

(2014) 03 AHC CK 0144

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1715 of 2000

Devanti Devi

APPELLANT

Vs

I.G. of Police

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 12, 12[c], 14(4)

Citation : (2014) 6 ALJ 179 : (2014) 3 UPLBEC 1935

Hon'ble Judges : Mahesh Chandra Tripathi, J

Bench : Single Bench

Advocate : P.K. Dwivedi and P.K. Srivastava, Advocate for the Appellant

Final Decision : Allowed

Judgement

Mahesh Chandra Tripathi, J.—The present writ petition has been filed in the nature of certiorari calling for the records and to quash the orders dated 14.10.1999 and 11.6.1999.

The counter affidavit and rejoinder affidavit have been exchanged between the parties.

The case of the petitioner No. 2 is that he is adopted son of late Brij Bihari Pandey, who was working as Constable in Civil Police and died on 12.12.1997.

2. This petition is being filed by late Smt. Devanti Devi alias Damyanti Pandey, wife of Sri Brij Bihari Pandey alongwith petitioner No. 2-Sri Vijay Prakash Pandey (adopted son of deceased employee). Sri Brij Bihari Pandey in his life time has desired to adopt a son and in this regard he talked and convinced Sri Shashi Kant Pandey for adoption of his elder son Vijay Prakash Pandey (petitioner No. 2) and in this regard adoption ceremony was solemnized in the presence of Pandit and other members of the village which is known as "Datta Homam". For a valid adoption, the physical act of giving and taking is an essential requisite ceremony, imperative in all adoptions. And this requisite is satisfied in its essence on expression of consent or an executed deed of adoption.

3. The said documents regarding adoption has been brought on the record as annexure No. 1 to the present writ petition.

4. The said documents were prepared on 11.10.1997 and immediately thereafter Sri Brij Bihari Pandey, the father of petitioner No. 2 died on 12.12.1997. An application dated 13.1.1998 had been moved by Smt. Damyanti Pandey for registration of the said documents and the same was registered on 16.1.1998. She had also moved an application before the Civil Judge (Senior Division), Mau for succession certificate in favour of the petitioner No. 2 (her adopted son) and finally name of the petitioner Nos. 1 and 2 had been mutated in family register. After due verification and enquiry the District Magistrate, Mau has also issued succession certificate in favour of the petitioners.

5. In this background, petitioner No. 1 had moved an application to the U.P. Police Head Quarter, Allahabad to consider the case of the petitioner for family pension and in response the Finance Controller had also informed to the Senior Superintendent of Police, Ballia for incorporation of her adopted son's name for family pension. In this regard a legal opinion had also been sought by the Senior Superintendent of Police, Ballia vide his letter dated 6.11.1998 from the Senior Prosecution Officer and finally through a letter dated 15.11.1998, the Senior Superintendent of Police, Ballia had informed to the U.P. Police Head Quarter, Allahabad that as per the legal opinion submitted in the present matter, Sri Vijay Prakash Pandey (adopted son of Brij Bihari Pandey) would be entitled for family pension up to his attainment of majority and the family pension benefit may be conferred in his favour. Certain other correspondence took place between the department but finally the Finance Controller, U.P. Police Head Quarter, Allahabad, vide order dated 14.10.1999 had declined for giving family pension to the adopted son, specially on the ground that his adoption deed had not been executed in his life time and the same had been executed after the demise of an employee (Sri Brij Bihari Pandey) and therefore, he is not entitled for any benefit.

6. He further states that under the Hindu Law an adopted son continues the line of the adoptive father for secular and spiritual purposes and when a widow adopts a son to her husband, the doctrine of relation back makes sonship retroactive from the moment of the death of the late husband. The adopted son is deemed to have been born on the death of the adoptive father.

7. Learned Counsel for the petitioner has further argued that in the present matter, no doubt that an employee who had died on 12.12.1997, but in fact in his life time, the adoption had been decided between husband and wife and the documents had been executed in the presence of the witnesses on 11.10.1997 and finally the succession certificate has also been issued in favour of petitioner No. 2 (Vijay Prakash Pandey).

8. Learned Counsel for the petitioners has apprised to the Court regarding Section 12 of The Hindu Adoptions and Maintenance Act, 1956, for ready reference, same is quoted below:-

"12. Effects of adoption.--An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoptive family:

Provided that--

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

9. By bare perusal of the said Section, it is apparent that an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoptive family.

10. Hindu Adoptions and Maintenance Act clearly provides that an adopted child shall be deemed to be the child of his adoptive father or mother for all purposes with effect from the date of the adoption and from such date all ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. As a consequence, when a widow adopts a child, the child not merely acquires an adoptive mother but also acquires other relationships in the adoptive family, unless there is anything to the contrary in the Hindu Adoptions and Maintenance Act.

11. In the present matter, deed had been prepared on 11.10.1997 before the demise of Sri Brij Bihari Pandey. It has also brought on record, the succession certificate issued by the District Magistrate, Mau and also decision taken by the Civil Judge (Senior Division), Mau dated 19.3.1998 in Original Suit No. 30 of 1998 (Damyanti Pandey alias Davanti Pandey & others) (Annexure No. 4 to the writ petition). The complete record which has been brought before this Court demonstrated that the adoption was not fake and it is true that the same had taken place and finally the same has also been approved by the competent authority.

12. The Hon"ble Apex Court in Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others, has held as follows:-

"It is well settled that a person who seeks to displace the natural" succession to property by alleging an adoption must discharge the burden that lies upon him

by proof of the factum of adoption and its validity. It is also true that the evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and probable as to give no occasion for doubting its truth. Nonetheless the fact of adoption must be proved in the same way as any other fact."

13. It is also relevant to mention that Smt. Damyanti Devi, wife of deceased employee had also died on 16.12.2002 and she got family pension since 12.12.1997 to 16.12.2002. It had also been brought on record that petitioner No. 2 - Vijay Prakash Pandey (adopted son) was hardly six years old at the time when his father Sri Brij Bihar Pandey died on 12.12.1997 and when his mother Smt. Damyanti Devi died on 16.12.2002, the petitioner No. 2 was hardly 11 years old. This is most unfortunate that in these circumstances once the adoption was correct in the eyes of law, then there was no occasion to deny the benefit of family pension to petitioner No. 2 (adopted son) since his attainment of the majority.

14. Learned Standing Counsel has relied the Government Order dated 24.8.1966 which talks about the family pension and he has indicated the following provisions:-

15. Bare perusal of the said Government Order, it is apparent that the same is applicable for giving pensionary benefits and he has also indicated the .

16. The adoption has taken place prior to the retirement of an employee. It does not talk about the situation where a person dying in harness and adoption has already taken place either in his life time or after the demise of an employee.

17. In true sense, under the present facts and circumstances of the case the Government Order dated 24.8.1966 would not be applicable in the present facts and circumstances of the case.

18. Learned Counsel for the petitioners has also drawn the attention of the Court regarding decision in Smt. Chandan Bilasini (Dead) by LR. Vs. Aftabuddin Khan and others, It is useful to quote the relevant paragraphs, which are as below:-

"4. The first appellate Court on the basis of the oral evidence as well as the two supporting documents held that there was a valid adoption of the respondent Amaresh Sarkar by the original plaintiff No. 1. The Division Bench of the High Court in appeal, however, held that there was no valid adoption. It appears to have drawn an adverse inference on the basis of the fact that the adoptive mother who was alive at the time when the evidence was recorded by the trial Court, had not examined herself. It is accepted by both sides that at the time when the evidence was recorded the adoptive mother was a very old lady 86 years of age and she was too old to be produced in Court for giving evidence. The Division Bench failed to take into account the fact that there were three other witnesses who were present at the time of the adoption ceremony who were examined one of them being the priest and the other one being a person

who was also present at the time when the deed of admission of adoption was executed by the first plaintiff adoptive mother and was an attesting witness to the deed. The mere fact that some other persons who were also present at the adoption ceremony were not examined, cannot be considered as making the adoption doubtful. There is clear testimony relating to the ceremony of taking and giving the respondent Amaresh Sarkar in adoption as between the natural parents and the adoptive mother. The registered document regarding this adoption which was executed within a month of the adoption by the adoptive mother should also be given its due weight as evidence of adoption. There is also a second document executed by the natural father after a lapse of two years. Since the natural father would be interested in executed such a document which would give an advantage to his natural son the same probative value may not be attached to the second document. But the earlier document which is executed by adoptive mother must be given its due weight. It has been properly proved and is a registered document.

5. Looking to the entire evidence which is on record which goes to establish that adoption took place by the ceremony of giving and taking, we hold that there was a valid adoption of the respondent Amaresh Sarkar by the original first-plaintiff Chandan Bilasini Dasi. After the coming into force of the Hindu Adoptions and Maintenance Act of 1956, this adoption was made in accordance with the provisions of Hindu Adoptions and Maintenance Act.

6. On adoption of the respondent Amaresh Sarkar by the widow of the deceased Kalikrishna Sarkar, the adopted son Amaresh Sarkar severed his ties with his natural family and became a part of the adoptive family. As such, Chandan Bilasini Dasi became his mother and Kalikrishna became his deceased father. Section 12 of the Hindu Adoptions and Maintenance Act clearly provides that an adopted child shall be deemed to be the child of his adoptive father or mother for all purposes with effect from the date of the adoption and from such date all ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. As a consequence, when a widow adopts a child, the child not merely acquires an adoptive mother but also acquires other relationships in the adoptive family, unless there is anything to the contrary in the Hindu Adoptions and Maintenance Act.

7. This position is reinforced by Section 14(4) which sets out that where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child. In other words, the family relationship gets crystalised as at the date of adoption. The child will be deemed to be the child of the parent who adopts the child and the existing or deceased spouse of that parent (as the case may be), if any, will be considered the child's father or mother. A spouse subsequently acquired by the adoptive parent becomes the step-parent of the adopted child. The adopted child, however, cannot divest any person of any property already vested in that

person (Section 12[c])."

19. Looking to the entire evidence which has been brought on record in the present writ petition clearly establish that the adoption took place by the ceremony of giving and taking even in his life time of the deceased employee, the department can not take a plea that in formal and in true sense the execution of the deeds had not been taken place in his life time and the same had been carried out after the demise of an employee.

20. Bare perusal of the annexure No. 1 to the writ petition, it is apparent that the ceremony of giving and taking had taken place on 11.10.1997 and Sri Brij Bihar Pandey, deceased employee died on 12.12.1997.

21. Therefore, as per the view taken by the Hon''ble Apex Court, this Court is of the view that the denial of the right of the petitioner No. 2 (adopted son) was not justified and is not in accordance with law.

22. Therefore, the orders dated 14.10.1999 and 11.6.1999 (annexure Nos. 12 and 15 of the writ petition) are hereby quashed. Mandamus is issued to the respondent No. 1 to pay family pension to the petitioner No. 2 (adopted son) since 16.12.2002, when his mother Damyanti Devi has died till the attainment of his majority. It is expected that same may be carried out within three months from the date of presentation of certified copy of this order, before the respondent No. 1. The writ petition is, accordingly, allowed.

No order as to costs.