

Bipta Devi and ors. Vs. Chander @ Kangress Maraiya and ors.

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Court : Jharkhand

Decided On : May-21-2004

Reported in : [2004(3)JCR468(Jhr)]

Judge : Vishnudeo Narayan, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 16

Appeal No. : A.F.A.D. No. 192 of 1987 (R)

Appellant : Bipta Devi and ors.

Respondent : Chander @ Kangress Maraiya and ors.

Advocate for Def. : A.N. Deo and; P.P. Chatterjee, Advs.

Advocate for Pet/Ap. : Debi Prasad, Sr. Adv. and; K.P. Deo, Adv.

Disposition : Appeal dismissed

Judgement :

Vishnudeo Narayan, J.

1. This appeal at the instance of the plaintiff-appellant has been preferred against the impugned judgment and decree dated 13.3.1987 and 10.4.1987 respectively passed in Title Appeal No. 92 of 1997 by Shri Raja Ram Singh, 1st Additional District Judge, Deoghar whereby and whereunder the said appeal was allowed

and the judgment and decree dated 16.7.1997 passed in Title Suit No. 11 of 1975/35 of 1977 have been set aside and the suit of the plaintiff-appellant was dismissed.

2. Original plaintiff Sakali Maraiyian had died during the pendency of the appeal before the appellate Court below and her heirs and legal representatives have been substituted.

3. Original plaintiff Sakali Maraiyian has filed the said title suit on 18.1.1975 for a declaration that the registered deed of adoption dated 24.12.1974 (Ext D) alleged to have been executed by her is void, illegal, inoperative and tainted with fraud and is the result of fraud committed on her by defendant-respondent Baikunth Maraiyia.

4. The case of the plaintiff-appellant, in brief is that Dorki Maraiyia had two sons, namely, Sohan Maraiyia and Badri Maraiyia. Sohan Maraiyia had two sons, namely, Gokhul Maraiyia and Sudhir Maraiyia. Original plaintiff Sakali Maraiyian is the widow of Gokhul Maraiyia. aforesaid Gokhul Maraiyia had four daughters. Badri Maraiyia had two sons, namely, Kashi Maraiyia and defendant-respondent Baikunth Maraiyia. Defendant-respondent Chander @ Congress Maraiyia is the natural born son of Baikunth Maraiyia aforesaid. Original plaintiff Sakali Maraiyia was in need of Rs. 200/- and she approached defendant Baikunth Maraiyia to advance the loan of Rs. 200/- to her by taking her land in bhugatbandha to which he agreed and she along with defendant Baikunth Maraiyia came to Deoghar. on 24.12.1974 for execution of bhugatbandha deed and Baikunth Maraiyia got a deed scribed and asked her to put her L.T.I. on the said deed and he paid Rs. 200/- to her and Baikunth Maraiyia got the said deed registered by suppressing his fraudulent move and keeping her in dark about the nature of the document and he asserted that it was a deed of bhugatbandha. It is alleged that the contents of the said deed was never read over and explained to her and he taking advantage of her illiteracy and good faith did not give any opportunity to her to know the real shape of the said deed and thereafter he propagated in the village that his son Chander has been adopted by her as her son and a deed to that effect has been executed by her. She being suspicious on the basis of the false propaganda made

by Baikunth Maraiyia came to Deoghar on 9.1.1975 and on enquiry she learnt about the fraudulent execution and registration of the said deed of adoption by making false representation to her and thereafter she had sworn an affidavit that she has neither adopted anyone as her son nor she has executed any deed of adoption to that effect. The further case of the original plaintiff is that she has not adopted defendant-respondent Chandar as her son and there was no occasion to her for the same and said Chandar is living with his parents and he has never resided with her and he had or has also no connection with her and the alleged deed of adoption is a fraudulent document brought into existence by defendant Baikunth Maraiyia to have his hold over her property after her death as she has only four daughters and the said deed of adoption is a result of the fraud committed on her by defendant Baikunth Maraiyia in collusion with Khelan Maraiyia, Brihaspat Maraiyia, Chedi Maraiyia and others.

5. The case of the defendant-respondent, inter alia, is that original plaintiff Sakali Maraiyian has lawfully and validly adopted Chander as her son on 28.11.1974 (12th Aghan 1318 B.S. Kartik, Purnima day) after performing pujapath and actual giving and taking ceremony in presence of friends, relations and respectable persons at her home and on 24.12.1974 she along with defendant Baikunth Maraiyia and others including her brother Chedi Maraiyia (DW 8) and her cousin Brihaspat Maraiyia (DW 14) came to Deoghar where she executed registered deed of adoption and the case of loan of Rs. 200/- and execution of bhughat-bandha deed has been purposely invented for this case. It is alleged that the deed of adoption was scribed under her instruction as well as of defendant Baikunth Maraiyia in presence of witnesses and the contents of the said document was read over and explained to her by the scribe in presence of the witnesses including her brother and there was no question of any hide and sick or misrepresentation at all on her as adoption has taken place as per her repeated request. It is alleged that Sudhir Maraiyia, the brother of the deceased husband of original plaintiff Sakali Maraiyia and others did not like the said adoption and they along with her sons-in-law and daughters subsequently instigated her to file the suit. It is also alleged that after the adoption, name of Chander was changed as Narsingh, who was living with original plaintiff Sakali Maraiyian but subsequently at the instigation of the aforesaid persons she is not maintaining Chander aforesaid. It is also alleged that

the deed of adoption dated 24.12.1974 is genuine, valid and duly executed by Sakali Maraiyian.

6. In view of the pleadings of the parties, the following issue were framed by the trial Court for adjudication in that suit :

(i) Has the plaintiff a valid cause of action for the suit?

(ii) Is the suit maintainable in its present form?

(iii) Whether defendant No. 1 and 3 gave their son defendant No. 2 in adoption to the plaintiff and whether the plaintiff took defendant No. 2 in adoption in actual giving and taking ceremony?

(iv) Whether the adoption deed dated 24.12.1974 is void, illegal, inoperative and whether it is the result of fraud committed on the plaintiff by the defendant No. 1?

(v) To what other relief or reliefs, if any, is the plaintiff entitled?

7. The learned trial Court on the basis of the evidence oral and documentary on the record while deciding issue Nos. (iii) and (iv) has held that original plaintiff Sakali Maraiyian had executed and registered the adoption deed (Ext. D) in a fit of anger and no sooner her anger was cool down, she started repudiating it and the deed of adoption was never accompanied with any overt act in giving and taking. It has also been held that though the plaintiff has not been able to prove that the adoption deed dated 24.12.1974 was tainted with any fraud, nevertheless it has to be declared void, illegal and . inoperative as it was not accompanied by an actual delivery and taking of Chander in adoption and defendant-respondent Baikunth Maraiyia and his wife did not give their son Chander in adoption to plaintiff Sakali Maraiyian and she did not take Chander in her adoption in actual giving and taking ceremony. In view of the findings aforesaid, the suit of the plaintiff was decreed.

8. Aggrieved by the impugned judgment and decree of the trial Court, the defendant-preferred Title Appeal No. 92 of 1997. The learned appellate Court below after reappraisal and re- appreciation of the evidence, oral and documentary, on the record allowed the appeal and set aside the judgment and

decree of the trial Court and dismissed the suit. The lower appellate Court has concurred with the findings of the trial Court that the deed of adoption (Ext. D) was duly executed by original plaintiff Sakali Maraiyia and it is not tainted with fraud. It has also been held that under Section 11(vi) of the [Hindu Adoptions and Maintenance Act, 1956](#) (hereinafter referred to as the said Act) the child to be adopted must be actually given and taken in adoption by the parties or guardian concerned or under their authority with intent to transfer the child from the family of its birth to the family of its adoption but under Section 16 of the said Act, the Court shall presume that this condition was also fulfilled and it is for the plaintiff to disprove the fulfillment of this condition and the evidence on the record brought by the plaintiff is not of such a nature and standard on the basis of which it cannot be said that the factum of adoption has been disproved and in view of the deed of adoption (Ext. D) it shall be presumed that the adoption has been made in compliance with the provisions of the said Act and thus there is no scope to hold that the condition of adoption regarding actual giving and taking in adoption was not fulfilled and the plaintiff, therefore, could not disprove the presumption.

9. This Court while admitting the appeal for hearing vide order dated 24.3.1994 has formulated the substantial question of law which runs thus :--

'Whether the finding of the appellate Court that there is no need for giving and taking ceremony for a valid adoption is based on legal appreciation of law?'

10. Assailing the impugned judgment it has been submitted by the learned counsel for the plaintiff-appellant that certain conditions have been mandated under Section 11 of the said Act, the compliance of which is condition precedent for a valid adoption and one of the conditions is that the child to be adopted must be actually given and taken in adoption by the parents or guardians concerned to under their authority with intent to transfer the child from the family of its birth to the family of its adoption and here in this case, original plaintiff Sakali Maraiyian has deposed in the most clear and unequivocal terms that she has not at all adopted Chander and there had not been any religious ceremony in respect thereof and said Chander resides with his father and he has never resided with her and other witnesses examined on her behalf have materially corroborated her

testimony and presumption as to the registered document relating to adoption (Ext. D) shall only arise if the adoption has been made in compliance with the provisions of the Act specially the provisions under Sections 7, 8, 9, 10 and 11 of the said Act. It has further been submitted that the said presumption is a rebuttable presumption and the plaintiff- appellant as per the cogent evidence on the record has disproved the alleged factum of adoption. It has also been submitted that the evidence brought on the record on behalf of the defendant-respondent in support of the alleged adoption is definitely not sufficient to satisfy the heavy burden that rest upon him as he seeks to displace the natural succession by alleging the said adoption and having regard to the facts and circumstances of this case conclusive presumption cannot be raised from the registered deed of adoption containing a recital in the deed regarding giving and taking of the child in the alleged adoption. It has been contended that the trial Court has thrashed the evidence of the witnesses of the parties threadbare and has come to a definite finding that defendant-respondent Baikunth Maraiyia and his wife did not give their son Chander in adoption to original-plaintiff Sakali Maraiyian and she also did not take Chander in her adoption and there was in fact no actual giving and taking ceremony but the learned appellate Court below in the impugned judgment did not assign any cogent reason regarding disbelieving the evidence of the witnesses of the plaintiff-appellant and has also not adverted to any reason in the impugned judgment for disagreeing with the finding of the trial Court. Therefore, the impugned judgment suffers with illegality and it cannot be sustained. In support of his contention reliance has been placed upon the ratio of the cases of Smt. Janki Devi v. Fani Nandan Tewari and Ors., AIR 1988 Pat 251, Smt. Urmila Dei v. Hemanta Kumar Mohanta @ Hemanta Mohanta and Ors., AIR 1993 Ori 213. Further reliance has been placed upon the ratio of the case of Devgonda Raygonda Patil v. Shamgonda Raygonda Patil and Anr., AIR 1992 Bom 189.

11. In contra, it has been submitted by the learned counsel for the defendant-respondent that there is clinching evidence on the record to prove the fact that Sakali Maraiyian had adopted Chander on 28.11.1974 and performed religious ceremony in respect thereof and Chander was given in adoption to her by defendant-respondent Baikunth Maraiyia with the consent of his wife and Sakali Maraiyian has taken the said child in adoption in presence of a large number of

persons including her full brother DW 8 Chhedi Maraiyia and her cousin brother DW 11 Brihaspat Maraiyia, and DW 16 Bishwanath Jha, who is admittedly the priest of Sakali Maraiyian has performed the religious ceremony on the eve of the said adoption and he has also deposed in support of giving and taking ceremony of the said child in the adoption. It has also been submitted that thereafter Sakali Maraiylan has executed a registered document (Ext. D) regarding the said adoption on 24.12.1974 out of her freewill and volition and both the Courts below have concurrently held that the said deed has been duly executed by her and it is not tainted with any fraud or misrepresentation. It has also been submitted that the said adoption is in accordance with the provisions of the said Act and there is statutory presumption attached with the said registered deed under Section 16 of the said Act and the plaintiff-appellant has failed to disprove the factum of adoption as per the evidence she has brought on the record and the learned appellate Court below has considered the evidence on the record in proper perspective and has come to the finding that the evidence of the plaintiff-appellant is not of such a nature and standard on the basis of which it cannot be said that the factum of adoption has been disproved and there is no scope to hold that the condition of adoption regarding actual giving and taking in adoption was not fulfilled. Relying upon the ratio of the case of Devgonda Raygonda Patil (supra) it has been contented that under Section 16 of the said Act, the presumption is raised that adoption has been made in compliance with the provisions of the said Act and it is for the plaintiff-appellant to prove that ceremony of giving and taking has not taken place. Further reliance has been placed upon the ratio of the cases of Konchada Laxminarayan Subudhi and Anr. v. Konchada Padmanav Subudhi and Ors., AIR 1973 Ori 3, Ramanna Gowda v. Shankarappa and Ors., AIR 1988 Kant 248, Pathivada Ramaswami v. Korada Surya Prakasa Rao and Anr., AIR 1993 AP 336 and Mst Pratapi and Ors. v. Balkishan and Anr., AIR 1988 MP 125. Lastly, it has been contended that it is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial Court in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is not ground for interference in second appeal when it is found that the appellate Court has

given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence. Therefore, there is no illegality in the impugned judgment requiring an interference therein.

12. Original plaintiff Sakali Maraiyian has only four daughters, two of which stands married. She has no son born of her. Her husband Gokhul Maraiyia had died about nine years ago of the execution of the said registered deed of adoption and she is aged about 45 years when she has executed the said deed (Ext. D). She is also possessed of sufficient culturable land in several villages. She has admittedly executed a registered deed (Ext. D) on 24.12.1974 regarding adoption evidencing the fact that she has taken in adoption Chander aged about four years, the second son of defendant-respondent Baikunth Maraiyia. The said adopted child is her nephew as per the admitted genealogy mentioned at the foot of the plaint. It is relevant to mention here that her case regarding fraud practised upon her by Baikunth Maraiyia in the execution of the deed of adoption in lieu of bungath-banda deed in token of acceptance of Rs. 200/- as advance has been disbelieved by both the courts below and it is a concluded finding of the courts below that the deed of adoption (Ext. D) has been duly executed by her and it is not tainted with fraud or misrepresentation. Section 16 of the said Act is quoted below for proper appreciation :--

'16. Presumption as to registered documents relating to adoption.--Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.'

The presumption contemplated under Section 16 has a very wide sweep in that it mandates that when an adoption is evidenced by a registered instrument, the Court has to presume the validity of the adoption in all respects envisaging that the adoption shall be deemed to have been made in compliance with the provisions of the Act. The presumption places the burden on the person who challenges the adoption to prove its invalidity. The burden is not only heavy but is inexorable in so far as it concerns the contender. The presumption attaches ipse jure to the factum of adoption and the question when in point of time the adoption took place whether earlier or as stated in the registered adoption deed it was contemporaneous record of the event would not be germane to the validity of the adoption. The production of the registered deed of adoption is meant to dispense with other modes of proof of factum of adoption and it is also meant to prevent frivolous challenges to the validity of the adoption. It is well recognized principle of law that under Section 16 of the said Act, the presumption is raised that adoption has been made in compliance with the provisions of the Act unless and until it is disproved and the presumption places the burden on the person who challenges the adoption to prove its invalidity. This is the ratio in all the cases referred to above relied upon by the defendant-respondent. It is needless to say that an adoption results in changing the course of succession, depriving the natural heirs if any, of their rights and transferring properties to comparative strangers or remote relations, and it is necessary that the evidence to support it should be such that it is free from all suspicions circumstances as to leave no occasion for doubting its truth. Here in this case, the evidence has been brought on the record to rebut the presumption under Section 16 of the said Act by the plaintiff-appellant and the evidence on her behalf is that no adoption has, in fact, taken place in which there has ever been a giving and taking of the child to the original plaintiff by the natural father of the said child. The learned appellate Court below has discussed the evidence brought on the record on behalf of the original plaintiff and on proper scrutiny has disbelieved their evidence in respect thereof. On the contrary, there is the testimony of three witnesses, namely, DW 8 Chhedi Maraiyia, DW 14 Brihaspat Maraiyia and DW 16 Bishwanath Jha. DW 8 is admittedly, the full brother of the original plaintiff-appellant. DW 14 is her cousin brother and DW 16 is admittedly the family priest of the plaintiff-appellant. All these three witnesses in their evidence have

categorically deposed that Sakali Maraiyan has taken in adoption Chander and there was a religious ceremony on that occasion in which Baikunth Maralyia had given Chander to Sakali Maraiyan and she has taken Chander in adoption as her adopted son. Their evidence clinchingly supports that Sakali Maraiyan has taken in adoption Chander and there has been a giving and taking ceremony of the said child in the religious function. It, therefore, appears that the adoption in this case has been made in compliance with the provisions of that Act and thus there is statutory presumption attached with the said registered deed relating to her said adoption. The evidence on the record brought by the plaintiff-appellant does not dislodge or disprove the said statutory presumption in this case, in view of the evidence on the record. The learned appellate Court below in view of the evidence on the record has correctly held that the plaintiff- appellant has failed to disprove the factum of adoption and in view of the deed of adoption it shall be presumed that the adoption has been made in compliance with the provisions of the said Act and thus, there is no scope to hold that the condition of adoption regarding actual giving and taking in adoption was not fulfilled. The ratio of the cases of Smt. Janki Devi and others (supra) and Smt. Urmila Dei and another (supra) are of no help to the plaintiff-appellant in this case. The finding of the learned appellate Court below cannot be said to be erroneous being contrary to the mandatory provision of law applicable or its settled proposition of law or based upon in admissible evidence or arrived at without evidence. It therefore, appears that adoption of Chander has been made in this case in compliance with the provisions of the said Act and there was actual giving and taking of the child in respect of which the document (Ext. D) purports to evidence as adoption. I, therefore, see no substance in the contention of the learned counsel for the plaintiffs- appellant. There is thus, no illegality in the impugned judgment requiring an interference therein.

13. There is no merit in this appeal and it fails. The impugned judgment of the appellant Court below is hereby affirmed. The appeal is dismissed. There shall be no order as to costs in the facts and circumstances of this case.