
(2010) 06 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4275 of 2006 (S)

Ashish Kumar Shrivastava

APPELLANT

Vs

Western Coalfields Ltd.

RESPONDENT

Date of Decision : 22-06-2010

Acts Referred:

Constitution of India, 1950 — Article 141
Hindu Adoptions and Maintenance Act, 1956 — Section 11, 16, 5, 8, 9
Hindu Marriage Act, 1955 — Section 16
Hindu Succession Act, 1956 — Section 15(1)
Registration Act, 1908 — Section 17(1)

Citation : (2010) ILR (MP) 2094 : (2011) 3 MPHT 210 : (2010) 4 MPJR 204 :
(2011) 1 MPLJ 353

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Krishn Kumar Lahoti, J.

The Petitioner has sought following reliefs:

- (i) Quash the impugned order dt. 19-12-2003 and 11-10-2005 Annexure P-1 and P-2 respectively.
- (ii) Command the Respondents to issue appointment order to the Petitioner on compassionate ground.
- (iii) And also be pleased to issue any other writ/order/direction deemed fit and proper in the facts and circumstances of the order.

Facts of the case are that the Petitioner moved an application for his compassionate appointment on the ground that his adoptive mother Smt. Shantibai died in harness, so he be appointed on compassionate ground. Petitioner's adoptive mother Smt. Shantibai executed deed of adoption dated 19-5-1994 Annexure P/5 in favour of Petitioner in which she acknowledged that

her late husband Sahablal and she, both, had taken the Petitioner in adoption in the childhood of Petitioner in the presence of persons of Samaj. Petitioner was brought up by her and residing along with her. For confirmation of aforesaid, the adoption-deed was executed. It is pertinent to mention that the deed is notarized and is not a registered document.

Smt. Shantibai died on 1-1-1995. Thereafter, Petitioner moved an application for his compassionate appointment with the Respondents. The claim was turned down vide order dated 19-12-2003 against which Petitioner filed Writ Petition No. 286/2004(s) which was disposed of finally on 22-6-2005 an order of this Court, thus:

In this Petitioner has assailed an order (P, 1) passed by Respondent No. 1 by which application filed by Petitioner seeking compassionate appointment has been disallowed on the ground that he is not son of deceased employee Smt. Shantibai.

Perusal of the order (P, 1) indicates that finding has been recorded in para 6 of the order that Petitioner is not real son of the deceased Smt. Shantibai, however, claim of the Petitioner was that he was adopted by deceased which aspect was required to be gone into by the Respondents in objective manner and it was not the case of the Petitioner that he was real son of the deceased Smt. Shantibai, thus, case requires reconsideration on the question whether Petitioner was adopted son of the deceased employee. Let opportunity of hearing be granted to the Petitioner; necessary enquiry be made by the Respondents about the claim of the Petitioner; let fresh reasoned order be passed after due enquiry, within a period of 4 months.

Writ petition is allowed to the extent indicated above. Parties to bear their own costs as incurred.

Thereafter, Petitioner moved a fresh representation Annexure P/1, but it was dismissed vide Annexure P/2, on following grounds:

(i) That, the husband of Shantibai namely late Sahablal was working at Chandmata Colliery. He died on 15-10-1987. after his death, his wife Shantibai moved an application of her employment in which she disclosed Lakhanlal as her son and Laxmi Bai as her daughter. On the basis of said application, Shanti Bai was extended an employment by the Respondents.

(ii) The adoption-deed dated 19-5-1994, Annexure P/5, which was produced by the Petitioner, was found against the provisions of Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as "the Act") on the ground that Mahendra Kumar, the natural father of the Petitioner was alive who had given Petitioner in adoption to Smt. Shantibai. That the deed of adoption was not in accordance with Section 5 of the said Act and cannot be recognized legally. That as per Section 9 of the Act, if natural mother of the child is alive then her consent was also required. In the deed of adoption, there was no consent of

natural mother.

(iii) That as per Section 11 of the Act, if son is adopted then at the time of the adoption, no son, son's son or son should be alive. As Per deed of adoption, late Sahablal was grand-father of the Petitioner and father of Petitioner or son of Sahablal namely Mahendra Kumar was alive, so during life-time of Mahendra Kumar, Petitioner could not be adopted. Apart from this, on 19-5-1994, another son of Shantibai namely Deepak was also alive so at that time, such adoption was not permissible.

(iv) That as per the Rules of Company, only a dependent can be extended employment, only when dependent is unable to maintain himself. The dependent cannot claim compassionate employment as a mode of employment.

(v) That Smt. Shantibai died on 1-1-1995. In the year 1998, Petitioner attained the age of majority. As per Rules of Company, the compassionate appointment can be granted immediately after the death, if claim is found as per the Rules, but after 7 years of death, such appointment cannot be accepted.

(vi) That the Petitioner was neither the son of Shantibai nor legally adopted son, so he is not entitled for compassionate appointment. On these grounds, application was rejected. Thereafter, again this petition has been filed seeking aforesaid relief.

Respondent on notice filed reply and reiterated the same contentions which are find place in the impugned order Annexure P/2.

Learned Counsel for Petitioner submitted:

(i) That there was no son of Smt. Shantibai, so the Petitioner was rightly adopted by Smt. Shantibai. There is no provision in Hindu Adoptions and Maintenance Act, 1956 restricting an adoption even in case step-son is alive.

(ii) That the Legislation in its wisdom has not prohibited in Section 11(i) for such an adoption. The Legislation in its wisdom has intentionally not included step-son in section prohibiting adoption of a son in case an adopted son is alive.

Stating aforesaid, it was submitted that the impugned order be quashed and the Respondents be directed to extend compassionate appointment to the Petitioner.

Shri Greeshm Jain, learned Counsel appearing for Respondents supported the impugned order. He submitted that the deed of adoption was invalid. Under Sections 5 and 11 of the Act, such adoption was not valid. Deed of adoption Annexure P/5 was not a valid document. On the basis of such unregistered-deed, compassionate appointment cannot be directed. Reliance is placed to a judgment of the Apex Court in Chairman, Bihar Rajya Vidyut Board Vs. Chhathu Ram and Others, and submitted that this petition may be dismissed.

Before considering the rival contentions of the parties, it would be appropriate if the glaring facts of the case may be stated. Late Sahablal was an employee of

the Respondent-Company. From this first wife, he was having a son namely Mahendra Kumar, natural father of Petitioner, after death of his first wife, he married to Shantibai. After death of Sahab Lal, Shantibai applied for compassionate appointment which was granted to her and she was working as Safai Karmachari under the Respondents. She died on 1-1-1995, as per case of the Petitioner, Petitioner was adopted during his childhood by Sahab Lal and Shantibai and he was brought up by Shantibai after the death of Sahab Lal. A document in the name of Adoption-deed was also executed by Smt. Shantibai on 19-5-1994 in which these facts were stated that Ashish Kumar, Petitioner, was adopted in the childhood in the presence of reputed persons of Samaj by both of them (Smt. Shantibai and Sahab Lal) and to give legal effect to the adoption, deed dated 19-5-1994 was executed. It was also stated that the document was executed by herself and by her step-son namely Mahendra Kumar who had agreed to give Ashish Kumar in adoption and Ashish Kumar was adopted by her. The deed was executed, witnessed and attested by a notary.

Shri Greeshm Jain, learned Counsel for Respondents relied on the judgment of the Apex Court in Chhathu Ram (supra) in which the Apex Court has held that without registration, no presumption can be drawn u/s 16 of the Act relating to validity of the adoption. In view of the law of the Apex Court, the deed cannot be seen for a valid adoption. Section 17(1)(b) of the Registration Act, 1908 provides that registration of such document was compulsory. The Apex Court in Jahuri Sah and Others Vs. Dwarka Prasad Jhunjhunwala and Others, held that a deed of adoption merely records the fact that an adoption had taken place and nothing more. Such a deed cannot be likened to a document which by its sheer force brings a transaction into existence. It is no more that a piece of evidence and the failure of a party to produce such a document in a suit does not render oral evidence in proof of adoption inadmissible. In view of the law laid by the Apex Court even if a document was inadmissible, other evidence could have been taken into consideration in support of the contention of the Petitioner that he was an adopted son of Smt. Shantibai.

Now the crucial question may be examined; whether the adoption of Petitioner by Smt. Shantibai was legal in view of the specific provisions as contained in the Hindu Adoptions and Maintenance Act, 1956. Section 5 of the Act provides that after the commencement of the Act, no adoption shall be made by or to a Hindu except in accordance with the provisions contained in Chapter-II of the Act and any adoption made in contravention of the said provisions shall be void. Section 5 further provides that an adoption which is void shall neither create any right in the adoptive family in favour of any person which he could not have acquired except by reason of the adoption, nor destroy the right of such person in the family of his birth.

Section 8 provides that a Hindu female whose husband is dead can adopt son or daughter in adoption, Section 9(2) of the Act provides that father has a right to give in adoption but such right shall not be exercised save with the consent of

the mother. In this case, there is nothing on record or in the document Ex.P.5 that consent of the mother of the Petitioner was obtained in the adoption of the Petitioner by Smt. Shantibai and in absence of the consent of the mother, even in document Ex.P.5, such adoption was not valid.

Section 11 specifically provides that if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son (whether by legitimate blood relationship or by adoption) living at the time of the adoption. The aforesaid provision specifically provides that in the presence of any of aforesaid, adoption cannot be made and in contravention of such provision, adoption shall be void.

In this case, it is not in dispute that Mahendra Kumar son of Sahab Lal from his first wife is alive. His relationship with Shantibai was of step son. During life time of Mahendra Kumar whether Shantibai could have adopted the Petitioner is a question to be considered. Section 11(i) of Hindu Adoptions and Maintenance Act specifically provides as under:

Section 11. Other conditions for a valid adoption- In every adoption, the following conditions must be complied with-

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son (whether by legitimate blood relationship or by adoption) living at time of adoption;

The aforesaid provision specifically provides that if the adoption is of a son, the adoptive mother by whom the adoption is made must not have a Hindu son (whether by legitimate blood relationship or by adoption) living at the time of the adoption. This provides vital rule relating to law of adoption of a son and specifically prohibits that in case a living son or adopted son, no adoption can be made. This section provides the conditions which are absolute and non-compliance of it will render the adoption invalid.

Son is understood, in common parlance, a natural son born to a person after marriage. It is a direct blood relationship in which son is usually understood. Son usually connotes and includes not only natural son but also son's son namely grand-son and where personal law permits adoption, it also includes adopted son. Even illegitimate son may be treated as legitimate as for example son referred to in Section 16 the Hindu Marriage Act.

Whether a son or daughter includes step-son or step-daughter was before the Apex Court in Mrs. Shakuntala Sawhney Vs. Mrs. Kaushalya Sawhney and Others, . The Apex Court considered the provisions as contained in Section 15(1) (a) of the Hindu Succession Act, 1956 in para 3 of the judgment held thus:

The question of law canvassed before us turns on the meaning of "son" and "daughter" in the setting of Section 15(i)(a) of the Act. Do the expressions include step-son and step-daughter or embrace only the son and daughter of the deceased female propositus? The text and the context and the application of

traditional rules of statutory interpretation leave the position in an unsatisfactory dilemma of dual import. Even an equitable approach may not necessarily help reach a just solution, because equity shifts as the situation varies, as illustrations presented to us convinced us. Thus, the problem is a little tricky and may well arise frequently. Contradictory positions already taken by different High Courts add to the difficulty and result in the deleterious uncertainty of the law which may well incite, as it has done here, close relations to quarrel over property. Blood may be thicker than water, but wealth breaks all relations in a world of material value sets. The Supreme Court may, when the High Courts disagree, resolve the logomachic conflict by exercising its preference guided by the language and the milieu and following the customary canons of statutory interpretation. While its decision will be binding on account of Article 141 of the Constitution, it may still be fallible because the intendment of Parliament is best brought out by legislative clarification. In the present instance, we have a hunch that the specific point of claim by step-sons and step-daughters to inherit to the estate of a deceased female has escaped Parliament's attention while fashioning the legislation. This is not surprising when we appreciate the push and pressure, hurry and worry of law-making modalities. In such a situation, when a sharp conflict has shown up in the rulings of courts, the matter should not be left in doubt or to forensic-linguistic exercises but must be settled by legislative action on the part of Parliament, making explicit its policy on this branch of the Hindu Succession Act. Inaction leads to more litigation, speculation and compulsion for judicial legislation by the Supreme Court. Drafting lapses are understandable but when differences of interpretation come into the open, delay in correctional parliamentary performance is fraught with negative litigative potential. We are hopeful that the Indian draftsmen will disprove the old English jingle:

I'm the parliamentary draftsman

I compose the country's laws

And of half the litigation

I'm undoubtedly the cause.

The Apex Court left the question open to be considered by the Parliament. Section 11 of the Act includes the son by legitimate blood relationship. The legitimate blood relationship has been specifically used in Section 11 of the Act. The son by pre-deceased wife of Sahablal was step son of Shantibai. For all purposes, he would succeed the property of Sahablal and also of Shantibai. During life time of male issue, whether an adoption can be made has been considered by the Apex Court *Salekh Chand (Dead) by Lrs. Vs. Satya Gupta and Others*, wherein the Apex Court in para 21 of the judgment held thus:

it is not disputed that even under the old Hindu Law, adoption during life time of a male issue was specifically prohibited. In addition, I have observed that such an adoption even if made would be contrary to the concept of adoption and purpose thereof, and reasonable. Without entering into the arena of controversy,

whether there was such a custom, it can be said even if there was such a custom, the same was not a valid custom.

Now the case may be examined from a different angle. Adopted son of Shantibai shall be treated as an adopted son of her husband Sahablal and of Shantibai. When Sahablal is having a natural son namely Mahendra Kumar, then a second son can not be adopted by his second wife. Apparently in the presence of natural son namely Mahendra Kumar, Shantibai was not entitled to adopt Petitioner Ashish Kumar. Apart from this, the adoption Deed of Shantibai Annexure P-5 Specifically refers that the Petitioner was adopted by her during the life time of her husband Sahablal. In the set of these facts, apparently the adoption of Petitioner by Shantibai was not legal. The Apex Court in Smt. Shanti Bai Vs. Smt. Miggo Devi and Others, considering the question of adoption by a widow under Banaras School of Hindu Law held that the adoptive mother can take in adoption to any one with the authority of her deceased husband.

In this case as stated hereinabove, though Shanti Bai stated that Petitioner was adopted during the life time of Sahablal by Sahablal and Shantibai in the presence of natural son Sahiblal namely Mahendra Kumar, such adoption was not permissible.

In view of the aforesaid, Shantibai was not entitled to adopt the Petitioner herein during life time of Mahendra Kumar, son of first wife of her husband. The aforesaid adoption was contrary to Section 11(i) of the Act. In view of the aforesaid, if the Respondents turned down the case of the Petitioner on the ground that he was not an adopted son of Shantibai and was not entitled to seek compassionate appointment, no fault is found. This petition is found without merit and is accordingly dismissed with no order as to costs.