

(2010) 08 JH CK 0015
In the Jharkhand High Court
Case No : S.A. No. 351 of 2004

Haradhan Pandit

APPELLANT

Vs

Nehru Lal Pandit

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Evidence Act, 1872 — Section 101

Citation : (2011) 1 JCR 415 : (2011) 6 RCR(Civil) 2336(2011) 1 JLJR 502

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—This second appeal is against the judgment and decree passed in Title Appeal No. 16 of 2003 by learned Vth Additional District Judge. FTC-II, Godda, who has dismissed the appeal of this Defendant-Appellant-Appellant affirming and upholding the judgment and decree of learned trial Court.

2. The Plaintiff-Respondent had brought Title Suit in the Court of Subordinate Judge, Godda seeking declaration that the deed of adoption No. 11 dated 30.1.1988 executed by Dulari Devi in favour of Haradhan Pandit is illegal, unauthorized, fraudulent and ineffective and the same is not binding on the Plaintiff.

3. The Plaintiff's case, in brief, was that they are the successor of Rupan Pandit, in whose name the said land bearing J.B. No. 68 of village Kubjighat was recorded. Said Rupan Pandit had two sons - Durga Pandit and Murat Pandit. They had inherited the property of Rupan Pandit. Murat Pandit died in the year 1973 leaving behind his wife Alkhi, daughter-Kaushalya and grand son-Nehru Pandit, who inherited the property of Rupan Pandit. They had been in possession of the property of Rupan. After death of daughter Kaushalya, a fake lady namely Dulari Devi claimed herself as second wife of Murat and got her name entered in the revenue record in respect of the land in collusion with the Survey Officer. The

Defendant-Haradhan claimed to be the adopted son of Dulari. The Plaintiff's averred that Murat had no second wife. He died in 1973. The Defendant claimed adoption by virtue of deed dated 30.1.1988.

4. The Defendants contested the suit and claimed that Murari Pandit died in the year 1994. The Plaintiff and his mother have not succeeded and inherited the suit land. Dulari had appeared before the survey authority and on verification her name was recorded as the wife of Murat. By virtue of deed dated 23.1.1988 Dulari had adopted Haradhan Pandit son of Jagdish Pandit (Appellant) after observing the required formalities and the rituals. Since after adoption, he has been living with Dulari Devi. The Defendant has got valid right, title to inherit the suit land as adopted son of Murat Pandit.

5. Both the parties led their evidences before learned trial Court. The Appellant produced rent receipts and certified copy of the order of SDO, Godda in Revenue Misc. Case No. 51 of 1995-1996, whereas the Defendant exhibited the deed of adoption (Exhibit-A), voter list (Exhibit-B) and order passed by the Attestation Officer (Exhibit-C). They also led oral evidences.

6. Learned trial Court thoroughly appraised the evidences adduced by the parties and came to the conclusion that the Plaintiff has been able to prove their case and the claim of adoption made by the Defendant is without any legal basis. Learned trial Court took notice of paragraph-9 of the written statement of the Defendant, wherein it was stated that Murat Pandit died in the year 1994 but the adoption deed in question is dated 30.1.1988 in which Murat Pandit was described as dead. Learned trial Court further found that there is no evidence on record to prove the factum of marriage of Dulari with Murat Pandit. Learned trial Court, in conclusion, held that the said Dulari was not in existence in the family of Murat Pandit and in fact she was not the second wife of Murat Pandit and the deed of adoption executed by her describing herself as the wife of Murat Pandit is fraudulent, illegal and inoperative and the same has no legal effect on the right, title of the Plaintiff over the property, inherited by them.

7. The Defendant-Appellant had filed appeal against the said judgment and decree before the District Judge, Godda in which the impugned judgment had been passed.

8. Learned lower appellate Court has also considered the facts and evidences in detail. He independently scrutinized the evidences. Learned lower appellate Court, having considered all the relevant aspects, concurred with the findings arrived at by learned trial Court and dismissed the appeal.

9. Learned Counsel appearing on behalf of the Appellant submitted that the learned Courts below had adopted erroneous principle of appreciation of evidence and also wrongly shifted onus of proof on the Defendant. The Plaintiff has to succeed or fail, on the basis of his own evidence, but the learned Courts bellow have decreed the Plaintiff's suit on the weakness of the Defendant's pleading and evidence. The Plaintiff's failed to prove death of Murat Pandit in 1973, as

pleaded by them. There is no evidence on record to establish that Murat Pandit was alive when the deed of adoption was executed. The learned Courts below picked up a sentence from the written statement and heavily relied on the same to hold that Murat Pandit was not alive when the deed was executed. There is no evidence on record to meet the Defendant's claim that Dulari Devi was the second wife of Murat Pandit. The findings of learned Courts below are, thus, perverse and illegal and liable to be set aside.

10. I have heard learned Counsel for the Appellant and considered the facts and the materials on record. The Defendant specifically pleaded that Dulari is second wife of Murat Pandit. The Defendant also asserted that the deed of adoption was executed by Dulari Devi and he being the adopted son of Murat Pandit, he has succeeded him and has acquired valid right title over the suit land.

11. Section 101 of the Evidence Act provides that whoever desires any Court to give the decision as to any legal right or liability dependent on the existence of facts which he asserts, he had to prove that those facts exist. In the instant case since the Defendant asserted that he is an adopted son of Dulari Devi, who was second wife of Murat Pandit, learned Courts below have rightly held that he had to prove the said facts but he failed to substantiate his claim.

12. Moreover, when a fact clearly asserted in the written statement has relevance on the decision and the same is undisputed, taking notice of that fact in the decision cannot be said to be an error.

13. Learned trial Court as well as learned lower appellate Court, after taking into consideration the aforesaid facts, evidence and circumstances, have come to the concurrent finding of facts and held that Dulari Devi was not the wife of Murat Pandit and that the deed of adoption dated 30.1.1988 executed by her claiming to be the wife of Murat Pandit is illegal and fraudulent and the same has not affected the right, title of the Plaintiff over the suit property, inherited by them being the successor of Murat Pandit. The said findings are supported by sound reasons.

14. I find no error in the said concurrent finding of facts recorded by the Courts below giving rise to any substantial question of law to be framed and decided in second appellate jurisdiction of this Court.

15. This second appeal is, accordingly, dismissed.