

(1955) 03 OHC CK 0017
In the Orissa High Court
Case No : S.A. No. 331 of 1951

Daya Mahakur

APPELLANT

Vs

Khedu Mahakur and Others

RESPONDENT

Date of Decision : 14-03-1955

Acts Referred:

Citation : (1955) 21 CLT 566

Hon'ble Judges : Panigrahi, C.J; Mohapatra, J

Bench : Division Bench

Advocate : P.C. Chatterji, for the Appellant; G.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Mohapatra, J.—Defendant No. 4 has brought this second appeal against the confirming judgment of the lower appellate Court arising out of a suit for declaration of title and recovery of possession in respect of the land which originally belonged to one Chaitan. From the genealogy attached to the judgment of the lower appellate Court it appears that the Plaintiff claims to be the adopted son of Brunda, the brother of deceased Chaitan. Plaintiff further asserts that Defendant No. 1 (Chhuta) is not the son of Chaitan. Kia is the widow of Chaitan and Defendants 2 and 3 are the alienees from Defendant No. 1 who assert himself to be the son of Chaitan. Defendant No. 4 is the remote reversioner of the deceased Chaitan. The defence of course was denial of adoption and further that Defendant No. 1 is the son of Chaitan.

2. The courts below have decreed the Plaintiff's suit on the finding that the present defence is barred by the principles of res judicata on account of two previous judgments. In the year 1941, the present Plaintiff had brought a suit for declaration that he was the adopted son of Brunda, and, as such, the next reversioner Chaitan. He further asserted that Chutta was not the son of a Chaitan but was the son of a distant agnate of Chaitan (Ghundu) who married Kia for the second time. The Plaintiff also had claimed possession of the land of

Chaitan. In that suit both Kia and Chutta were made parties. It was found that the Plaintiff was the adopted son of Brunda and Chhuta was not the son of Chain, therefore, the Plaintiff was the next reversioner of Chain. But nevertheless as it was found that Kia was the widow of Chaitan, the "Plaintiff's prayer for immediate possession was rejected on the ground that the widow of Chaitan was alive. There was an appeal against this decision of the trial court in T.S. No. 253/41 and the appeal was dismissed. There was a further suit brought by the widow of Brunda denying the adoption of the Plaintiff. That suit was decided in favour of the Plaintiff declaring that the Plaintiff was the adopted son of Brunda.

3. It is clear that in the first suit even though the decree for possession was negatived, the issue of adoption and the further issue that Chutta was not the son Chaitan were concurrently decided in favour of the present Plaintiff. The issues, therefore, as directly and substantially arose in the previous suits, serve as res judicata to the present defence.

4. Mr. Chatterji, appearing on behalf of the Appellant, has further contended that Defendant No. 4 was not a party to any of the previous suits, and, as such, he is not hit by the principles of res judicata. In the first suit, the Plaintiff brought the claim as the next reversioner of Chaitan. "The suit was therefore in a representative character on behalf of all the reversioners. The position is made further clear by reference to the second suit where Brunda's widow challenged the adoption of the Plaintiff. The widow indeed represented the estate of Brunda and as Defendant No. 4 in that suit was represented through the widow of Brunda, the Appellant is not entitled to challenge the adoption of the Plaintiff in the present suit, provided the previous suits were conducted fairly and honestly. It appears to us that the courts below have taken the correct view from the materials transpiring that the previous suits were honestly and fairly conducted, and as such, they were binding against the remote reversioners.

5. The appeal therefore fails and is dismissed with costs.

Panigrahi, C.J.

6. I agree.

7. Appeal dismissed.