

What rights do adopted children have in an ancestral property?

They are entitled to property bequeathed to them before adoption; but cannot claim property of adoptive parents given to others before adoption

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The dictionary meaning of the term adoption is the act of rearing the child of other parents as one's own. It is a practice that has been validly recognised under Hindu law. The process and procedure of adoption of children by Hindus in India has been codified and is governed by the Hindu Adoptions and Maintenance Act, 1956. Adoption ensures that a child is considered to belong to its adoptive parents for all purposes from the date of adoption. This means that for the purpose of rights over property, adopted children would have the same status as natural born children of their parents.

However, there are two exceptions to this general principle. First, adoption of a child by the adoptive parents would not deny any other person who received

the property from them prior to the date on which the child was adopted. This means that the property rights of the adopted child would not take preference over the property rights of someone to whom the property was already given before the adoption of the child.

Now take this case of A (a Hindu male) who dies leaving behind his widow, A1, and daughter, D. On A's death, A1 and D inherit his property in equal share. Subsequently, A1 adopts a son, B. The adoption of B will have effect from the date of his adoption and B will not affect the estate of A1 or D which was vested in them before his adoption.

The Hon'ble Supreme Court clarified the position in this regard in its judgment in *Namdev Vyankat Ghade versus Chandrakant Ganpat Ghade* (2003) case. In this case, the child was adopted by the a woman after the death of her husband. Before the child was adopted by the woman, her husband's property had already devolved upon his other legal heirs and successors. It was held that since

the child was adopted after the death of his adoptive mother's husband and the property had already devolved upon the other legal heirs of the deceased father, the adopted child would not be entitled to a share in such property that had already devolved.

Secondly, the adopted child retains the right to property that was transferred to him/her before he/she was adopted. The Act has clarified that if a child has been adopted, it does not mean that the child is denied rights over the property that he/she inherited or acquired prior to adoption from his/her biological parent(s) or other family members.

For instance, take the case of A (a Hindu male) and his late wife A1 had two sons, B and C. C was given in adoption by A to X after A1's death, which meant that C would not be entitled to inherit property from A as his son. However, as C's mother had died prior to the adoption, C was entitled to a share (along with A and B) in the property

left by A1. That share which had already been vested in C, would continue to vest in him. It was clarified that C was not entitled to inherit from A as his son as after adoption he became a part of the adopted family.

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