

**CASE COMMENT: RATANLAL CHUNILAL SAMSUKA V.  
SUNDARABAI GOVARDHANDAS SAMSUKA (DEAD) THROUGH  
LEGAL REPRESENTATIVES AND ORS.**

- Anarghya Udupa<sup>1</sup>

**FACTS**

Ratanlal, the appellant was born to Mr. Chunilal. However, right from his childhood Ratanlal lived with his paternal uncle and claimed adoptive father, Mr. Govardhandas.

Upon the death of Mr. Govardhandas, his wife, Mrs. Sundarabai filed a notice denying the adoption of Ratanlal, and **moved the Court for a declaration that Ratanlal was not her adoptive son.**

**PROCEDURAL HISTORY**

<b>Trial Court<sup>2</sup></b>	<b>High Court</b>
<p>The Trial Court held that Sundarabai failed to prove that Ratanlal was not her adoptive son, and hence, the <b>declaration sought was rejected</b> due to the following reasons:</p> <ul style="list-style-type: none"> <li>➤ Certain correspondence addressed to Ratanlal referred to him with his adoptive father's name.</li> <li>➤ Oral testimony of the priest that performed the adoption ceremony, and pictorial evidence of the ceremony.</li> <li>➤ Ratanlal belongs to the Jain community, where there exists a custom that allows for the adoption</li> </ul>	<p>The High Court held that <b>Ratanlal was not the adoptive son of Govardhandas</b> due to the following reasons:</p> <ul style="list-style-type: none"> <li>➤ The photographs do not portray the actual ceremony of adoption, and the only evidence present is the oral testimony of the priest.</li> <li>➤ Ratanlal was married and of 32 years of age when the alleged adoption ceremony was conducted.</li> <li>➤ From the date of adoption, to the date of filing suit, Ratanlal continued to his birth father's name.</li> <li>➤ The claimed adoptive mother is</li> </ul>

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<sup>2</sup>Sundarabai Govardhandas Samsuka vs. Ratanlal, (2006 SCC OnLine Bom 1517)

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<p>of married persons, and irrespective of age.</p> <p>➤ Aforementioned custom has been judicially recognised, and thus, was not required to be plead in the current case.</p> <p>This decision was appealed in the High Court.</p>	<p>herself contesting the adoption. This decision was appealed to the Supreme Court<sup>3</sup>.</p>
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### ISSUES

The issues in contention before the Honorable Supreme Court are as follows:

**Issue 1:** Whether the appellant is required to prove a custom that has been judicially recognised?

**Issue 2:** Whether the appellant is to be considered a legally valid adopted son of the respondent?

### RULES

- Section 2 of HAMA<sup>4</sup>** (hereinafter referred to as “the Act”): The application of the Act holds that adoptions within the Jain community are governed by the Act.
- Section 3(a)<sup>5</sup>** lays down the definition and essential ingredients for a custom to be accepted.
- Section 10(iii)<sup>6</sup>** states that a married person cannot be adopted, unless there exists a custom which permits the same.
- Section 10(iv)<sup>7</sup>** states that a person above 15 years of age cannot be adopted, unless there exists a custom which permits the same.

### ANALYSIS

**Issue 1: Whether claimant is required to prove a custom that has been judicially recognised?**

<sup>3</sup> Ratanlal Chunilal Samsuka vs. Sundarabai Govardhandas Samsuka (Dead) through Legal Representatives and Ors, (2018 11 SCC 119)

<sup>4</sup> Section 2, Hindu Adoptions and Maintenance Act, 1956: Application of the Act.

<sup>5</sup> Section 3(a), Hindu Adoptions and Maintenance Act, 1956: Definition and essential ingredients of a custom

<sup>6</sup> Section 10(iii), Hindu Adoptions and Maintenance Act, 1956: Persons who may be adopted.

<sup>7</sup> Section 10(iv), Hindu Adoptions and Maintenance Act, 1956: Persons who may be adopted

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In consideration of the appellants claim, the Court reviewed the following judicial and legal principles:

### ***Collector of Madura vs. Mootoo Ramalinga Sathupathy***

The Court reviewed and upheld the case of *Collector of Madura vs. Mootoo Ramalinga Sathupathy*<sup>8</sup>, wherein it was held that clear proof of usage of a custom<sup>9</sup> would outweigh the written text of law<sup>10</sup>. Thus, the Apex Court held that **when customs are pleaded at equal parance with written law<sup>11</sup>, they should be strictly proved<sup>12</sup>**.

It further debunked the presumption that the written law prevails over the claim of a custom and held that if the claimant satisfies the burden of proving the existence of the custom<sup>13</sup>, and if the custom in question satisfies the essential ingredients<sup>14</sup> as laid down under Section 3(a), the Court, the claim of the custom shall be granted by the Courts<sup>15</sup>.

### **Custom evolves by conduct**

The Court held that while the claimed custom is willfully accepted as having the force of law, a custom evolves by conduct and therefore, its validity cannot solely be measured by its historic judicial recognition. The judicial recognition of a custom is relevant for the establishment of its validity, but the claimant must still satisfy his burden of establishing said custom.

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## **Issue 2: Whether the appellant is to be considered a legally valid adopted son of the respondent?**

### **Burden of Proof in Adoption**

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<sup>8</sup> Collector of Madura vs. Mootoo Ramalinga Sathupathy, (1868) 12 M.I.A. 397

<sup>9</sup> Sant Ram v. Labh Singh, AIR 1965 SC 314

<sup>10</sup> Dasaratha Rama Rao v. State of Andhra Pradesh, AIR 1961 SC 67

<sup>11</sup> Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors, (2019) 11 SCC 1

<sup>12</sup> Hem Singh and Anr. v. Hakim Singh and Anr, [1955]1SCR44

<sup>13</sup> Laxmibai (Dead) thr. L.Rs. and Anr. vs. Bhagwantbuva (Dead) thr. L.Rs. and Ors, (2013) 4 SCC 97

<sup>14</sup> Gokal Chand vs. Parvin Kumari, AIR 1952 SC 231.

<sup>15</sup> Daya Ram v. Sohel Singh, (1906) 110 PR 390

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The Honourable Supreme Court, in reviewing the evidence presented before it, held that the burden of proof in adoption is heavy<sup>16</sup> as an adoption can change the course of succession, change the expected rights of the daughters and wives of a family, and it is thus essential for the evidence to be free from suspicion.

### Consideration of Oral Evidence

Since the photos of the adoption ceremony do not portray the ceremony itself, the only evidence to be considered by the Court is the oral evidence by way of the testimony of the Priest.

However, in line with *RahasaPandiani vs. Gokulananda Panda*<sup>17</sup>, which held that if a claimant relies solely oral evidence to support his contention of adoption, and it is not supported by any other registered document, the Court must exercise a great deal of caution in considering the oral evidence.

The testimony of the witnesses examined in this case was found to be contradictory, and thus the appellant failed to satisfy the Court in its evidence presented. Further, the Apex Court held that the Trial Court was mistaken in placing the burden of disproving the adoption on Sundarabai, which is against the law.

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### **CRITICAL ANALYSIS: VALIDITY OF THE ADOPTION OF MARRIED PERSONS IN THE JAIN COMMUNITY IN INDEPENDENT INDIA**

This case presented the Supreme Court with an opportunity, for the first time since independence, to address the lacuna in the law i.e., the existing gap in the current law that governs the adoption within the Jain Community and their customs. However, the factual matrix of the current case hindered the Apex Court from addressing the gap.

In *Rup Chand vs. Jambu Parshad*<sup>18</sup>, the custom concerning the present was called into question before the Privy Council. It was held that this custom was exercised by a very small number of the Jain Community, and was thus insufficient to establish a widely practiced custom.

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<sup>16</sup>Kishori Lal vs. Chaltibai, AIR 1959 SC 504

<sup>17</sup>RahasaPandiani vs. Gokulananda Panda, (1987) 2 SCC 338

<sup>18</sup> Rup Chand vs. Jambu Parshad, 1910 SCC OnLine PC 5

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On the contrary, in the case of *Sheokuarbai vs. Jeoraj*<sup>19</sup>, the Privy Council recognised the custom in question and held that the adoption of a married and older person is valid within the Jain Community. This position was consistently upheld by the Privy Council in a plethora of cases including *Asharji Kunwar v. Rup Chand*<sup>20</sup>, *Govindram v. Sheoprasad*<sup>21</sup>, *Manohar Lal vs Banarsi Das*<sup>22</sup>, *Chiman Lal vs Hari Chand*<sup>23</sup>.

Thus, in view of the grounds established by the Privy Council, the Supreme Court in the current case must have reaffirmed the validity of the custom in Independent India and upheld Ratanlal's adoption, if the appellant had pleaded for the establishment of the custom.

Therefore, there exists a gap in the current law that governs the adoption within the Jain Community and their customs.

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## **CONCLUSION**

### **JUDGEMENT:**

The Supreme Court held that while a custom maybe judicially recognised, a custom evolves by conduct and therefore, its validity cannot solely be measured by its historic judicial recognition. Thus, the Apex Court held that when customs are pleaded at equal parance with written law, they should be strictly proved by the claimant.

Additionally, the Court held that the burden of proof in cases of adoption is heavy due to the paramount impact it has in familial relations. It discussed the nature of evidence required and held that mere oral evidence is not satisfactory to meet the burden of proof.

### **IMPACT:**

The Supreme Court's clarification that the validity of a custom cannot rest solely on its judicial recognition has found great<sup>24</sup>and extensive<sup>25</sup>applicability<sup>26</sup>in a plethora<sup>27</sup>of cases<sup>28</sup> by

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<sup>19</sup>Sheokuarbai vs. Jeoraj, 1920 SCC OnLine PC 54

<sup>20</sup>Asharji Kunwar v. Rup Chand, (1908) 30 All 197

<sup>21</sup>Govindram v. Sheoprasad, (AIR 1948 Nag 398)

<sup>22</sup>Manohar Lal vs Banarsi Das, (1907) ILR 29 All 495

<sup>23</sup>Chiman Lal vs Hari Chand, (1913) 15 BOMLR 646

<sup>24</sup>Roopautin Bai vs. Sunderi Bai and Ors, MANU/CG/0143/2020

<sup>25</sup>Surjotin and Ors. Vs. Chamrin Bai and Ors, MANU/CG/0066/2020

<sup>26</sup>Suresh Kumar Singh and Ors. vs. Central Coalfields Limited and Ors, MANU/JH/0459/2020

<sup>27</sup>Bhim vs. State of Jharkhand, MANU/JH/0260/2020

<sup>28</sup>Rajkumari Amrit Kaur and Ors. vs. Maharani Deepinder Kaur and Ors, MANU/PH/0414/2020

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various<sup>29</sup> benches<sup>30</sup> in various<sup>31</sup> courts<sup>32</sup>, including matters of succession<sup>33</sup>, inheritance<sup>34</sup>, property<sup>35</sup> and more<sup>36</sup>. However, its inability to fill the existing vacuum in the Jain Community's adoption law in Independent India necessitates a major reform of the present legal position.

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<sup>29</sup>Bhagwati vs. Cheduram and Ors, 2020(2) CGLJ236

<sup>30</sup>Crown Transport (P) Ltd. Vs. Alpasso International Engineering Co. and Ors, MANU/WB/2892/2019

<sup>31</sup>V. Sudarshan vs. V. Mohan and Ors, MANU/KA/5390/2019

<sup>32</sup>Pusapati Laxmi Narasayamma vs. Alamanda Narayana and Ors, 2018(5) ALT95

<sup>33</sup>Jhuli and Ors vs. Patru and Ors, AIR2021Chh60

<sup>34</sup>Maniyar Sai and Ors. vs. Jangi Bai and Ors., AIR2020Chh183

<sup>35</sup>A. Rawoof Khan and Ors. vs. Noushad Basha and Ors, MANU/AP/0623/2020

<sup>36</sup>Ratan Singh vs. Rajaram, AIR2020MP135

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