Ramning Vs. Ganesh and Others

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Court : Karnataka Dharwad

Decided On : Sep-10-2015

Judge : B. Veerappa

Appeal No. : R.S.A.No. 100039 of 2014

Appellant : Ramning

Respondent : Ganesh and Others

Advocate for Pet/Ap. : Sri. Ramachandra Mali

Judgement :

(Prayer: This RSA is filed u/s 100 of CPC, against the judgment and decree DTD: 18.11.2013 passed in R.A.No.179/2008 on the file of the senior Civil Judge, Khanapur, dismissing the appeal, filed against the judgment and decree DTD: 04.03.2005 and the decree passed in O.S. No.73/1999 on the file of the PRL Civil Judge (JR. DN.), Kahanapur, dismissing the suit filed for declaration and injunction.)

1. This is an unsuccessful plaintiff's regular second appeal against the judgment and decree dated 18.11.2013 made in R.A. No. 179/2008 on the file of the Senior Civil Judge, Khanapur, confirming the judgment and decree dated 04.03.2005 made in O.S. No. 73/1999 on the file of the principal Civil Judge (Jr.Dn.), Khanapur, dismissing the suit for declaration and injunction.

2. It is the case of the plaintiff that he is the son of 1st defendant. Defendant Nos.2 and 3 are strangers to the plaintiff and plaintiff belongs to Hindu community of Amate Village and defendent Nos.2 and 3 belongs to Muslim community and they are no way concerned to the family of the plaintiff in any manner. The plaintiff was adopted son of the defendant No.1 and defendant No.1 had taken plaintiff in adoption, as per registered adoption deed dated 08.03.1977, as per Hindu Customs and Rites. Thereafter, the plaintiff was looking after all the family affairs as adopted son of defendant No.1. plaintiff, defendant No.1 and wife of the plaintiff are residing at Amate Village and ultimately relations are continued till today. Defendant No.1 is holding the family property bearing R.S. Nos. 114, 124 and a house bearing G.P.C. No.215 situated within the limits of Amate Village. All the properties were standing in the name of defendant No.1. and his name entered in the revenue records as owner. The suit properties are on actual possession, wahiwat and personal cultivation of the plaintiff since long till today without anybody's disturbances as an owner. Except the plaintiff, defendant No.1 had no any male or female issues. The plaintiff being only adopted son is entitled to the entire suit properties, as he is only legal heir i.e., adopted son. The plaintiff further submitted that defendant No.1 is aged about 85 years and he had hearing impaired and had short eyesight and also mental imbalance and such being the state, the plaintiff was looking after all the affairs of the family. Taking the advantage of till ill health of the 1st defendant, defendant Nos.2 and 3 who are the strangers were illegally created some bogus documents in their favour and tried to grab the entire suit properties. The plaintiff recently came to know that the 1st defendant colluding with 2nd and 3rd defendants illegally filed the suit in O.S. No. 90/1997 and subsequently it was compromised between them. The same was not binding on the plaintiff and further contended that the defendant Nos.2 and 3 are illegally tired to change revenue and panchayat records. Therefore, the plaintiff was constrained to file the suit.

3. The defendant Nos.1 to 3 appeared with their counsel 1st defendant filed written statement. Denfendant Nos. 2 and 3 adopted and denied the entire plaint averments and specifically contended that suit filed by the plaintiff is not maintainable and the plaintiff has filed a false frivolous and vexatious suit against them. The defendant specifically contended that the 1st defendant has not at all

taken the plaintiff into adoption on 08.03.1977 under the registered adoption deed, as alleged and has specifically contended that the 1st defendant has never taken the plaintiff as adoption at any time and he is not residing along with the plaintiff or his wire. The suit schedule property belongs to the 1st defendant and also denied the plaintiff's possession in respect of the suit schedule property and also contended that the plaintiff is not at all in possession and enjoyment of the property and also denied that he has mental imbalance. The 1st defendant further contended that he is hale and healthy and therefore, the allegation made in the plaint are baseless. Defendants further contended that the 1st defendant voluntarily appeared in Khanapur Munisiff Court and filed a suit in O.S.No. 90/1997 and the same was compromised before the Lok Adalat and compromise decree was passed. Defendant No.1 has voluntarily, freely without any pressure has given the property in physical possession to the defendant nos.2 and 3 etc. Therefore, he sought for dismissal of the suit.

4. Based on the pleadings the trial court framed the following issues:

ISSUES

1. Whether the plaintiff prove that he is the adopted son of defendant No.1?

2. Whether the plaintiff proves that he is the owner of the suit properties by virtue of he is being adopted son of the defendant No.1?

3. Whether the plaintiff proves that the compromise decree obtained by the defendant No.2 and 3 in O.S No. 90/97 is null and void and not binding on the plaintiff?

4. Whether the plaintiff proves that he is in possession of the suit property as on the date of the suit?

5. Whether the plaintiff further proves the alleged interference by defendant No.2 and 3?

6. Whether the defendant No.1 proves that he suit is not properly valued and proper court fee is not paid?

7. What order or decree?

5. In order to establish his case, the plaintiff examined himself as PW.1 and a witness as PW.2, marked the documents as Ex.P.1 to P.8. The 1st defendant examined himself as DW.1 and marked document as Ex.D.1.

6. After considering both oral and documentary evidence on record, the trial court recorded a finding that the plaintiff failed to prove that he is the adopted son of 1st defendant and also failed to prove that he is the owner of the suit schedule property by virtue of he being adoptive son of the 1st defendant and failed to prove that the compromise between defendants 1 to 3 O.S.No.90/97 is null and void and not binding on the plaintiff and also failed to prove his possession as on the date of the suit and also failed to prove the alleged interference by defendants 2 and 3. Ultimately, the suit came to the dismissed.

7. Against the said judgment and decree, the plaintiff filed R.A.No.179/2008 before the learned Senior Civil Judge, Khanapur, who after hearing both parties by his impugned judgment and decree dated 18.11.2013 dismissed the appeal and confirmed the judgment and decree of the trial court.

8. Against the said concurrent findings of facts recorded by the courts below, did not deter the appellants from preferring the present regular second appeal as the last ditch attempt.

9. I have heard the learned Counsel for the appellant.

10. Sri.Anthony Rodrigues appearing on behalf of Sri Ramachandra Mali, learned Counsel for appellant has strenuously contended that, both the courts blow have committed an error in not relying upon Ex.P.7 which is a registered adoption deed dated 8.3.1997 which is more than 30 years old document, without considering both oral and documentary evidence on record and also contended that presumption should have been drawn by the courts below under Section 90 of Indian Evidence Act. He also contended that both the courts below have committed an error in holding that the adoption of appellant/plaintiff is in violation of Section 10 of the Hindu Adoptions and Maintenance Act, 1956. Therefore, he

sought to set aside the judgment and decree of the courts below.

11. I have given my anxious consideration to the arguments advanced by the learned Counsel for the appellant and perused the entire material on record.

12. The substance of the plaintiff's case is that, he is the adopted son of 1st defendant and adoption was made on 8.3.1977 as per Hindu customs and rituals and thereafter, the plaintiff, his wife and 1st defendant were residing together and plaintiff is looking after the affairs of the family. Therefore, he filed the suit for the relief sought for. The 1st defendant filed written statement and denied the very adoption and contended that the plaintiff was never adopted by the 1st defendant and he is not in possession and enjoyment of the suit schedule property at any point of time. The defendant further contended that he is the owner of the suit schedule property and he is in possession and enjoyment of the same.

13. In order to prove his case, the plaintiff examined himself as PW. And a witness as PW. And marked documents as Ex.D1. to D.8. To disprove the plaintiff's case, the 1st defendant examined himself as D.W.1 and marked document as Ex.D.1. The trial court considering the entire material on record has recorded a finding that, the PW.1 has clearly admitted that, the adoption deed is made in the office of the Tahasildar (witness volunteers that homawas conducted at home and then he came to Tahasildar's office). The original adoption deed was in my house and it was eaten by white ants ?. But in the present case, PW.1 himself has produced Xerox copy of the said adoption deed. If at all the original adoption deed was eaten by white ants, then how he has produced the adoption deed. PW.1 further admits in the cross examination that, on Ex.P.7 the LTM on pages 2 and 4 are put by him and he also admitted that is true that against these LTMs it is written that these are LTMs of G.M. Gaonkar. The witness further volunteers that said Ganesh Mukund Gaonkar, i.e. 1st defendant can sign. Ex.P.7 is obtained by Ganesh Mukund Gaonkar. He has also admitted that it is true that 1st defendant, in order to show that he himself has purchased the stamp paper he has to sign or put his LTM on Ex.P.7 on pages 2 and 4 are not that of 1st defendant but they are plaintiff's LTMs. Therefore, it clearly goes to show that the thumb impressions at pages 2 and 4 of Ex.P.7 are not belonging to 1st defendant, but these thumb

impressions have been put by plaintiff himself and he has clearly stated that the name of wife of defendant-1 is Laxmi or it may be Parwati. He does not remember to have enquired into the said names. Further he clearly admits in the cross examination that, in Ex.P.7 the name of wife of Ganesh Mukund Gaonkar is mentioned as Parwatibai and further he admits that when it is Sitabai how it can be mentioned the name of his wife as Parwaatibai. He also admits that it is true that contents of ration card are written by the Revenue officials and signed by Tahasildar. The said ration card is marked as Ex.D.1, which clearly indicates that wife of Ganesh Mukund Ganonkar is mentioned as Sita Ganesh Gaonkar. He also admitted that the name of wife of Ganesh Mukund Gaonkar is Sita Ganesh Gaonkar. He also admits that name of wife of Ganesh Mukund Gaonkar is no Parwatibai, Rukamini, Laxmibai etc. He also admits that if any name is appearing other than Sit as the wife of Ganesh Mukund Gaonkar, it is a false and fabricated document.

15. It is also admitted that 1st defendant filed a criminal complaint against plaintiff and he has attended the Khanapur Police Station. Further he also admitted that 1 st defendant has been taken medical treatment by defendant No.2. He also admitted in the cross-examined that I did not get Ex.P.7 read over to me by anybody. It is true that I do not know to read and write and also no one has read over and explained the contents of Ex.P.7 pertaining to me or not. It is also true that I do not know the contents of Ex.P.7 ?. Further he has clearly admitted that he has not at all seen one Bharmani Parashuram of Jamboti village at any point of time. Further he has clearly admitted that there is no priest in his village. In the cross-examination PW.1 clearly admitted that the adoption ceremony i.e., Dattak Vidhan, was performed by the priest by name Dhamodar, who was aged about 60 to 70 years and he had come from Jamboti and now he is alive and he can attend the court and give evidence. But in the present case, the plaintiff has not examined the said priest who performed the dattak ceremony. The trial court also recorded a finding that in the entire cross-examination, in one breath PW.1 submits that original adoption deed was eaten by white ants and in another breath he submitted that original adoption deed is available in the Tahasildar's office, and further once again he admits that defendant No.1 has taken away the original adoption deed by breaking open the iron trunk. So he is not at all perfect in his say as to how he has

taken the zerox copy of the original adoption deed. Further the PW.1 submits that, he has not at all seen the original adoption deed since 1980-81. So when he has not at all seen the original adoption deed since 1980-81 then how he has taken the Xerox copy of the original adoption deed two years prior to the filing of the suit. He has further admitted that the 1st defendant was residing in his own house and he has not at all stated that he is also residing in the same house along with the 1st defendant and he is looking after care and custody of the defendant No.1 and it is true that defendant No.1 and his wife have taken care of each other. So looking from the entire version of PW 1, it clearly goes to show that there was no adoption ceremony celebrated and plaintiff is not the adopted son of defendant No. 1.

16. The plaintiff also admitted that Ex.P.1 to P.6 the revenue records which show the name of defendant No.1 as owner and actual cultivator of the landed properties and the owner of that house property. PW.2 who is examined on behalf of plaintiff has also admitted in the cross examination that in Ex.D.1 the name of plaintiff is not appearing. But he has clearly admitted that after discussion he came to Khanapur and in between that period nothing in respect of adoption ceremonies taken place, and also admitted that it is true that in Ex.P.7 there is no recital that the genitive mother is actually giving her son in adoption to the adoptive parents. He also further admitted that it is true that whether the defendant No.1 and his wife were present and as per their instructions Ex.P.7 was written can be stated by the Tekadi and admittedly, in the present case plaintiff has not at all examined the bound writer of Ex.P.7. In the cross examination DW.1 has clearly stated that:

KANNADAM ?

The trial court also recorded a finding that as on the date of adoption the plaintiff was a married person and there is no single word in Ex.P.7 that there is a custom and usage of taking a married person as adoption son and even in the said Ex.P.7 there is no recital that a person of age 25 years can be taken as adopted son. So there is no single recital about the custom and usage of taking a married person as adoptive son in the family of defendant No.1 not in the genitive family of the plaintiff. Therefore, the trial court has recorded a finding that in view of provisions of Section 10(1)(iii) of the Hindu Adoption and Maintenance Act, 1956, the

adoption of plaintiff is not permissible. According, the trail court dismissed the suit. On re-appreciation of entire material on record, the lower appellate court has recorded a finding that PW.1 in his examination-in-chief has stated that he was married and after his marriage he went in adoption. But the said statement has been clearly denied by defendant No.1 in his cross examination stating that:

KANNADAM ?

17. The appellate Court also recorded a finding that, admittedly, the plaintiff was married at the time of alleged adoption on 8.3.1977 and he was aged 21 years as on the said date and plaintiff has not pleaded regarding the customs, usage as well as rituals and ceremonies that took place in respect of the same and in view of the provisions section 10 of the Hindu Adoption and Maintenance Act, 1956, the alleged adoption is invalid and ultimately confirmed the judgment and decree of the trial court.

18. Though the learned counsel for plaintiff has contended that the alleged adoption deed was registered on 8.3.1977 and it is more than 30 years and therefore presumption has to be drawn that it is a valid document, cannot be accepted for the simple reason that admittedly as on the date of adoption the plaintiff's age was about 21 years and it is also mentioned in the Ex.P.7 his age as 21 years. If that is so, in the absence of any usage and customs in the community of the plaintiff, it is not permissible under the provisions of Section 10(1)(iii) of the Hindu Adoption and Maintenance Act, 1956. When the adoption deed itself is invalid in the eye of law, the question of presumption to the alleged document does not arise. When the material documents clearly prove that the plaintiff during the course of cross examination has specifically admitted that he is not aware of contents of Ex.P.7 and he is not residing along with the defendant and his wife and Ex.D.1 the ration card clearly indicates that 1st defendant and his wife Sitabai alone were residing and not the plaintiff, itself goes to disprove the case of the plaintiff. Further, the plaintiff has not produced any material documents before court to substantiate that in their community even after 21 years the customs and usage permits that adoption can be made beyond 15 years and he has also not examined the priest who performed the adoption ceremony and in the present

cases the plaintiff has not pleaded or proved the factom of giving and taking and the plaintiff has not examined the bond writer of Ex.P.7.

19. The provisions of Section 10 of the Hindu Adoptions and Maintenance Act, 1956, no person shall be capable of being taken in adoption unless he or she has not completed the age of 15 years, unless there is a custom or usage applicable to the parties which permits person who has completed the age of 15 years being taken in adoption, which reads as under:

Persons who may be adopted- No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely-

(i) he or she is a Hindu,

(ii) he or she has not already been adopted.

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption ;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption. ?

Admittedly, in the present case, it is not the case of the plaintiff that in their community there is a custom and usage that even after 15 years the adoption can take place and in the absence of any pleadings the claim of plaintiff cannot be considered. The 1st defendant has specifically denied the adoption and specifically contended that the plaintiff is a stranger and the entire burden is on the plaintiff to prove that he is the adopted son and the plaintiff has not produced has not produced any oral and documentary evidence to discharge the initial burden on him. The provisions of Section 10 of the Hindu Adoptions and Maintenance Act, 1956, clearly indicates that the person capable of being taken in adoption has to fulfil certain conditions and the plaintiff has not produced any oral and documentary evidence to show that he was actually given in adoption by his parents and guardian as required under Section 11(iv) of the Hindu Adoptions and Maintenance Act, 1956. Therefore, in the absence of any material produced before

the court to prove the adoption ceremony of giving and taking, the adoption deed cannot be accepted since the same is disputed by the 1st defendant.

20. The Hon'ble Supreme Court in the case of Harnek Singh Vs. Pritam Singh and Others, reported in (2013) 4 SCC 458, while considering the provisions of Section 10(iii) and Section 11(vi) of the Hindu Adoption and Maintenance Act, 1956, has held that,

Clause (vi) of Section 11 specifically provides that, the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with the intent to transfer the child from the family of its birth. A child who is abandoned or whose parentage is not known may also be taken in adoption provided the given and taken ceremony is done from the place of family where it has been brought up to the family of its adoption. ?

And also specifically held at paras 16 to 19 as under:

16. Both the first appellate court and the High Court have considered all the decisions relied upon by the parties and finally came to the conclusions that neither has the custom been proved nor has the factum of adoption been established by conclusive evidence. Normally, the concurrent findings recorded by the two courts need not be interfered with unless the findings appear to be perverse in law.

17. Without going into the question with regard to the custom prevalent amongst the Jats to take in adoption a married man having children, the evidence which has been brought on record goes against the plaintiff-appellant on the basis of which it cannot be held that there was a valid adoption.

18. The plaintiff-appellant impleaded his adoptive father Sarup Singh as defendants No.1 and alleged that he was adopted by defendant No.1. Curiously enough, defendant No.1, the so called adoptive father, contested the suit by filing written statement making an averment that he never adopted him as his son. If the adoptive father himself asserted that he never took the appellant in adoption, the court cannot come to the conclusion that appellant was taken in adoption by

Defendant No.1. It is strange enough that when during the pendency of the case Defendant No.1 adoptive father died the appellant-plaintiff who claims himself to be the adopted son has not even performed the last ritual and other ceremonies of the deceased. It has also come in evidence that during the period when the alleged adoption took place, the appellant's natural father was Sarpanch of the village and the register which was produced in court to show that there was some entry with regard to adoption remained with the said Sarpanch. Apart from that, defendant No.1 adoptive father in his detailed written statement has denied each and every allegation and claimed to be in cultivating possession of the land and further denied that the appellant ever resided with him in his house or helped him in cultivating the land. The evidence, in our view, goes against the appellant and, therefore, it cannot be held that there is perversity in the judgment passed by the two appellate courts.

19. In the light of the findings recorded by the two appellate courts and the discussion made hereinbefore, we do not find any reason to interfere with the judgments passed by the first appellate court and the High Court. ?

21. In the present case, both the courts below concurrently held that the plaintiff failed to prove that he is the adopted son of the 1st defendant and failed to prove that he is the owner of the suit schedule property by virtue of being adoptive son 1 st defendant. Therefore, the plaintiff is not entitled to any relief as prayed for. The said findings of facts are based on the cogent legal evidence on record and the same is in accordance with law. No interference is called for under the provisions of Section 100 of the Code of Civil Procedure.

No substantial question of law involved in the present appeal. Accordingly, the regular second appeal is dismissed at the stage of admission without reference to the respondents.