
(2010) 11 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No. 9714 of 2010 (Arising out of SLP (C) No. 28504 of 2008)

Atluri Brahmanandam (d), Thr. LRs.

APPELLANT

Vs

Anne Sai Bapuji

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Evidence Act, 1872 — Section 57

Hindu Adoptions and Maintenance Act, 1956 — Section 10, 16

Citation : AIR 2011 SC 545 : (2011) 1 ALT 31 : (2011) 3 AWC 2769 : (2011) 1 CHN 217 Supp : (2010) 12 JT 441 : (2011) 1 MLJ 742 : (2011) 2 RCR(Civil) 97 : (2011) 112 RD 347 : (2010) 12 SCALE 157 : (2011) 1 UC 38

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—Leave granted.

2. The present appeal filed by the appellant herein arises out of an order passed by the High Court of Andhra Pradesh at Hyderabad in Appeal Suit No. 2185 of 1989 whereby the High Court has dismissed the appeal filed by the appellant herein and affirmed the judgment and decree passed by the trial court in favour of the respondent.

3. The appellant herein was the defendant in the suit filed by the respondent seeking for a decree for possession and future mesne profits with interest at the rate of 6% per annum and for payment of Rs. 4,500/- with interest at the rate of 6; per annum till realization. One of the contentions which was raised in the suit was that the respondent/plaintiff was the adopted son of Late Anne Seetharamaiah and if the findings are in the affirmative, in that event, he would be entitled to claim for recovery of possession of the scheduled land.

4. The case of the respondent-plaintiff in the suit was that in 1965, one Myden Saheb of Atkuru Village in Gannavaram Taluk of Krishna District filed a small

cause suit being S.C. No. 44 of 1965 against Atluri Brahmanandam of the same village. The suit was decreed by the Court of District Munsif, Nuzvid for an amount of Rs. 355/-. Consequent upon the passing of the said decree, the decree-holder Myden Saheb filed E.P. No. 29 of 1967 during the course of which the judgment-debtor's agricultural wet land admeasuring Acs. 1.78 was sold in auction in which Anne Seetharamaih purchased the same for Rs. 5,900/-. The auction purchaser is the adopted father of Anne Sai Bapuji, who filed the present suit in the Court of Subordinate Judge, Vijaywada which was later transferred to the Court of Subordinate Judge, Gudivada.

5. The respondent-plaintiff had stated in the plaint that after Seetharamaiah purchased the property in Court auction on 26.4.1968, Brahmanandam filed various applications in E.P. No. 29 of 1967 and prevented delivery of possession. However, the Court delivered the possession to Seetharamaiah on 10.7.1974. It was, however, contended that by taking advantage of pendency of Miscellaneous Appeal in the High Court, Brahmanandam trespassed into suit scheduled property in January, 1975 and obtained wrongful possession. It was also contended that Anne Sai Bapuji, the respondent herein, is the adopted son of Late Anne Seetharamaiah who died intestate on 7.8.1981, as a result of which all his properties devolved on respondent and, therefore, he is entitled to a decree for recovery of possession.

6. The appellant herein who was the defendant denied that the respondent is the adopted son of Late Seetharamaiah. He also denied delivery of possession on 10.7.1974 and contended that the aforesaid auction sale is liable to be set aside. It may be mentioned at this stage that the appellant herein did not file any separate suit seeking to setting aside the auction sale in which the adoptive father of the respondent purchased the said property. Without filing such a suit against the sale by which the appellant has been divested of the title to the property, the appellant cannot claim to be the owner of the suit property. But the present suit was filed by the respondent seeking for decree delivery of possession which was also contested by the appellant and, therefore, we are required to examine the contention of the learned Counsel appearing for the parties and to decide the lis between them.

7. The main issue, therefore, in the present appeal on which extensive argument was made is as to whether or not the respondent was the adopted son of Late Anne Seetharamaiah. In the plaint filed, the respondent claimed himself to be the adopted son of Late Seetharamaiah. During the trial of the suit, the appellant also relied upon and proved Ex. A-8. Relying heavily on the said document, it was contended by the respondent that in terms of the said document, the respondent should be held to be the legally and validly adopted son of Anne Seetharamaiah.

8. In view of the pleadings of the parties and the judgment and decree passed by the High Court upholding the judgment and decree passed by the trial court in favour of the respondent, two contentions were mainly urged before us by the

learned Counsel appearing for the appellant. According to him, there was no adoption of the respondent by the adoptive father as alleged and secondly, since the respondent was more than 15 years of age on the date of the alleged adoption, he could not have been validly adopted without proving any customs in favour of such adoption. In support of the aforesaid contentions, the counsel of the appellant referred to and relied upon the provisions of Section 10(iv) and Section 16 of the Hindu Adoption and Maintenance Act, 1956.

9. We have perused the records which are placed before us including the deed of adoption which is placed on record by the respondent and proved as Ex. A-8. The said Ex. A-8 is dated 27th April, 1966 and incidentally, is a registered deed of adoption. The recital in the said deed of adoption is that the natural parents of the respondent had given the respondent aged about 18 years and unmarried on the said date in the presence of elders and in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1956 to Anne Seetharamaiah, who was issueless and, hence, the adoption. It also recited that the aforesaid adoption is in accordance with the customs prevailing in the "Kamma" community in Andhra Pradesh.

10. The aforesaid deed of adoption was produced in evidence and the same was duly proved in the trial by the evidence led by PW-1, the respondent. We have carefully scrutinized the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the appellant herein either to the legality of the said document or to the validity of the same. Therefore, the said registered adoption deed went unrebutted and unchallenged. We have already referred to the recitals in the said documents which is a registered document and according to the recitals therein, the respondent was legally and validly adopted by the adoptive father Late Anne Seetharamaiah and that such adoption even beyond the age of 15 years is permissible and recognized in the "Kamma" community of Andhra Pradesh. All these factors also go unrebutted and unchallenged.

11. Section 10 and Section 16 of the Hindu Adoptions and Maintenance Act, 1956 of which reference was made during the course of arguments read as follows:

10. No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:

(i) ...

(ii) ...

(iii)...

(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.

16. 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.

12. We are concerned for the purpose of this case with Clause (iv) of Section 10 which provides that a person to be adopted should not have completed the age of 15 years. But there is also an exception provided therein to the aforesaid required qualification which provides that if there is a custom or usage applicable to the parties permitting persons who have completed the age of 15 years being taken in adoption, such a person could also be validly adopted. On the other hand, the effect and the implication of Section 16 of the Act is that if there is any document purporting to record an adoption made and is signed by the person giving as well the person taking the child in adoption is registered under any law for the time being in force and if it is produced in any Court, the Court would presume that the adoption has been made in compliance of the provisions of the Act unless and until it is disproved.

13. There is no denial of the fact in the present case that the respondent was more than 15 years of age at the time of his adoption. But the respondent has relied upon the exception provided in Section 10(iv) and has proved by leading cogent and reliable evidence like Ex. A-8 that there is a custom in the "Kamma" community of Andhra Pradesh for adoption of a boy even above the age of 15 years. Therefore, the aforesaid exception which is engrafted in the same part of the provision of Section 10 of the Act was satisfied. Since the aforesaid custom and aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption.

14. Reference has also been made to a Division Bench decision of the Andhra Pradesh High Court reported in 1964 Andhra Weekly Reporter p.156. In the said decision, the Division Bench has recognized that there is a custom among the members of the "Kamma" caste to adopt a boy of more than 15 years old and that such custom is valid. The said decision rendered by a Division Bench in 1964 has stood the test of time and has remained binding till date.

15. In the case of Ujagar Singh Vs. Jeo, , this Court has held that the ordinary rule is that all customs general or otherwise have to be proved, but u/s 57 of the Evidence Act, 1872 nothing need to be proved of which the Court can take judicial notice. It was also held that when a custom has been repeatedly recognized by Courts, it is blended into the law of land and proof of the same would become unnecessary u/s 57 of Evidence Act, 1872.

16. The aforesaid decision is squarely applicable to the facts and circumstances of the present case. The Andhra Pradesh High Court has recognized such a custom among the "Kamma" community of Andhra Pradesh of taking in adoption

of a person even above the age of 15 years of age and has held the same to be legal and valid.

17. In view of the above discussion, we find no infirmity at all in the findings of the trial court which were affirmed by the High Court that the adoption of the respondent by Late Anne Seetharamaiah is legal and valid. We, therefore, find no merit in this appeal which is dismissed but we leave the parties to bear their own costs.