is placed on decisions of Hon'ble Supreme Court in **Basavarajappa Vs. Gurubasamma and others**[2]**; Sawan Ram vs. Mst. Kalawanti and others**[3]**; Smt Sitabai and another vs. Ramchandra**[4]**;** and the decision of Patna High Court in **Santosh Kumar Jalan alias Kanhaya Lal Jalan vs. Chandra Kishore Jalan and**

[1] AIR 1981 AP 19
[2] (2005) 12 SCC 290
[3] AIR 1967 SC 1761
[4] 1969 (2) SCC 544

another[5]**,** and the decision of Bombay High Court in **Devgonda Raygonda Patil vs. Shamgonda Raygonda Patil and another**[6]**.**

2. *Per contra,* respondents contended that under Section 6 of the Hindu Succession Act, 1956 (for short, 'Act, 1956'), devolution of interest of coparcenary property is by survivorship and is not divested by the adoption of the adoptee in the light of the language employed in proviso (b) to Section 12 of the Hindu Adoptions and Maintenance Act, 1956 (for short, 'Adoptions Act'). They relied on the decision of Division Bench of the then High Court of Andhra Pradesh in **Yarlagadda Nayudamma** (supra) and the decision of Bombay High Court in **Shivaji Anantrao Deshmukh vs. Anantrao Devidasrao Deshmukh**[7]**.**

3. The Division Bench has looked into various decisions cited at the bar and the decision in **Nayudamma.** The Division Bench was not persuaded to accept the reasoning assigned in **Nayudamma**. The Division Bench posed the question for consideration as under:

> "17. On the above analysis of the case laws on the point, the question is whether the rights of a coparcener in the joint possession and enjoyment of the property is clear vesting of title in the coparcener even before partition, and can he be said to be short of rights of a full owner or whether his rights would get crystallized into definite share only on actual partition. In view of the dissenting views expressed by this Court in **Yarlagadda Nayudamma**'s case (supra) as also the view expressed by the Patna High Court in **Santosh Kumar Jalan'**s case (supra) and the decisions of other

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[5] AIR 2001 Patna 125
[6] AIR 1992 Bombay 189
[7] 1990 SCC Online Bom 72

> Courts following these decisions, an authoritative pronouncement will set at nought the issue."

4. The Division Bench also posed following question for consideration:

> "Whether by virtue of the proviso (b) to Section 12 of the Adoption Act, the undivided interest in the property of a coparcener will not, on his adoption, be divested, but will continue to vest in him even after his adoption."

5. Therefore, the Division Bench requested Hon'ble the Chief Justice to refer the matter to a Full Bench for an authoritative pronouncement. Accordingly, the matter is placed before this Full Bench.

THE REFERENCE:

6. The question referred to Full Bench is as under:

> "Whether the rights of a coparcener in the joint possession and enjoyment of the property is clear vesting of title in the coparcener even before partition, and can he be said to be short of rights of a full owner or whether his rights would get crystallized into definite share only on actual partition; and
>
> Whether by virtue of the proviso (b) to Section 12 of the Adoption Act, the undivided interest in the property of a coparcener will not, on his adoption, be divested, but will continue to vest in him even after his adoption."

7. Briefly noted, this LPA arises out of judgment and decree in O.S.No.54 of 1977 on the file of Senior Civil Judge's Court, Khammam for partition and possession of the suit schedule properties. Appellant herein is the Defendant No.1 in the suit. For the sake of convenience, the parties herein will be referred as arrayed in the suit. The defendant No.1 and

plaintiff in the suit are brothers, defendant Nos.4 and 5 are sisters, defendant No.2 is their mother, defendant No.3 is their grandmother. Defendant No.6 is the maternal uncle of defendant No.2. It is stated that Defendant No.6 has adopted the plaintiff as his son. O.S.No.54 of 1977 is filed by the plaintiff praying to grant decree of partition and allocate his share and to grant possession of the suit schedule properties of his original family.

8. The Trial Court decreed the suit in favor of the plaintiff. The court observed that in view of proviso (b) to Section 12 of the Adoptions Act and Judgment rendered by a Division Bench of this Court in **Yarlagadda Nayudamma** (supra), a coparcener of the family in which he was born would not be divested of his share in the properties belonging to that family even after his adoption by another family. Aggrieved by the judgment of the trial court, the defendant No.1 filed A.S.No.1251 of 1985, which came to be dismissed by a learned Single Judge of this Court. Following which, the defendant No.1 filed a Review Petition which was also dismissed. Thereafter the defendant No.1 has filed L.P.A.No.204 of 2001.

SUBMISSIONS:

9.1. Learned senior counsel Sri Vedula Srinivas appearing for appellant would contend that once a person is adopted he becomes coparcener of adoptive family and ceases to have any relationship with his family of

birth. He would submit that proviso (b) to Section 12 applies only when property already vested in him in the family of his birth before his adoption. Understanding the scope of proviso in any other manner would be amounting to violating the effect of main provision.

9.2. According to learned senior counsel, **Nayudamma** has not considered the issue in right perspective. It has ignored the precedent decisions of Hon'ble Supreme Court and relied only on opinion of authors. As held by Patna High Court, a person adopted by another family can have no right to claim share in the property of family of his birth. He would submit that **Nayudamma** is not a good law.

9.3. He would submit that a coparcener has interest in the ancestral property of the family where he was born, but he can acquire definite right over a portion of joint family only when partition opens up. If he is adopted before such event, he becomes coparcener of adoptive family and seizes to have any interest in the property of the family of his birth.

9.4. No person can be a coparcener of two families and unless a person is a coparcener he cannot claim share in the ancestral property.

9.5. He would submit that the decisions arising from Calcutta High Court concern Dayabhaga Law, whereas in Telugu States Mitakshara Law applies and therefore those decisions are not relevant for consideration of

the case. He would further submit that in the decisions relied by learned senior counsel Sri Murthy no ratio is laid down.

9.6. In support of his submissions, learned senior counsel relied on following decisions:

i) **Basavarajappa vs. Gurubasamma and others** (supra);

ii) **Mrs. Akella Lalitha vs. Konda Hanumantha Rao and another**[8]**;**

iii) **Sawan Ram vs. Mst. Kalawanti and others** (supra);

iv) **Smt. Sitabai and another vs. Ramchandra** (supra);

v) **Yarlagadda Nayudamma etc. vs. The Govt. of Andhra Peradesh and others** (supra);

vi) **Vasant and another vs. Dattu and others**[9];

vii) **Dharma Shamrao Agalawe vs. Pandurang Miragu Agalawe and others**[10];

viii) **Basavarajappa vs. Gurubasamma and others** (supra);

ix) **Santosh Kumar Jalan alias Kanhaya Lal Jalan vs. Chandra Kishore Jalan and another** (supra); and

x) **S.Sundaram Pillai and others vs. V.R.Pattabiraman and others**[11]

10.1. Learned senior counsel Sri Y.Srinivasa Murthy, appearing for Sri M.V.B.S.N.Anudeep for the respondents 2 and 3 contended that in view of proviso (b) to Section 12 of Adoptions Act, 1956, a coparcener acquiring right to ancestral property in the family where he was born by birth retains

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[8] 2022 (5) ALT 9 (SC)
[9] AIR 1987 SC 398
[10] AIR 1988 SC 845
[11] (1985) 1 SCC 591

such right even after he is adopted by another family and secures coparcenary right of his new family.

10.2. To support this contention, the learned senior counsel has placed reliance on the excerpts of ***Mayne's Hindu Law and Usage, 12th Edition*, Pages 443 – 449,** the relevant portions have been reproduced below,

> **"7. Adoptee's right to property of his family of birth**: **Proviso (b)**. Similarly nothing in the Act divests the adoptee's right to any estate vested in him or her prior to the date of adoption. In fact not only the property belonging to an adopted child in the natural family such as his or her self-acquired property, property inherited by him or her from other persons including his or her father or or her ancestor and property held as a sole surviving coparcener in a Mitakshara family, but even the interest of a male child in a Mitakshara coparcenary would continue to vest in him as if he had separated from the coparcenary[12].
>
> It is to be noted that when the adoptee takes any rights he has also to fulfill the necessary obligations attached to the property including the maintenance of relatives etc. This does not include any personal obligation or liability incurred by him as a member of the natural family."

10.3. Furthermore, the learned senior counsel also relied on the definitions of the terms '*vest*', '*vested*' and '*vested interest*' from the ***Black's Law Dictionary, 9th Edition***, extracted below:

> **"vest**, vb. (15c) **1.** To confer ownership (of property) upon a person. **2.** To invest (a person) with the full title to property. **3.** To give (a person) an immediate, fixed right of present or future enjoyment. **4.** Hist. To put (a person) into possession of land by the ceremony of investiture. - **vesting, n."**
>
> **vested**, adj. (18c) Having become a completed, consummated right for present or future enjoyment; not con-tingent; unconditional; absolute <a vested interest in the estate>. [Cases: Estates in Property <1.]

[12] *Yarlagadda Nayudamma vs Government of AP* 1980 (2) APLJ DB 194

> "[Unfortunately, the word 'vested' is used in two senses. Firstly, an interest may be vested in possession, when there is a right to present enjoyment, e.g. when I own and occupy Blackacre. But an interest may be vested, even where it does not carry a right to immediate possession if it does confer a fixed right of taking possession in the future." George Whitecross Paton, A Textbook of Jurisprudence 305 (G.W. Paton & David P. Derham eds., 4th ed. 1972).
>
> "A future interest is vested if it meets two requirements: first, that there be no condition precedent to the interest's becoming a present estate other than the natural expiration of those estates that are prior to it in possession; and second, that it be theoretically possible to identify who would get the right to possession if the interest should become a present estate at any time." Thomas F. Bergin & Paul G. Haskell, Preface to Estates in Land and Future Interests 66-67 (2d ed. 1984)."
>
> ***vested in interest.*** (18c) Consummated in a way that will result in future possession and use. • Reversions, vested remainders, and any other future use or executory devise that does not depend on an uncertain period or event are all said to be vested in interest.[Cases: Wills 628-638.]
>
> ***vested in possession.*** (18c) Consummated in a way that has resulted in present enjoyment."

10.4. Learned Senior Counsel contended that **Yarlagadda Nayudamma** (supra) lays down correct proposition of law.

10.5. He has relied on following decisions:

i) **Purushottam Dass Bangur, In re,**[13]

ii) **Jadabendra Narayan Choudhury v. Shitanshu Kumar Choudhury**[14]**;**

iii) Shivaji Anantrao Deshmukh v. AnantraoDevidasrao Deshmukh (supra);

iv) **Rajah Venkata Narasimha Appa Row v. Rajah RangayyaAppa Row**[15]

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[13] 2016 SCC Online Cal 1659
[14] 2013 SCC Online Cal 610
[15] 1905 SCC Online Mad 51

10.6. According to learned senior counsel, decisions relied by learned senior counsel Sri Vedula Srinivas arise under proviso (c) to Section 12 and, therefore, are not relevant while considering the point for reference.

11. Learned counsel Sri E.V.V.S.Ravi Kumar appearing for 1st respondent submitted that explanation to Section 6 of Hindu Succession Act has to be read along with proviso (b) to Section 12 of Adoptions Act and reading these together make it very clear that even after adoption by adoptive family, the person retains his right to share in the ancestral property of his family of birth.

CONSIDERATION:

12. To appreciate the issue for reference, it is necessary to look into Section 12 of the Adoptions Act. It reads as under:

> **"S.12 Effects of adoption.** —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."

13. The principal provision in Section 12 of Adoptions Act envisages severance of ties with the family of his/her birth on adoption and acquiring of rights in the adoptive family. Provisos deal with three aspects that impact adoption. On the question for consideration by the Full Bench, the entire debate is on scope of proviso (b). The debate and discussion is on whether the adopted child continues to retain coparcenary right in the family of his/her birth even after his/her adoption. It therefore requires consideration as to what is meant by ***'vested in the adopted child'*** occurring in proviso (b). But, before considering the said aspect, it is necessary to consider scope of proviso to a Section.

14. In **S.Sundaram Pillai** (supra), Hon'ble Supreme Court reviewed precedent decisions on scope of a proviso and summarized the principles that emerge from precedent decisions as under:

> **"27.** The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.
>
> Xxxx
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> **43.** We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:
>
> (*1*) qualifying or excepting certain provisions from the main enactment:

(*2*) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(*3*) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(*4*) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

15. At this stage, it is expedient to dwell into how various dictionaries have defined and what the precedent decisions have asserted on the words '***vest'*** and ***'vested'***.

15.1. Dictionary meaning of ***'vest'*** is to confer or to bestow; to grant or endow with a particular property; to give to a person a legally fixed immediate right of present or future enjoyment. ***'Vested'*** means fully and unconditionally guaranted a legal right, benefit or privilege. From the dictionary meaning, it is apparent that '***vesting of right in a property'*** would indicate vesting such right in the present or future. On the contrary, '***vested right in a property'*** would indicate that already right is '***vested'***. As held by Hon'ble Supreme Court in **Vatticheruku village Panchayat vs. Nori Venkatarama Deekshithulu**[16]**,** the word ***'vest'/'vested'*** bears variable colour liking its content from the context in which it came to be used.

[16] (1991) Supp (2) SCC 228

15.2. In **Vatticheruku Village Panchayat** (supra), the Hon'ble Supreme Court held as under:

> **"10.** The word 'vest' clothes varied colours from the context and situation in which the word came to be used in a statute or rule. *Chamber's Mid-Century Dictionary* at p. 1230 defines **'vesting' in the legal sense "to settle, secure, or put in fixed right of possession;** to endow, to descend, devolve or to take effect, as a right". In *Black's Law Dictionary*, (5th edn. at p. 1401) the meaning of the word **'vest' is given as : "to give an immediate, fixed right of present or future enjoyment;** to accrue to; to be fixed; to take effect; to clothe with possession; to deliver full possession of land or of an estate; to give seisin; to enfeoff". In *Stroud's Judicial Dictionary*, (4th edn., Vol. 5 at p. 2938), the word **'vested' was defined in several senses**. At p. 2940 in item 12 it is stated thus "as to the interest acquired by public bodies, created for a particular purpose, in works such as embankments which are 'vested' in them by statute", see *Port of London Authority* v. *Canvey Island Commissioners* [(1932) 1 Ch 446] in which it was held that the statutory vesting was to construct the sea wall against inundation or damages etc. and did not acquire fee simple. Item 4 at p. 2939, the word 'vest', in the absence of a context, is usually taken to mean "vest in interest rather than vest in possession". In item 8 to 'vest', "generally means to give the property in". **Thus the word 'vest' bears variable colour taking its content from the context in which it came to be used.** .... " (emphasis supplied)

15.3. In **Bharat Coking Coal Ltd., vs. Karam Chand Thapar & Bros. (P) Ltd. and others**[17] Hon'ble Supreme Court held,

> **"3. The word "vest" in common English acceptation means and implies conferment of ownership of properties upon a person and in the similar vein it gives immediate and fixed right of present and future enjoyment. Significantly, however, the expression "vest" is a word of variable import since it has no fixed connotation and the same has to be understood in different contexts under different set of circumstances.** The decision of this Court in *Fruit & Vegetable Merchants Union* v. *Delhi Improvement Trust* [AIR 1957 SC 344] lends concurrence to the same." (emphasis supplied)

[17] (2003) 1 SCC 6

15.4. In **Bibi Sayeeda and others vs. State of Bihar and others**[18], the Hon'ble Supreme Court held as under:

> **"17.** The word 'vested' is defined in *Black's Law Dictionary* (6th Edn.) at p. 1563 as:
>
> > **"Vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent."**
>
> **Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In *Webster's Comprehensive Dictionary*, (International Edn.) at p.1397 'vested' is defined as:**
>
> > **"[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests."**
>
> (emphasis supplied)

16. It is thus seen that the word 'vest' has variable impact since it has no fixed connotation and the same has to be understood in different contexts under different set of circumstances. The word '***vested'*** means already fixed, accrued, settled, completed and gives a right of absolute ownership. In proviso (b) to Section 12 word '***vested'*** is employed. By employing the word ***'vested'*** in proviso (b) instead of ***'vest'*** the legislative intent is made very clear. It intended to recognize only such right in the property of family in which he or she was born which was already vested in him/her by the time he/she was adopted. The scheme of the Act makes it

[18] (1996) 9 SCC 516

clear that once adoption is formalized the person severs all his/her ties with the family in which he/she was born and acquires new title in the adoptive family. Therefore, a right has to vest in a coparcener in the family where he/she was born before he/she was adopted by another family.

17. In Hindu Mitakshara law a coparcener acquires right in a joint family property as soon as he was born. But, such right is unspecified. A coparcener acquires interest in the ancestral property by birth, but has no definite share in the coparcenary property. A coparcener does not have exclusive rights on any specific property of the family. All the coparceners enjoy the ancestral property jointly. The right to interest changes from time to time depending on additions or deletions of coparceners. It acquires a concrete shape only when partition opens. The property allotted to a coparcener becomes specified only on partition. On effecting partition, the coparcener acquires a specific extent of property and becomes absolute owner to that property in his right. The word ***'vested'*** employed in Section 12 proviso (b) indicates such a contingency. In other words, if ancestral properties are partitioned and a share is allotted to a child, that property vests in him. If he/she was adopted after such vesting, he/she carries with him/her said property, though he/she severs his/her relationship with the family in which he/she was born.

18. At this stage, it is expedient to consider what Mulla and other exponents of Hindu law have said on rights of an adopted person with reference to the property of family of his birth. They are noted hereunder:

18.1. In **Mayne's Hindu Law and Usage, 12th Edition,** Pg 443-44**,** the object of the enactment of the section 12 of the Hindu Adoptions and Maintenance Act, 1956 has been discussed which has been extracted as follows,

> "**2. Transplantation into a new family**. The section categorically declares. that the adopted child shall be deemed to be a child of his or her adoptive father or mother for all purposes and all the ties of the child in the family of his or her birth shall be deemed to be severed. This assumption operates only from the date of adoption when all the ties of the child severed from the old family are replaced by those created by the adoption in the adoptive family[19]. The emphatic repetition of the word all' in relation to the "purposes" and "ties" is significant. The word "ties" is very wide and comprehensive and would include all types of bonds, social, religious, cultural or any other that would bind the adoptee to his natural family. All relationships are according to the mandate of the section, replaced by the corresponding ties in relation to the adoptive family. In view of this, the adoptee is to be treated from the date of his (or her) adoption as if he (or she) were born in the adoptive family for all practical purposes. Therefore, on adoption, as in the case of birth, the adoptee acquires the caste of the adoptive parents without any thing more to be done by him or by others. The adoptee does not require the sanction of the adoptive community for treating him as a member thereof[20]. Where the adopted son is a married person it was held under the old law that the child born to him after adoption even if conceived earlier, shall be deemed to be the child in the adoptive family with all the consequential rights and privileges. The position would be the same under the Act also[21]."

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[19]*Kanwaljit Singh v State of Haryana* 1981 Punj LJ 64, 66.
[20]*Khazan Singh v Union of India* 1980 Delhi
[21]*Tarabai v Babgonder*1981 Bom 13.

18.2. Further, in Pg.378-379, various texts and authorities on Hindu Law on the effect of adoptions have been discussed,

> **198. Texts on the subject.** – Fifth, results of adoption. - the texts on the subject are fairly comprehensive and clear. The Mitakshara follows Manu, who makes the adopted son the heir not only to the adoptive father but to his kinsmen as well.[22] The Dayabhaga citing Devala might on a prima facie view be taken to have named the adopted son in the second six of the twelve secondary sons. But it would seem that 'the first six' who are mentioned as heirs to kinsmen in the Dayabhaga (X, 8) refers to the 'first six' according to the order of enumeration. On that view the adopted son comes within the first six of the twelve secondary sons and is an heir to the adoptive father's collaterals and as well[23]. Manu makes the transfer of the adopted son from the natural family to the adoptive family complete, by declaring that "an adopted son shall never take the family name and the estate of his natural father . . . . the funeral offerings of him who gives his son in adoption cease as far as that son is concerned"[24]. The DattakaMimasa and the Dattaka Chandrika expressly lay down that the adopted son is a substitute for a real legitimate son both for purposes of inheritance and for purposes of funeral obligations, and that he is a sapinda to the members of the adoptive family and that the forefathers of his adoptive mother are his 'maternal grandsires'[25].

18.3. At Pg.383-384**,** post adoption, it is explained how the adoptee severs ties with his/her birth family, especially with regards to their civil rights and obligations attached to the birth family.

> **205. Removal from natural family. –** By adoption the boy is completely removed from his natural family as regards all civil rights and obligations[26]. He is so completely removed that he has not even to observe pollution on the birth or death of any member in the family of his birth[27]. He also ceases to perform funeral ceremonies for those of his family for whom he would otherwise have offered oblations, and he loses all rights of inheritance as completely as if, hey had never been born[28]. D adopted son loses his rights in

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[22]Manu, IX, 141, 159, Mit., I, XI, 31.
[23]D. Bh., X, 7, 8; see the note giving Sri Krishna's comment on X, 7 and *BuddoKumaree v. Jaggut Kishore (1880) 5 Cal 615, 630.*
[24]IX, 142, SBE Vol. XXV, p 353.
[25]Dat. Mima, VI, 50-53; Dat Ch III, 17, 20; V 24
[26]*Muthu Krishnan v Palani* 1969 (1) MLJ 129 (office of a trustee)
[27]Sarkar, 'Adoption', 2nd edn 388; Dat. Mima VIII, 2-4
[28]Manu, IX, 142; DatMima Vi, s 6.84; Dat Chand II, s 18-20; Mit I, 11, s. 32; V May IV, 5, s. 21; *Chandrakunwar v ChoudriNarpat Singh* (1907) 34 IA 27: 29 All 184, 190. See contra, 1 Gib 95, as to Pondicherry. In parts of the Punjab the right of the adopted son in his natural family take effect if his natural father dies without leaving legitimate sons. Punjab Customary Law, III, 83. The adopted son will accordingly have no rights in the natural paternal grandfather's estate where he dies leaving a son other than the natural father of the boy.

the coparcenary property[29] and his natural family cannot inherit from him[30], nor is he liable for their debts[31]. Of course, however, if the adopter was already a relation of the adoptee, the latter by adoption would simply after his degree of relationship, and, as the son of his adopting father, would become the relative of his natural parents, and in this way mutual rights pause inheritance might still exist. The rule is merely that he loses the rights which he possessed qua natural son. But the tie of blood, with its attendant disabilities, is never extinguished. Therefore, he cannot after adoption marry whom he could not have married before adoption[32]. Nor can he adopt out of his own natural family a person, whom by reason of relationship, he could not have adopted, had he remained in it[33]. He is equally debarred from marrying in his adoptive family within the forbidden degrees[34].

18.4. In **Mulla on Principles of Hindu Law, Eighteenth Edition, Volume–I, Pg.826-828,** the results of adoption have been explained,

"§ 494. RESULTS OF ADOPTION:

(1) Adoption has the effect of transferring the adopted boy from his natural family into the adoptive family. It confers upon the adoptee, the same rights and privileges in the family of the adopter as the legitimate son, except in a few cases. Those cases relate to marriage and adoption (sub-s (3) below), and to the share on a partition between an adopted and after-born son.[35]

(2) But while the adopted son acquires the rights of a son in the adoptive family, he loses all the rights of a son in his natural family,including the right of claiming any share in the 'estate of his natural father' or natural relations, or any share in the coparcenary property of his natural family. This follows from a text of Manu (IX, Verse 142). Adoption does not under the Bengal School of Hindu law (Dayabhaga law), divest any property which was vested in the adopted son by inheritance, gift, or under any power of self-acquisition before his adoption.[36]

Saligram v Munshi 1961 SC 1374. An adoption made under the very lax customs of the set of Gyawals in Gya does not deprive the person adopted of his rights in his natural family. *Luchman Lal v Kanhya Lal* (1895) 22 IA 51, 22 Cal 609.

[29]*Kunwar Lallaji v. Ram Dayal* AIR 1936 All 77.

[30]1 W MacN 69; *Srinivasa v Kuppanayyangar* (1863) 1 Mad HC 180; *Muthayya v Minakshi* (1902) 25 Mad 394; *Raghuraj v Subadra Kunwar* (1928) 55 IA 139: 3 Luck 76 (natural brother cannot succeed to adopted son's estate in the adoptive family)

[31]*Pranvullubh v Deocristin* Bom Sel Rep 4; *Kasheepershad v Bunseedhar* 4 NWP (SD) 343.

[32]DatMima VI, s. 10: Dat Chand IV, s. 8; V May IV, 5 s. 30

[33]*MootiaMoodelly v Uppon* Mad Dec of 1858, p. 117.

[34]DatMima VI, s. 25, 38.

[35]See § 497. Pratapsing v Agarsingji (1919) 46 IA 97, 43 Bom 778, 50 IC 457, AIR 1918
PC 192; Nagindas v Bachoo (1916) 43 IA 56, 67-68, 40 Bom 270, 287-88, 32 IC 403, AIR 1915 PC 41; *Haribhau v Hakim* AIR 1951 Nag 249, (1951) Nag 99, *Kalagouda v Annagouda* AIR 1962 Mys 65.

[36]*Behari Lal v Kailas Chunder* (1896) 1 CWN 121; *ShyamcharanvSricharan* (1929) 56
Cal 1135, 120 IC 157, AIR 1929 Cal 337; *RakhalrajvDebendra* AIR 1948 Cal 356.

As regards cases governed by Mitakshara law, it has been held by the Madras High Court, that an adoption does not divest any property which has vested in the adopted son prior to the adoption; it has accordingly been held by that court that where coparcenary property has already vested in a person as the sole surviving coparcener, and such person is subsequently adopted into another family, he does not, by adoption, lose his rights in that property[37] Following this decision, it has been held by the Bombay High Court that a Hindu does not, on his adoption, lose the share which he has already obtained on partition from his natural father and brothers in his family of birth, the reason given being that such share cannot be said to be the estate of his natural father[38] The same principle has been applied when the partition was between the grandfather and his son, and grandsons and one of the grandsons, who got a share on partition was subsequently adopted into another family.[39] However, it has been held by the same High Court that where property has vested in a person as the heir of his father, and such person is subsequently adopted into another family, he loses by adoption, his rights in that property, that property being the estate of his natural father.[40] This view has not been accepted by the Calcutta High Court, which has all along taken the view that a son given in adoption will not be divested of any property of which he had become owner by inheritance before his adoption.[41] The Punjab[42] and Orissa[43] High Courts also have taken the latter view.

(3) Though adoption has the effect of removing the adopted son from his natural family into the adoptive family, it does not sever the tie ofblood between him and the members of his natural family. He cannot, therefore, marry in his natural family within the prohibited degrees, nor can he adopt from that family, a boy whom he could not have adopted, if he had remained in that family.[44]

(4) The only cases in which an adopted son is not entitled to the full rights of a natural-born son are: (1) where a son is born to the adoptive father after the adoption; and (2) where he has been adopted by a disqualified heir. The first of these cases is dealt with in § 497 and the second in § 102.

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[37]*Sri Rajah Narsimha v Sri Rajah Rangayya* (1906) 29 Mad 437; Sarju Bai v Harriam (1987) MP 143.
[38]*Mabableshwar v Subramanya* (1922) 47 Bom 542, 72 IC 309, AIR 1923 Bom 297;*Manikabai v Gokuldas* (1925) 49 Bom 520, 87 IC 816, AIR 1925 Bom 363.
[39]*Babinbai v Kisalal* 51 Bom LR 825, AIR 1950 Bom 47, (1949) Bom 587.
[40]*Dattatraya v Govind* (1916) 40 Bom 429, 34 IC 423, AIR 1916 Bom 210.

[41]*RakhalarajvDeebendra* AIR 1948 Cal 356, 52 CWN 771.
[42]*Har Lal v Ganga Ram* AIR 1951 Punj 142, *Rampal v Bhagwandas* AIR 1954 Ajmer 11.
[43]*Madhab Sabu v HatkishoreSahu* AIR 1975 Ori 48. Also see *Har Chand v Ranjit* AIR 1987 P&H 259
[44]*Mootia v Uppon* (1958) Mad SD 117.

(5) Where a married person is given in adoption and such person has a son at the date of adoption, the son does not, like his father, lose the gotra and right of inheritance in the family of his birth, and does not acquire the gotra and right of inheritance in the family into which his father is adopted. The wife passes with her husband into the adoptive family, because according to the Shastras husband and wife form one body.[45] In such a case, if the husband dies, the wife cannot adopt her son, because she has lost the power to give and she cannot be both giver and taker.[46] However, it has been held that when a married Hindu is given in adoption, and at the time of adoption, his wife is pregnant, and a son is born to him, the son on his birth, passes into the adoptive family and is entitled to inherit in that family, the reason given being that such a son is born into the adoptive family and should therefore be treated as a member of that family.[47]

Illustrations:

(a) A has two sons B and C. A gives C in adoption to X. C is not entitled to inherit to A as his son.

(b) **A and B, two brothers, and their respective sons, C and D, are members of a joint family. A gives his son C in adoption to X.Closes all his rights as a coparcener in his natural family.The coparcenary which consisted of four members before the adoption, will be reduced after C's adoption to a coparcenary of three members only.**

(c) A and his son, C, are members of an undivided family. A dies, and on his death, C becomes entitled to the whole of the coparcenary property, as sole surviving coparcener. C's mother then gives C in adoption to X. C does not, by adoption, lose his rights in that property."

18.5. At **Pg.551-552**, it explains the implications of proviso (b) of section 12 of the Hindu Adoption and Maintenance Act, 1956 and implications of the said proviso with a few illustrations which have been reproduced below,

"**PROVISO (B)**

Adoption did not have the effect under the Bengal school of Hindu law (Dayabhaga Law) of divesting any property which had vested in the adopted

[45]*Kalgauda v Somappa* (1909) 33 Bom 669, 3 IC 809*; Babarao v Baburao* AIR 1956 Nag 98; *Lekh Ram v Kishono* AIR 1951 Pepsu 99.
[46]*Sarat Chandra v Shanta Bai* (1945) Nag 544.
[47]*Advi v Fakirappa* (1918) 42 Bom 547, 46 IC 644, AIR 1918 Bom 168. Also see *Tarabai v Babgonda* AIR 1981 Bom 13.

son by inheritance, gift, or under any power of self-acquisition prior to his adoption. As regards cases governed by Mitakshara law, there was some divergence of judicial opinion on certain aspects of the matter (§ 494, Vol D. The present section lays down the clear rule that any property that might have vested in the adoptee before the adopting, continues to vest in the adoptee, subject, of course, to any obligations attaching to the ownership of such property including the obligation of the adoptee to maintain relatives in the family of his or her birth. The adopted person is not, by fact of the adoption, divested of any property already vested in him. It follows as a corollary to that rule that the fact of adoption should not operate to the prejudice of persons related to the adoptee in the natural family who had the right to claim maintenance from such adoptee.

Illustrations:

(a) A has two sons B and C. A gives C in adoption to X, C is not entitled to inherit to A as his son. On the death of Al, the mother of B and C which had taken place prior to the adoption, C had become entitled to a share (along with A and B) in the property left by her. That share which had already vested in C, will continue to vest in him.

(b) A and B, are two brothers. A's sons, C and D and Bs son E, are all members of a Mitakshara coparcenary. A gives his son C in adoption to X. Closes all his rights as a coparcener in his natural family. The coparcenary, which consisted of five members before the adoption, will be reduced after Cs adoption to a coparcenary of four members only.

(c) A and his sons B and C were members of Mitakshara coparcenary. A died after the commencement of the Hindu Succession Act 1956, leaving him surviving his two sons B and C, his daughter D, and his widow Al, the natural mother of B, C and D. Soon thereafter A1 gave C in adoption to X. By operation of s. 6 of the Hindu Succession Act, A's interest in the coparcenary property devolved by succession in equal shares among A1, B, C and D. The effect of the adoption will not be to divest C of his aliquot share in the father's interest in the joint family property which became vested in him on A's death. C will not, however, be entitled to claim a share along with B and D in the property that may be left by A1 upon the death."

19. The main point in contention in this LPA is whether the coparcenary right arising out of the birth in a family is a right vested in the adoptee, and if so does it continue to be vested even after the adoption, in view of Section 12(b) of Adoptions Act.

20. To answer this question, it is important to understand the meaning of what constitutes an undivided coparcenary property. In **Mayne's Hindu Law and Usage, 12th Edition, Pg. 374,** the definition and the nature of an undivided coparcenary interest is explained,

> **"216. UNDIVIDED COPARCENARY INTEREST:**
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> **The essence of a coparcenary under Mitakshara law is unity of ownership. The ownership of the coparcenary property is in the whole body of coparceners. According to the true notion of an undivided family governed by Mitakshara law, no individual member of that family, whilst it remains undivided, can predicate, of the joint and undivided property, that he, that particular member, has a definite share, one-third or one-fourth.[48] His interest is a fluctuating interest, capable of being enlarged by deaths in the family, and liable to be diminished by births in the family.[49] It is only on a partition that he becomes entitled to a definite share.** The most appropriate term to describe the interest of a coparcener in a coparcenary property is undivided coparcenary interest. The nature and extent of that interest is defined in § 235. **The rights of each coparcener, until a partition takes place, consist in a common possession and common enjoyment of the coparcenary property**. As observed by the Privy Council in KatamaNatchiar v Rajah of Shivagunga:[50]
>
> there is community of interest and unity of possession between all the members of the family, and upon the death of any one of them, the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession."

21.1. A Full Bench of the Allahabad High Court in the case of **Anand Prakash v. Narain Das Dori Lal [1930 SCC OnLine All 256],** while deciding on the law that whether a father of a Hindu joint undivided family, when declared

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[48] *Appovierv Rama Subba* (1886) 11 MIA 75, 89.
[49] *Sudarsan U Narasimbul* (1902) 25 Mad 149, 154, 156.
[50] (1863) 9 MIA 539, 543, 611.

23. Now we consider the precedent decisions.

as insolvent, assuming the debts to be paid, becomes the pious duty of the sons, does the share of the joint family property of the son vest in the receiver, the Allahabad High Court answered this in the negative. It has held that,

> **"Can we say, in the case of a joint Hindu family governed by the law of Mitakshara, that the son's share was vested in the father? We cannot say so, for the simple reason that while the family is joint no member of the family is in a position to say what property is vested in him.** The entire property belonging to the family is vested in each and every one of the several members constituting, the family. In Mayne's Hindu Law, 9th edition, at page 344, the following occurs as a description of an undivided Hindu family: "There is no such thing as succession, properly so-called, in an undivided Hindu family. The whole body of such a family, consisting of males and females, constitutes a sort of corporation, some members of which are coparceners, that is, persons who on partition would be entitled to demand a share, while others are only limited to maintenance." **Such being the nature of the property held by a joint Hindu family, it is impossible to say that thefather, even as the head of the family, has in him vested any portion of the family property.** Much less can it be said that the son's share, that is to say, the share which a son might get on partition in the family, is vested in the father."

21.2. In **Man Singh v. Ram Kala, [(2010) 14 SCC 350],** the Supreme Court decided on whether a member of a Hindu Joint Family can claim a specific share in the joint family property. The Apex court held that such right to claim and alienate a share of the joint family properties only arises on the disruption of the joint family status, i.e. at partition,

> **"14. Till disruption of joint family status takes place, neither the coparcener nor the other heirs entitled to share in the joint family property can claim with certainty the exact share in that property**. In Appovier v. Rama Subba Aiyan Lord Westbury speaking for the Judicial Committee (Privy Council) observed:

> "**According to the true notion of an undivided family in Hindoo law, no individual member of that family, whilst it remains undivided, can predicate of the joint and undivided property, that he, that particular member, has a certain definite share**."

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16. ..... In SCC para 20 of the Report, this Court stated thus: [Kalyani vs. Narayanan case :1980 Supp SCC 298], SCC p. 311)

> "20. ... **Till disruption of joint family status takes place no coparcener can claim what is his exact share in coparcenary property. It is liable to increase and decrease depending upon the addition to the number or departure of a male member and inheritance by survivorship**. But once a disruption of joint family status takes place, coparceners cease to hold the property as joint tenants but they hold as tenants-in-common."

21.3. In **Rohit Chauhan vs. Surinder Singh**[51], Hon'ble Supreme Court held as under:

> **"11.** We have bestowed our consideration to the rival submissions and we find substance in the submission of Mr Rao. In our opinion coparcenary property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. **A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static.** We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener."
>
> (emphasis supplied)

21.4. In **Purushottam Dass Bangur, In re,** (supra), it is held,

> **"17.** Section 12 of the Hindu Adoptions and Maintenance Act, 1956 deals with the effects of adoption. It specifies that an adopted child will sever all

[51] (2013) 9 SCC 419

ties with the family of his or her birth on and from the date of adoption. The second proviso of Section 12 of the Hindu Adoptions and Maintenance Act, 1956 stipulates that any property which has vested in the adopted child before the adoption shall continue to vest with him subject to the obligations, if any. The second proviso allows the property vested in the adopted child before the adoption to continue to vest in the adopted child subject to the obligations, if any, attaching to the ownership of the property including the obligation to maintain relatives in the family on his or her birth. The Bombay and the Patna High Courts' view is that, a right in a coparcener in a Mitakshara family does not vest in a person on birth. Consequently, on the date of adoption the adopted child loses of his rights in the Mitakshara coparcenary of his birth.

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19. A vested interest in a property is understood to mean that a person has acquired proprietary interest therein. However, the enjoyment of such proprietary interest may be postponed till the happening of a certain event. **Once that event happens such person would enjoy proprietary rights in respect of the property. A coparcener in a Mitakshara coparcenary acquires an interest in the properties of the Hindu family on his birth. His interest is capable of variation by events such as birth, adoption or death in the coparcenary.** In the event of a partition of the coparcenary, a coparcener is entitled to a share of the properties belonging to joint Hindu family. On partition his share gets defined. He can still continue to enjoy his share in jointness with other family members or he can ask for partition of the properties by metes and bounds in accordance with the shares. **This interest which the coparcener in a Mitakshara family acquires by his birth in the natural family continues to remain with him in spite of the adoption in view of Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956."**

(emphasis supplied)

21.5. In **Sawan Ram** (supra), Hon'ble Supreme Court held:

"8. The second provision, which was ignored by the Andhra Pradesh High Court, is one contained in Section 12 itself. The section, in its principal clause, not only lays down that the 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, but, in addition, goes on to define the rights of such an adopted child. It lays down that from such date all the ties 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. A question naturally arises what is the adoptive family of a child who is adopted by a widow, or by a married woman whose husband has completely and finally renounced the world or has been declared to be of unsound mind even though alive. It is well-recognised that, after a female is married, she belongs to the family of her husband. The child adopted by her must also, therefore, belong to the same family. On adoption by a widow, therefore, the adopted son is to be deemed to be a member of the family of the deceased husband of the widow. ***Further still, he loses all his rights in the family of his birth and those***

rights are replaced by the rights created by the adoption in the adoptive family. The right, which the child had, to succeed to property by virtue of being the son of his natural father, in the family of his birth, is, thus, clearly to be replaced by similar rights in the adoptive family and, consequently, he would certainly obtain those rights in the capacity of a member of that family as an adopted son of the deceased husband of the widow, or the married female, taking him in adoption. This provision in Section 12 of the Act, thus, itself makes it clear that, on adoption by a Hindu female who has been married, the adopted son will, in effect, be the adopted son of her husband also. This aspect was ignored by the Andhra Pradesh High Court when dealing with the effect of the language used in other parts of this section." (emphasis supplied)

21.6. In **Basavarajappa** (supra), Hon'ble Supreme Court held:

"11. We may straightaway say that the High Court as well as the first appellate court erred in holding that the adoption of the appellant did not have the effect of divesting Narasappa of the properties to the extent of half share. The properties held by Narasappa were admittedly ancestral. On adoption, the adoptee gets transplanted in the family in which he is adopted with the same rights as that of a natural-born son. The legal effect of giving a child in adoption is to transfer the child from the family of his birth to the family of his adoption. He severs all his ties with the family from which he is taken in adoption. Interpreting Section 12 and sub-section (*vi*) of Section 11, this Court in *Sitabai* v. *Ramchandra* [(1969) 2 SCC 544] held that the adoptee ceases to have any ties with the family of his birth. Correspondingly, these ties are automatically replaced by those created by the adoption in the adopted family. The adopted child becomes a coparcener in the joint Hindu family property. It was observed: (SCC pp. 549-50, para 5)

> "*5. 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……*"

12. The view taken by the first appellate court and the High Court that Narasappa even after the adoption continued to be the absolute owner of the property being the sole surviving coparcener is incorrect. On adoption, the appellant became a coparcener with Narasappa and entitled to his coparcenary interest in the ancestral properties held by Narasappa. The appellant became entitled to half share in the joint Hindu family of his father as a coparcener like a natural son. The view which we are taking is in consonance with the view taken by this Court in *Sitabai case* [(1969) 2 SCC 544] in which it was held that after considering the scheme of Sections 11, 12 and 14 of the Adoption Act that on adoption the adopted child would

become a coparcener in the adopted family after severing all his ties with the family from which he has been adopted."

21.7. The facts in **Santosh Kumar Jalan** are, Chandra Kishore Jalan and Santosh Kumar Jalan were full brothers by birth. On 17.2.1966 their father Dwarika Prasad Jalan with the consent of his wife gave Santosh Kumar Jalan in adoption to one Radha Krishna Jalan [Respondent No.2] after performing ceremonies in presence of the relatives and friends. The contention of respondent No.1 is that by virtue of adoption dated 17.2.1966, appellant herein became member of the joint family of his adoptive father and stood divested of his rights and obligations as member of the joint family of his natural father. After death of Dwarika Prasad Jalan in 1968, the Respondent No.1 thus alone inherited his estate. Respondent No.2 had brought up Appellant and got him settled in life as his son. In 1980, however, they fell apart and decided to end the relationship (of adoptive father and adopted son). A panchayati was held and on 16.11.1980 and a so-called panchanama was prepared to the effect that the adoption dated 17.2.1966 was invalid. Respondent No.1 in the circumstances filed the suit seeking declaration with respect to the panchanama and status of the Appellant. The Appellant filed a suit seeking relief as indicated above. Briefly stated his case is that adoption dated 17.2.1966 was not valid and he never ceased to be member of the family of his natural father. According to him, Dwarika Prasad Jalan i.e.

his father had taken a loan from Radha Krishna Jalan i.e. his adoptive father, which he could not repay. He requested him to take the Appellant in lieu of the repayment of loan and that is how he came to be associated with the adoptive father. The trial Court held that adoption of the Appellant was valid and it could not be revoked, and being adopted son, he cannot claim any share in the suit property. After the appeals preferred against the said judgment were dismissed by the lower appellate Court, the Appellant went to the Patna High Court in Second Appeal which was dismissed.

21.8.1. High Court of Patna held,

> **"8.** The main provision of S. 12 creates, in fact recognises, a legal fiction by which the adopted child is deemed to be the son or daughter of the adoptive parents and member of the new family of his adoptive parents. His previous relationship with the family of birth having come to an end, the interest which the adopted child had acquired by birth cannot continue after the adoption. Proviso (b) interjects to protect his rights in any property which stood vested before the adoption. But it does not mean that the adoptee will continue to have same interest in the estate of the natural family which he had acquired by birth even though he is legally deemed to be member of the new family. That could not be the intention of the Legislature. The Legislature is supposed to be aware of the principles of Hindu Mitakshara Law. If the Legislature had intended to protect even the coparcenary interest of the adopted child, perhaps, proviso (b) would have been couched in different language. As it is, the proviso protects only the property which had vested in the adopted child before the adoption.
>
> **9.** What seems to create doubt, which in fact is the foundation of the appellant's case, is use of the word 'vested' in the proviso. It is however noteworthy that the word "vested" is part of the clause "any property which vested". The question is whether the right of a coparcener in the coparcenary property vests in him any right in "any property". It is well settled that though a coparcener gets right by birth in the coparcenary property the said right or interest is liable to fluctuation increasing by death of a coparcener and decreasing by birth of another coparcener. A coparcener has right to partition of the coparcenary property, he can even bring about separation in

status by unilateral declaration of his intention to separate from the family, and enjoy his share of the property after partition. But it is only after such partition that property 'vests' in him. Till partition takes place he has only a right to joint possession and enjoyment of the property. There is community of interest between all members of the joint family and every coparcener is entitled to joint possession and enjoyment of the coparcenary property. The ownership of the coparcenary property vests in the whole body of the coparceners and not in a member of the family. While the family remains undivided, one cannot predicate the extent of his share in the joint and undivided family. Indeed, as stated above he has fluctuating interest in the property liable to being increased or decreased by deaths and births in the family. These are the fundamentals of the Mitakshara Law of Hindu Coparcenary which are not open to any doubt or debate. In these premises, whether it can be said that "any property" had vested in the coparcener so as to attract Proviso (b) to S. 12. The answer in my opinion must be in the negative. What is vested in a coparcener before adoption, is his right of joint possession and enjoyment of the coparcenary property, I hardly need point out the distinction between the right to joint possession and enjoyment and the right to exclusive possession and enjoyment of a particular property. According to me, what is saved under Proviso (b) is a property which had already vested in the adoptee before adoption by, say, inheritance, partition, bequeath, transfer etc., which alone can be said to vest in him, to the exclusion of others. The vesting of that property is not affected by adoption.

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13. In *Vasant* v. *Dattu*, AIR 1987 SC 398, the Apex Court had occasion to consider the scope of Proviso (c) to S. 12 of the Adoption Act. If I may say so, in a sense, Proviso (c) contains provision converse to Proviso (b). While Proviso (b) protects the right of the adopted child in the property vested in him before adoption, Proviso (c) protects the right of any other person in whom any estate came to vest before adoption. It lays down that if any estate had already vested in any person before adoption, the adoption would not divest him of the same. The brief facts of the aforesaid case were that the plaintiffs claiming to be adopted sons of two widows had filed suit for partition and separate possession of their shares. One of the grounds on which the contesting defendants resisted their claim was that after the death of the husbands of the widows the properties had devolved on them i.e. contesting defendants by survivorship and the plaintiffs were not entitled to claim any share and S. 12 of the Adoption Act barred the plaintiffs from claiming any share in the properties. While rejecting the plea of the defendants the Apex Court observed that the property, no doubt, passes by survivorship, but there is no question of vesting or divesting of the property within the meaning of S. 12 of the Act. Interpreting S. 12 to include cases of such devolution by survivorship on the death of a member of the joint family would mean denying the effect of adoption. It would be useful to quote relevant observations from the judgments as under (At P. 399 of AIR):—

> "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.
>
> The learned Counsel for the appellants urged that on the death of a member of a joint family the property must be considered to have vested in the remaining members by survivorship. It is not possible to agree with this argument. The property, no doubt passes by survivorship, but there is no question of any vesting or divesting in the sense contemplated by S. 12 of the Act. To interpret S. 12 to include cases of devolution by 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. We do not think that such a result was in the contemplation of Parliament at all."

> **14.** Though the decision was rendered in the context of proviso (c), it provides sufficient light to the question involved in the present case. It is clear that Proviso have to be interpreted in the manner in which the very effect of adoption is not obliterated. As the Supreme Court has clarified adoption and birth stand on the same footing as regards legal consequences. Both result in decreasing the shares of the rest of the members of the joint family. Likewise, on the same analogy, adoption of a coparcener, like death, would result in increasing the shares of the remaining coparceners of the joint family of which he was a member before the adoption. How, then, it can be said that his interest as a coparcener in the joint family of his natural parents remains intact?
>
> **16.** Adverting to the present case, in the light of the above discussions it is clear that by reason of the adoption dated 17-2-1966, which has been held to be valid by both the Courts below, which finding is not under challenge before this Court (and could not be, on the death of the father the plaintiff being the sole survivor coparcener, alone was entitled to inherit his property and the defendant 1st party could not claim any share therein. His case that the adoption was invalid having been disbelieved and he being a member of the joint family of defendant 2nd party and proviso (b) to S. 12 not being applicable, he cannot claim any share in the suit property. The judgment and decree of the Court below therefore does not suffer from any error of law."

21.9. In **Mrs. Akella Lalitha** (supra), a widow whose husband passed away 2 months after their son was born married another man and wanted to give his surname to the child born to her deceased husband. High Court held that the mother can only mention the second husband as stepfather

and cannot change the surname of the child. Supreme Court held that, surname is the identity of a child and mentioning stepfather in the records would affect the child's identity. The mother being the only natural/legal guardian to the child can change the surname to the second husband's name to create the feeling of a family and togetherness. The Division Bench held as under:

> **"12.** While an adoption deed is not necessary to effect adoption and the same can be done even through established customs, in the present case the Appellant submits that on 12th July, 2019, during the pendency of the present petition, the husband of the Appellant/ step father of the child adopted the child by way of Registered adoption deed. Section 12 of the Hindu Adoption & Maintenance Act, 1956 provides that "*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*."
>
> **13.** According to the Encyclopedia of Religion and Ethics- "Adoption indicates the transfer of a child from old kinsmen to the new. The child ceases to be a member of the family to which he belongs by birth. The child loses all rights and is deprived of all duties concerning his natural parents and kinsmen. In the new family, the child is like the natural-born child with all the rights and liabilities of a native-born member." Therefore, when such child takes on to be a kosher member of the adoptive family it is only logical that he takes the surname of the adoptive family and it is thus befuddling to see judicial intervention in such a matter."

21.10. In **Kunwar Lallajee v. Ram Dayal**[52]**,** the Allahabad High Court held as under:

> **"1.** This is a defendant's appeal and arises out of a suit brought against him by the plaintiff-respondent to recover money on foot of a hypothecation bond by sale of the mortgaged property. The mortgage-deed had been executed in his favour by Shiam Prasad and by Mahabir Prasad on his behalf and on behalf of his two minor brothers Suraj Prasad

[52] 1935 SCC Online All 365

2. Defendant 7 who is a subsequent transferee of the mortgaged property contended that Ganga Prasad, one of the brothers of the mortgagors, did not join in the execution of the mortgage and therefore his 1/5th share in the mortgaged property was not liable for sale under the mortgage-deed. Bisheshar Dial who was the father of the mortgagors died leaving five sons, the four mortgagors and one Ganga Prasad. Before the mortgage Ganga Prasad was adopted by Kanhaiya Lal. The trial Court allowed the objection of defendant 7 and gave a decree for: the sale of only 4/5th share. On appeal the learned District Judge, Mainpuri, reversed the finding of the trial Court and allowed the appeal decreeing the sale of the whole of the mortgaged property. Against his decision is this appeal.

3. The point for consideration is whether Ganga Prasad after his adoption had any share or interest in the property in suit. As already stated, before the mortgage he had been adopted by Kanhaiya Lal. The learned Judge has found that the property in dispute was the ancestral joint family property of the mortgagors as it had been in the family since the time of Khiali Ram, the mortgagors' grandfather. It has also been found by the lower Court that Ganga Prasad was a member of the joint family till the time of his adoption. Ganga Prasad had no separate share in this property. The property belonged to the whole co-parcenary family as a unit and not to any individual coparcener and so Ganga Prasad had no separate share. He could not have transferred any part of the property. On adoption the adopted person loses all rights and interests in the property of his natural father. Similarly Ganga Prasad lost all his interest in the co-parcenary property on his adoption. The lower Court's decision is correct. There is no force in the appeal. It is therefore ordered that it be dismissed with costs. Permission to file a Letters Patent Appeal is rejected."

21.11. In **Jadabendra Narayan Choudhury** (supra), it is held,

"The only question required to be decided is whether by reason of such adoption of Jadabendra prior to 1956 Act, he still could claim any share in the coparcenary property of his biological parents.

The argument proceeds on the basis that a coparcener on birth acquired an interest in the coparcenary property and with the birth and death of a coparcener, the shares in the coparcenary property either increase or decrease.

Now it needs to be considered whether Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956 recognize such pre-existing right which a coparcener acquires by reason of his birth and not get obliterated and extinguished by reason of a deed of adoption executed prior to 1956 Act. Section 12(b) of the Hindu Adoptions and Maintenance Act, 1956 is reproduced hereinbelow:-

> *"12(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."*

The section is quite clear and it is a cardinal principle of interpretation that if the words are clear and the intention of the legislature could be gathered from a plain reading of the section, the Court must interpret the said section literally without taking recourse to any other means.

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The section in no uncertain terms clearly affirms that any property that might have vested in the adoptee before the adoption, continues to remain vested in the adoptee subject to of course any obligations, if any, attaching to the ownership of such property, including the obligation of the adoptee to maintain relatives in the family of his or her birth. The section recognizes the right of a coparcener in a coparcenary property by birth. It is immaterial whether vesting took place prior to coming into force of the Hindu Adoptions and Maintenance Act, 1956, and irrespective of the fact whether he has been adopted prior to the coming into force of the said 1956 Act. The legislature has consciously in the proviso carved out the exception which in no uncertain terms has clearly recognized and affirmed the pre-existing right of a coparcener irrespective of adoption. Such right is not whittled down by coming into operation of the 1956 Act."

21.12. In **Shivaji Anantrao Deshmukh** (supra), it is held,

> ***"10.*** Briefly stated, the rights of coparcener to his joint possession and enjoyment, to seek partition, to question alienations and to ask for accounts of the joint family property, are the clear manifestations of the full ownership rights in favour of a coparcener and on no reckoning such rights can be said to be short of rights of a full owner, such rights devolve on the coparcener by birth and crystallise into a definite share on actual partition. However, they do not remain dormant or unenforceable till actual partition. There is thus clear vesting of title in the coparcener even before partition. In every coparcenary, therefore, the son, the grandson or great grandson obtains an interest by birth in the coparcenary property so as to be able to control and restrain improper dealings with the property by another coparcener.
>
> ***11.*** With the enactment of section 30 and Explanation of the Hindu Succession Act, the right of testamentary disposition of the undivided share of the coparcener has been recognised which was hitherto barred with the commencement of Hindu Law by reason of the fact that at the moment of death, the right of survivorship of other coparceners is in conflict with the right by device. The title of survivorship being the prior title takes precedence to the exclusion of that by device. **With the enactment of Explanation to section 30, this Rule of Mitakshara Law**

is now abrogated and it is laid down in explicit terms that such interest is to be deemed to be the property capable of being disposed of by will notwithstanding anything contained in any other provisions of the Act or any other law for the time being in force. This provision would, therefore, clearly show that undivided share of coparcener can be disposed of by testamentary disposition and this is one of the aspects leading to the conclusion that the right of the coparcener in the undivided share is a right of the owner. **This legal sanction has thus strengthened the concept of the undivided share of a coparcener being vested in him as the full owner on birth. Such vesting is not divorced or deferred by any contingency or event. Birth and vesting are simultaneous processes and integrally connected, and nothing can intervene in that process so as to indicate that vesting has been postponed. Never a situation can arise when the vesting is shown to be postponed in face of birth of coparcener. In that light of the matter, it unhesitatingly follows that a coparcener is vested with the undivided interest in the coparcenary property. He is entitled to that share in the property that is vested in him on the eve of partition.**
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20. There is a clear purpose in the enactment of proviso (b) to section 12 of the Act, because before the enactment of that provision under text of Hindu Law the adopted son lost all his rights in the coparcenary property of the natural family. There are also conflicts of opinions amongst various High Courts in regard to the vesting of right of an adopted son in the property of the family of his birth. Whereas some of the High Courts took the view that adoption did not divest the vested right of adopted son, some took the contrary view. The details in that behalf may not be dilated here. It must be mentioned that under the Dayabhaga School of Hindu Law, adoption did not divest any property which had vested in the adopted son by inheritance, gift or self-acquisition. It is clearly seen that with the proviso (b) to section 12 of the Act, this entire controversy has been set at rest.

21. It can be, therefore, concluded that the undivided interest in the coparcenary property continues to vest in the adopted son even after the adoption. Section 12 read along with proviso (b) also clearly lays down that on adoption, there is virtually a severance of the adopted child from the coparcenary. There is thus a partition between the adopted son and other members. This being the legal position, the rule is discharged and the Civil Revision Application is hereby dismissed. However, in the circumstances of this case, parties shall bear their own costs." (emphasis supplied)

21.13. In **Rajah Venkata Narasimha Appa Row** (supra), it is held,

" We are aware of only one case in which the question has been actually decided, and that it is the case of ***Behari Lal Laha v. Kailas ChunderLaha***[53].

[53]1896 SCC OnLine Mad 51

There Mr. Justice Amir Ali held that although "adoption prior to the vesting of the inheritance entails loss of the right of claiming any share in the estate of the adopted person's natural father or natural relations, yet the interest which is once vested in a son upon the death of a father is not divested by his subsequent adoption into another family."

It is, however, contended by some of the parties to the present suits that this view of the law is incorrect, and it is therefore necessary to examine the texts Hindu Law which refer to the matter. It must be admitted that they are by no means explicit, but we are of opinion that they do not require us to dissent from the view of the Calcutta High Court just quoted, and that we would not be justified in holding that a person adopted loses, thereby, any rights of which he is not clearly deprived by the terms of the law to which he is subject.

The texts of Manu which refer to the matter are verses 141 and 142 of chapter IX and are translated as follows by Buhler at page 355 of volume XXV of the '*Sacred Books of the East*' edited by Max Muller:—

"141. Of the man who has an adopted (Datrima) son possessing all good qualities, that same (son) shall take the inheritance, though brought from another family.

"142. An adopted son shall never take the family (name) and the estate of his natural father; the funeral cake follows the family (name) and the estate, the funeral offerings of him who gives (his son in adoption) cease (as far as that son is to concerned)."
The texts of Manu are to be understood in the sense in which they are interpreted by the Hindu Commentators of recognized authority. The above text is quoted in the Mitakshara, chapter I, section II, verse 32, and is thus translated at page 422 of Stokes' 'Hindu Law Books'—"A given son must never claim the family and estate of his natural father. The funeral oblation follows the family and estate, but of him who has given away his sob, the obsequies fail."

In the Dattaka Chandrika (Stokes' idem, page 640), the reference is as follows:—

"On the subject (of adoption) Manu says:—

"'A given son must never claim the family and estate of his natural father. The funeral cake follows the family and estate but of him who has given away his son the obsequies fail.'.

"It is declared by this, that through the extinction of his filial relation from gift alone, the property of the son given in the estate of the giver ceases; and his relation to the family of that person is annulled.

"And accordingly since extinction of relation to the family (of the natural father) and so forth is shown, and as a text recites—'let the father initiate,

his own sons,'—the initiatory rites even of the adoption, which are yet to be completed subsequent to adoption, are to be performed by the adopter; but those already performed by the natural father are not to be cancelled."

They are the principal ancient commentators of special authority in South India. The DattakaMimamsa, which is of special authority in Bengal, follows the interpretation given in the Dattaka Chandrika. See Stokes' idem, page 599. The same passage of Manu is referred to in the Mayukha (of special authority in Bombay) as follows:—"Therefore says Manu (chapter IX, V242): 'A given son shall never claim the family and estate of his natural father; the pinda (the obsequial oblation) which follows the family and the heritage, and the Shraddha and other funeral ceremonies of the giver cease.'" "*Gotra rikthanujah* (means) what goes along with the family and the inheritance, the two expressions being generally co-extensive'" (Mandlik's 'Hindu Law,' page 59).

> We do not think that there is anything in these passages which necessarily carries with it the idea that the adopted son is divested of property which is his own absolutely at the time of adoption. **The more correct view seems to be that by the adoption the filial relationship, as the author of the Chandrika says, is extinguished in one family and is created in the other family, and that thereafter the person adopted cannot claim or take any property in his natural family by virtue of the extinguished filial relationship therein**. **The fact that under the Dayabhaga law in force in Bengal a son has no vested coparcenary interest with his father in ancestral property and that his interest in ancestral property of the father only accrues on the father's death rather favours the view that Mimamsa when adopting the interpretation of the Chandrikahad in mind the loss of rights that might accrue after the date of adoption rather than rights to property which had already vested.**

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We think too that there is great danger in speaking of adoption as civil death and a re-birth, and in attempting to enforce the consequences that might be supposed to logically flow from those conceptions.

It is clear from the passage in the Dattaka Chandrika (page 64, Stokes' 'Hindu Law Books') which we have already quoted that the idea of re-birth in the new family is only partially given effect to, for it is expressly provided that the initiatory rites which the boy has undergone in his natural family are not to be cancelled and performed afresh in his adoptive family. He is only required to perform in the new family those ceremonies which had not been performed in the old. For the purpose of these ceremonies there is no idea of death or re-birth. There is only one continuous existence. It would be easy to show that in other respects also theanalogy is misleading. It seems to us unsafe to determine the rights of parties by a reference to any such analogies, rather than by the exact language of the texts and the general principles of the Hindu Law in cases where the texts do not definitely decide the question raised."

21.14. In **Nayudamma** (supra), the petitioners contended that the adopted son was entitled to a share in the property of his natural family. The point that fell for consideration was, when a member of a coparcenary governed by Mitakshara School is given in adoption, whether his undivided interest in the coparcenary property would continue to vest in him even after adoption by reason of the proviso (b) to Section 12 of the Adoptions Act. The Division Bench held,

> **"4.** This apart, the coparcener has got every right under Section 30 of the Hindu Succession Act to will away his property or to dispose of or alienate in whichever way he desired, which he is entitled by birth It may be, that at a time when he alienated or willed away there may not have been a definite demarcation of the shares; but certainly he would be entitled to a particular share along with other coparceners which could be given effect to by various modes of disposition. That presupposes that he had got an independent right by birth which might be dormant in certain cases and patent in other cases. **From the foregoing what becomes apparent is that notwithstanding the adoption, a person In Mitakshara family has got a vested right even in the undivided property of his natural family which on adoption he continues to have a right over it.** This, in our judgment, is the undivided interpretation which has to be placed upon the provisions enacted in the proviso (b) to Sec 12 of the Act; and to construe otherwise, would be causing violence to the explicit expression given in the language of the said proviso. **If that is so it follows that Sree Rama Prasad who would be entitled from his natural family as a coparcener by virtue of vesting, would continue to have a right over it and that property will have to be taken into account for the purpose of computation of the holding of the adoptive family.** ....." (emphasis supplied)

22. On careful analysis of opinion expressed in Mayne's Hindu Law and Mulla on principles of Hindu law and in other scriptures it is beyond pale of doubt that on adoption by another family, the adoptee becomes coparcener of adoptive family and ceases to have any connection with family of his birth. He/she transplants into the adoptive family. He/she is

not required to observe pollution on birth or death of any member in the family of his/her birth. He/she ceases to perform funeral ceremonies and losses all rights of inheritance as completely as if he/she had never born. The illustrations given in Mulla's principles of Hindu Law, eighteenth edition makes the issue very simple and clear.

23. Reverting to Section 12, main provision brings out what Hindu Law has been emphasizing. It makes clear that on adoption into adoptive, family from the date of adoption the child severs all ties with the family of birth and becomes coparcener of adoptive family. In other words, he transposes into the adoptive family. The three provisos deal with three contingencies arising out of such adoption. Proviso (a) prohibits the person to marry any person whom he/she could not have married if he continued in the family of his birth. Proviso (c) protects the right of a person in adoptive family of his estate even after the adoptee enters their family. Proviso (b) saves the property vested in him in the family of his birth before he was adopted. Such vesting can be by self acquired, obtained by will, inherited from his natural father or other ancestor or collateral which is not coparcenary property held along with other coparceners and property held by him as sole surviving coparcener. A plain reading of proviso (b), breaking away from narrow interpretations given by some High Courts makes it crystal clear that what is saved is only

the property already vested in the child in the family of birth in the above manner before adopted by adoptive family.

24. The fundamental principle to remember in Mitakshara law on Hindu coparcener is that though by birth a coparcener gets interest in the coparcenary property, but it is unspecified and fluctuates depending on addition or deletion of coparceners. The right crystallizes only when partition takes place. Therefore, the word 'vested' employed in proviso (b) to Section 12 assumes significance. What is saved by proviso (b) is property already 'vested' in a person in the family of his birth before his adoption in the manner stated above, but not the unspecified coparcenary interest. This finer distinction was not appreciated by the Division Bench of this court in **Nayudamma** and some other High Courts.

25. In **Jadabendra Narayan Choudhury** (supra), the Calcutta High Court held that Section 12 recognizes the right of a coparcener in a coparcenary property by birth. It is immaterial whether vesting took place prior to coming into force of the Adoptions Act and irrespective of the fact whether he has been adopted prior to coming into force of the Adoptions Act. It is held that the pre-existing right of a coparcener is not whittled. In **Shivaji Anantrao Deshmukh** (supra), it is held that the undivided interest in the coparacenery property continues to vest in the adopted son even after the adoption. It is further held that Section 12 read with proviso (b) clearly

lays down that on adoption, there is virtually a severance of the adopted child from coparcenary. That there is partition between the adopted son and other members. In **Rajah Venkata Narsimha Appa Row** (supra) after referring to opinion of ancient commentators the Madras High Court observed that there is nothing in the ancient scriptures that carries the idea the adopted son is divested of property which is his own absolutely at the time of adoption. It is held that there is great danger in speaking of adoption as civil death and a re-birth and in attempting to enforce the consequences that might be supposed to logically flow from those conceptions. We respectfully disagree with the opinion expressed in the above decisions.

26. In **Santosh Kumar Jalan vs. Chandra Kishore Jalan[54],** learned single Judge of Patna High Court considered the issue elaborately and correctly analyzed the scope and effect of proviso (b) to Section 12 of Adoptions Act. We respectfully agree with the view taken by learned Judge.

27. Having regard to opinion expressed in Mayne's Hindu Law and Mulla on principles of Hindu Law and the Hon'ble Supreme Court in the decisions referred to above and the opinion of Patna High Court and Allahabad High Court, we are of the considered opinion that on adoption

[54] 2000 SCC Online Pat 721 : AIR 2001 Pat 125

the child ceases to be coparcener of family of his/her birth and foregoes interest in the ancestral property in the family of his birth. Only if a partition has taken place before the adoption and property is allotted to his share or self acquired, obtained by will, inherited from his natural father or other ancestor or collateral which is not coparcenary property held along with other coparceners and property held by him as sole surviving coparcener, he carries that property with him to the adoptive family with corresponding obligations. We answer the reference accordingly.

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P.NAVEEN RAO, J

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B.VIJAYSEN REDDY, J

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NAGESH BHEEMAPAKA, J

Date: 27.06.2023

Note: L.R. copy to be marked: Yes
(b/o.)
kkm

HONOURABLE SRI JUSTICE P.NAVEEN RAO
HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY
AND
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

LETTERS PATENT APPEAL NO.204 OF 2001

Date: 27-06-2023

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