

(1994) 09 OHC CK 0023
In the Orissa High Court
Case No : Second Appeal No. 211 of 1984

Ashoka Sa and Another

APPELLANT

Vs

Bidyadhar Patra (deceased by LRs.) and Others

RESPONDENT

Date of Decision : 05-09-1994

Acts Referred:

Specific Relief Act, 1963 — Section 34

Citation : AIR 1995 Ori 59 : (1994) 78 CLT 970 : (1995) 1 OLR 283

Hon'ble Judges : R.K. Patra, J

Bench : Single Bench

Advocate : B.L.N. Swamy and B.K. Mohapatra, for the Appellant; S. Mishra, S. Mantry, R.C. Rath and A.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—Defendants Nos. 4 and 6 are in appeal against the confirming judgment of the learned Subordinate Judge, Anandapur decreeing the respondent No. 1's suit to the effect that Naguni Sa (defendant No. 3 -- respondent No. 4) and not Ashoka (defendant No. 4 -- appellant No. 1) is the adopted son of Kusei Sa.

2. The case of the original plaintiff Bidyadhar (since dead) is that as Kusei Sa and his wife (widow) Arati Dei (defendant No. 2 and since dead) had no issue, they proposed to the plaintiff to give his natural son Maguni in adoption to them. The plaintiff accepted the proposal. Accordingly he and his wife gave Maguni in adoption to Kusei and Arati in accordance with the caste system. There was giving and taking ceremony on the 21st birth day of Maguni. After Maguni was taken in adoption, he continued to remain in the house of Kusei who got him admitted in the school and got educated. Maguni looked after their cultivation. On Kusei's death on 11-10-1981, he performed the funeral ceremony. Towards the end of October, 1981, Maguni claimed a share in the plaintiff's property alleging that defendant No. 5 Yudhistir Sa by influencing Kusei and his first wife Pata got a fraudulent deed of adoption in favour of Ashoka Sa defendant No. 4

(natural son of defendant No. 5 Yudhistir). The suit filed by Maguni to establish his adoption by Kusei was managed to be dismissed with the help of original defendant No. 2 with a view to get share in the plaintiff's property. On these allegations, the plaintiff filed the suit for declaration that Maguni-defendant No. 3 is the legally adopted son of Kusei and Arati Dei (original defendant No. 2) and Ashok Sa (defendant No. 4) is not the legally adopted son of Kusei.

Defendant No. 3 filed written statement supporting the plaintiff's case. Defendant Nos. 4 and 5 (present appellants) filed separate written statements denying the adoption of defendant No. 3 by Kusei. According to them, defendant No. 4 Ashoka is the validly adopted son of Kusei.

3. The plaintiff examined six witnesses in support of his case. Defendant No. 3 Maguni was examined himself as D. W. 1 Defendant Nos. 1, 4 and 5 examined four witnesses on their behalf in support of their stand. Parties filed a number of documents. On the basis of the evidence, the learned Munsif held that defendant No. 3 Maguni and not Ashoka -defendant No. 4 was adopted by Kusei as his son. He also held that the suit is neither barred by time nor hit by the principle of resjudicata. Being aggrieved by the said decision, defendants Nos. 4 and 5 (present appellants) filed appeal before the learned Subordinate Judge. A contention was raised on behalf of the appellants before the learned subordinate Judge that as the plaintiff does not seek declaration of his legal status or any right to property, the suit is hit by the provisions of Section 34 of the Specific Relief Act, 1963. Although this point was not taken before the trial court, the learned subordinate Judge allowed the point to be raised and held that since the plaintiff's legal right to his property is affected by declaration of legal status of Maguni, the suit is maintainable to that limited extent. He concurred with the finding of the trial Court that Maguni is the adopted son of Kusei and dismissed the appeal.

4. Shri Swamy, learned counsel for the appellants contended that plaintiff's bare declaratory suit without seeking his entitlement to any legal character or to any right as to any property is hit by Section 34 of the Specific Relief Act, 1963. In this connection, he placed reliance in the cases of Reshma Dubain Vs. Ram Dawan Tewari and Another, , Mahommad Akbar Khan v. Farman Ali AIR 1930 Lah 795 Ghanshamdas Lokumal Shivdasani v. Manager, Sind Encumbered Estates AIR 1939 Sind 36, Sanat Kumar Mitra Vs. Hem Chandra Dey and Others, , Somchand Karmchand Shah v. The State of Saurashtra AIR 1953 Sau 21 , Jugraj Singh and Another Vs. Jaswant Singh and Others, and Supreme General Films Exchange Ltd. Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others, .

Shri B. Mishra 2, learned counsel for the contesting respondents submitted that the conduct exhibited by Maguni-defendant No. 3 on 30-10-1981 directly affected the plaintiff inasmuch as he (defendant No. 3) openly claimed share in plaintiff's property although he had gone in adoption to the family of Kusei. By such declaration, the right to the property of the plaintiff is affected and as such, the suit is maintainable.

In *Reshma Dubain Vs. Ram Dawan Tewari and Another*, it has been held that if the plaintiff does not want a declaration as to any legal character or as to any right to any property, the suit would not be maintainable being hit by Section 42 of the Specific Relief Act, 1877. In that case, the plaintiff wanted a declaration to the effect that she was certain relation of a particular minor and that the minor was not married. The Court found that the declaration sought by the plaintiff was not to any legal character nor was it as to any right to any property.

In *Mahommad Akbar Khan v. Parsan Ali* AIR 1930 Lah 795, it has been held that a suit for a mere declaration that one person is related to another is not a suit to establish a legal right or any right as to any property and such suit would be incompetent.

In *Ghanshamdas Lokumal Shivdasani v. Manager, Sind Encumbered Estates* AIR 1939 Sind 36, it has been held that an equitable relief by way of declaration will not be granted to the plaintiff where one of the defendants is in collusion with him and the suit against him is brought merely for the purpose of assisting to ground the suit against the said defendant.

In *Somchand Karmchand Shah v. The State of Saurashtra* AIR 1953 Sau 21, the plaintiff filed the suit for bare declaration of his entitlement to receive full pension from the date of retirement without asking for any further relief in the form of decree for arrears of the pension which he was entitled to ask. The Court declined to give him the declaration prayed for because of his omission to seek further relief which he ought to have done in view of the proviso contained in Section 42 of the Specific Relief Act, 1877.

In *Sanat Kumar Mitra Vs. Hem Chandra Dey and Others*, it has been held that where the plaintiff does not seek for a declaration of his own right to property or his right to legal character but challenges the defendants pretensions to legal character and right to property, such a suit would be hit by Section 42 of the Specific Relief Act, 1877.

In *Jugraj Singh and Another Vs. Jaswant Singh and Others*, the Supreme Court declined to give any relief u/s 42 of the Specific Relief Act 1877 in view of the fact that the plaintiff merely asked for declaration that the defendants who were neither owners of the disputed land nor did they have right to get the same as per the orders of the S.D.O. acting as Collector without further asking for cancellation of the order or for any injunction.

In *Supreme General Films Exchange Ltd. Vs. His Highness Maharaja Sir Brijnath Singhji Deo of Maihar and Others*, , the Supreme Court held that Section 42 of the Specific Relief Act, 1877 merely gives statutory recognition to a well recognised type of declaratory relief and subjects it to a limitation. The said provision cannot be deemed to exhaust every kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside the said provision (Section 42). The circumstances in which a declaratory decree should be awarded is a matter of discretion depending upon

the facts of each case. A complete stranger whose interest is not affected by another's legal character or who has no interest in another's property cannot get declaration u/s 42 with reference to the legal character of the property involved.

5. On consideration of the aforesaid, the position that emerges is that law governing suits for bare declaration stands codified in Section 34 of the Specific Relief Act, 1963 (Section 42 of the old Act). The object of Section 34 is to clear the cloud hovering the legal character of the plaintiff or on his right to property. The circumstances in which a declaratory decree should be awarded is a matter of discretion which depends upon facts peculiar to each case. A complete stranger whose interest is in no way affected by another's legal character or who has no interest in another's property is not entitled to maintain a suit u/s 34.

6. In paragraphs 2 and 5 of the plaint, plaintiff has averred that he and his wife gave their natural son Maguni Sa on his 21st day of birth in adoption to Kusei Sa on the letters request and proposal. The adoption took place as per the prevalent custom and since then he (Maguni) became the adopted son of Kusei and has been continuing as such. But on 30-10-1981 he came and claimed share in his property and by such claim the plaintiff as well as his other sons' interest was affected. From the aforesaid averment it follows that defendant No. 3 having gone in adoption to the family of Kusei has lost all the right of a son in his natural family including the right of claiming his share in the estate of this natural father or natural relations. Once such adoption gets dislodged at the instance of defendant No. 4 who claims to have been adopted by Kusei, the adoptee (defendant No. 3) would lose all his rights in the family in which he has gone in adoption thereby endangering the rights and privilege of other members in the family of plaintiff. In other words, if the plaintiff does not get a declaration that defendant No. 3 is the adopted son of Kusei, his as well as his other sons' right to the property would be affected. For the reasons stated above, I am of the considered opinion that the suit for the declaration is maintainable and is not hit by Section 34 of the Specific Relief Act, 1963.

7. Shri Swamy also contended that the factum of adoption of Maguni has not been established and assailed the findings recorded by the learned Munsif confirmed by the learned Subordinate Judge in appeal. From the discussions made by the learned Subordinate Judge in the impugned judgment it appears that all the ingredients necessary for a valid adoption have been established and on consideration of the same, it has been rightly held that the defendant No. 3 is the adopted son of Kusei Sa. I do not find any legal infirmity in the aforesaid finding based on appreciation of evidence which cannot be upset in this second appeal.

8. In the result, I do not find any merit in this appeal which is accordingly dismissed with costs.