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Subhash Misir Vs. Thagai Misir

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Court : Allahabad

Decided On : Apr-13-1966

Reported in : AIR1967All148

Judge : S.N. Singh, J.

Acts : Hindu Adoptions and Maintenance Act, 1956 - Sections 12 and 14; Hindu Law; Tenancy Law; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 - Sections 171 and 172

Appeal No. : Second Appeal No. 214 of 1963

Appellant : Subhash Misir

Respondent : Thagai Misir

Advocate for Def. : Jagdish Misra, Adv.

Advocate for Pet/Ap. : R.B. Misra and ;Abhay Nandan Singh, Advs.

Disposition : Appeal allowed

Judgement :

S.N. Singh, J.

1. This appeal arises out of a suit for declaration of bhumidhari rights instituted by one Smt. Sahebzadi. The facts giving rise to the present appeal are that Smt.

Sahebzadi, plaintiff, filed the suit in respect of a number or plots of village Basanipur Tappa Kataura Pargana Silhat, detailed at the foot of the plaint. Her case was that the plots in suit were previously the sir and khudkasht holding of Ram Dhani, her husband, and after his death she became the sir and khudkasht holder and subsequent to the enforcement of the U. P. Zamindari Abolition and Land Reforms Act she became the bhumidhar thereof.

It was asserted that the defendant in collusion with the lekhpal fictitiously got his name entered in the revenue records although he never cultivated any of the plots which all along remained in the cultivatory possession of the plaintiff. During the pendency of this suit Smt. Sahebzadi died on 4th August 1961 and the present appellant was substituted in her place. The present appellant claimed to be the adopted son of Smt. Sahebzadi.

2. The suit of Smt. Sahebzadi was contested by the defendant who alleged that Ram Dhani, the husband of Smt. Sahebzadi who was the first cousin of the defendant, lived jointly with him and after the death of Ram Dhani the defendant came in exclusive possession of the property. In the alternative, he claimed sirdari and asami rights on the basis of his continuous possession. After the substitution of the appellant the defendant filed an additional written statement wherein he challenged the adoption and further challenged the right of the appellant to sue.

3. The learned Munsif on the pleadings of parties framed relevant issues and referred issues Nos. 2 to 4 relating to sirdari, adhivasi and asami right to the competent revenue Court. The revenue court returned the finding in the negative holding that the defendant had not acquired sirdari, adhivasi or assami right in the plots in suit. After the receipt of these findings the learned Munsif took up other issues and found that the plaintiff was not the adopted son of Smt. Sahebzadi, as such, he did not acquire bhumidhari rights. In any case, it was held that he could not succeed to Ram Dhani and the suit was not cognizable by the civil court in view of the amended Section 331 of the U. P. Zamindari Abolition and Land Reforms Act, Having arrived at these findings he dismissed the suit.

The plaintiff-appellant preferred an appeal before the lower appellate court. The lower appellate court accepted the adoption of the appellant but found that

although adoption was established the appellant did not succeed to bhumldhari plots which were the property of Ram Dhani, the husband of Smt. Sahebzadi. According to the learned Judge the adoption made by Smt. Sahebzadi was to herself and the adopted son could succeed to the personal property left by her but could not succeed to the property of her husband. Accordingly he maintained the dismissal of the suit though on different grounds. Subhash Misir, the adopted son, has come up in appeal to this Court against the concurrent decisions.

4. It has been argued on behalf of the appellant by his learned counsel that the lower appellate court having accepted the adoption erred in dismissing the suit. His contention is that adoption made by Smt. Sahebzadi was an adoption to her husband and the plaintiff-appellant would be deemed to be the son of Ram Dhani for the purposes of succession. Relevant provisions of the Hindu Adoptions and Maintenance Act (hereinafter referred to as the Act) were referred to by the learned counsel. The only point for determination in this appeal is as to whether the appellant who is the adopted son of Smt. Sahebzadi would succeed to the bhumidhari land left by Smt. Sahebzadi which she had inhertied from her husband before the date of vesting.

5. I have heard learned counsel of the parties on the above point and after hearing them I am of the opinion that this appeal should succeed. Although the trial court had not accepted the adoption of the plaintiff-appellant this was accepted by the lower appellate court. Parties have argued this case having accepted the finding of fact recorded by the lower appellate court about the adoption of the plaintiff-appellant.

6. Before coming into force of the Act a Hindu widow could not adopt any person without the permission of her husband. But with the passing of this Act she could adopt even without the permission of her husband as provided by Section 8 of the Act. On her adopting a son after the Act the boy adopted becomes her son. The point for determination is as to what relationship does this adopted son bear with the husband of the adopter. In this respect there are two provisions of the Act which need be noticed. These are Sections 12 and 14 of the Act which are reproduced herein below:

'(12) An adopted child shall be deemed to be the child of his or her adoptive father or mother for all practical 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 obligation, 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.

14 (1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

(2) Where an adoption has been made with the consent of more than one wife, the senior-most in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.

(3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.

(4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the stepfather of the adopted child.' Reading these two sections together one finds that although there is a mention as to the relationship the adopted child would bear with the subsequently married husband there is no mention as to what relationship the adopted child will bear with the deceased husband of a widow who has not remarried. The only thing which we find in section 12 of the Act is that the child severs all his family ties and connection with the family of his or her birth and replaced by those created by the adoption in the adoptive family. On adoption the adopted child becomes the

member of the family wherein he or she is adopted.

In absence of any provision to the contrary, it is not unreasonable to infer that the child adopted by the widow should be held to be the son of the widow as well as her deceased husband. The absence of any specific provision on this point suggests that the common notion that was held before the coming into force of this Act was accepted by the legislature so far as the relationship of the adopted child vis-a-vis the husband of the widow was concerned. This Act has only removed the bar of permission placed on the adoption by a female. Previously she could not adopt without the permission of her husband. An adopted son has all the rights of a natural son and it is reasonable to hold that in the circumstances he should be accepted to be the son of the husband of the widow.

Learned counsel for the respondent has invited rny attention to an article on the subject which finds place in 1965 All India Reporter (Journal Section) P. 27 as a part of his argument. This article has dealt with the lacuna in the Act and has suggested certain amendments to the Act. In the view of the learned Writer in the absence of a specific provision on the point it is difficult to accept that the adopted sou of a widow should be deemed to be the son of her deceased husband. Ke has referred to a decision of the Board of Revenue reported in Roshan Lal v. Pooran Lal, 1964 All LJ (Rev.) 54 and according to him this decision is incorrect. The Board in the aforesaid case had held as follows:

'If a child is adopted by a widow after the death of her husband the child becomes the son of both even though the husband was not alive at the time of adoption and at the death of the widow he would succeed under S. 171 U. P. Zamindari Abolition and Land, Reforms Act as the heir of the husband.' Although according to the Writer this decision in incorrect but then he has suggested amendments on the same lines. The suggested amendments are to be found on page 29 (Journal Section) 1965 AIR. He has suggested the following amendments to section 14 to be added after 14(4) as 14(5) and 14(6).

'14(5) Where a widow, who has been expressly prohibited by her husband by a writing signed by him, from adopting a son, adopts a son, the deceased husband of the widow shall be deemed to be the step-father of the adopted child.

14(6) In any other case of adoption of a son by a widow, not covered by sub-section (5), it shall be presumed that such an adoption is made to the deceased husband. The adopter shall be deemed to be the mother and her deceased husband the father of the adopted child.'

It is true that if the amendment suggested by the Writer is introduced, well and good. Even in absence of such an amendment, in my opinion, interpreting sections 12 and 14 one could safely hold that in cases covered by the suggested amendment at 14(6) the adopted son would be deemed to be the son of the deceased husband of the widow. It would be very harsh if in such a case the adopted son who severs all his connections from the family of his birth does not get anything in the adoptive family on the ground that he is adopted by the widow.

7. In Madras even before the Act under the old Hindu Law a widow could adopt without the permission of her husband and the various authorities of the Madras High Court would show that such adopted son was always treated as the son of the husband of the widow. In my opinion, the same status should be given to the adopted son after the passing of the Act in other provinces as well. In 'Introduction to Modern Hindu Law' by J. Duncan M. Derret we find in paragraph 180 of that book that the learned author after dealing with Sections 12 and 14 of the Act has opined that for the purposes of inheritance and maintenance an adopted child is precisely upon the same footing as a legitimate child. According to this view also as soon as the adopted son of the widow is held to be the legitimats son the widow's husband would be deemed to be the father of the adopted child.

8. For the reasons given above my conclusion is that the adopted son of a widow would be deemed to be the son of her husband and on her death would inherit the bhumidhari property as the heir of her husband by virtue of Sections 171 and 172 of the U. P. Zamindari Abolition and Land Reforms Act.

9. The lower appellate court erred in holding that the appellant did not succeed to the bhumidhari property left by Smt. Sahebzadi. Having accepted the adoption he should have decreed the suit.

10. The result of my findings is that plaintiff gets the property left by Smt. Sahebzadi and since there is a finding or the lower appellate court that the defendant is neither sirdar nor adhivasi nor an asami. The possession, if any, of the defendant is that of a trespasser and he is liable to ejectment. Accordingly this appeal succeeds. The plaintiff's suit for declaration that he is the Bhumidhari of the plots in suit and for possession is decreed with costs throughout.

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