
(1942) 02 PAT CK 0005
In the Patna High Court

Kasi Palei @ Krushna Parida

APPELLANT

Vs

Radhika Dei and Others

RESPONDENT

Date of Decision : 20-02-1942

Acts Referred:

Citation : AIR 1943 Patna 68

Hon'ble Judges : Fazl Ali, J

Bench : Division Bench

Judgement

Fazl Ali, J.—This appeal arises out of a suit instituted by the plaintiff, respondent for a declaration that defendant 2 is not the adopted son of Narayan Chaudhuri and the plaintiff is the next reversioner of Narayan and presumptively entitled to succeed to his estate after the death of his widow, defendant 3. The facts of the case need not be set out at length by me, because they are very clearly stated in the judgments of the Courts below. It appears that Narayan had died, leaving a widow, defendant 3, and the case of defendant 2 is that he had been adopted by Narayan during his lifetime. The plaintiff is admittedly the daughter of Narayan, and her case is that the alleged adoption of defendant 2 never took place. If it is a fact that the alleged adoption did not take place, then there can be no doubt that the plaintiff would succeed to the estate after the death of defendant 3, the widow of Narayan. The Munsif held on the evidence adduced in the case that defendant 2 had been validly adopted by Narayan, but the learned District Judge has taken the opposite view in appeal. His view is that the adoption has not been proved. Such a finding would have concluded this second appeal, but the judgment of the learned Judge has been assailed before me on two grounds both of which, in my opinion, require serious consideration.

2. The first ground is that the issue of limitation, which was an important issue in the case has not been dealt with by the learned Judge at all. The Munsif held that there had been an adoption, and the plaintiff must have come to know of the adoption at the time when it was made and at least at the time of the death of Narayan and therefore the suit was barred by limitation. The learned District

Judge has, however, not dealt with the point at all. It is contended on behalf of the respondents, firstly, that the point did not arise because the learned District Judge has come to the conclusion that the adoption has not been proved. It was contended, in the second place, that the finding of the Munsif is not based on any evidence but on a mere surmise and should therefore be ignored. Dealing with the second point first, it seems to me that I cannot in second appeal decide whether the finding of the learned Munsif ought to stand or should be reversed. It was for the learned Judge to have dealt with the matter and to have recorded a definite opinion as to whether there was any evidence to support the fact that the plain, tiff had come to know about the alleged adoption more than six years before the date of the suit.

3. The first contention seems at the first sight to be a plausible one, but it would appear on a careful examination of the language of Article 118 that it is not a sound contention. Article 118 purports to prescribe a period of limitation for a suit to obtain a declaration that an alleged adoption is invalid, or never in fact took place. This article provides that the starting point of limitation will be the time when the alleged adoption becomes known to the plaintiff. Therefore, whether an adoption takes place or not in fact, if a person has been alleging adoption, and has also been asserting that the alleged adoption was within the knowledge of the plaintiff, the Court must decide as to whether the alleged adoption came to the knowledge of the plaintiff within the period fixed in the article or before it. To take a very plain illustration: if a person who is setting up a case of adoption began to proclaim the alleged adoption soon after the death of the adoptive father and if the defendant was aware of such an allegation, I cannot conceive why in such a case the period of limitation will not begin to run immediately after he came to know of the allegation even though the alleged adoption never took place. I do not suggest that in this particular case the plaintiff came to know of the alleged adoption within six years of the suit, but that is a question of fact which must be investigated.

4. The second contention, which has been raised before me, is that there are indications in the judgment of the learned District Judge to show that in his view the burden of proof in the present case was upon the defendant. Reference was made by the learned advocate for the appellants in this connexion to the observations made by the learned Judge as to the failure of defendant 2 to examine one Ananda. The learned Judge says in his judgment that it was argued before him that it was for the plaintiff to examine him, but, in his opinion, nothing was easier for the respondent, namely defendant 2, to disprove it by examining Ananda. In *Asharfi Kunwar v. Rup Chand* (08) 30 All. 197 it was clearly laid down that where the plaintiff asks for a declaration that an alleged adoption is invalid, the burden is on him to make out a prima facie case that the adoption challenged by him is invalid in law, or never took place in fact. The passage to which reference has been made seems to me to indicate that the learned District Judge was not absolutely clear in his mind as to the onus of proof in a case like the present. That being so, in my opinion, the matter will have to

be reconsidered by him in the light of the law to which I have referred.

5. In the circumstances I set aside the judgment and the decree of the learned District Judge, and remand the case to him for disposal according to law. If the learned District Judge should feel any embarrassment in rehearing the appeal, it would be open to him to transfer this appeal for disposal to any other officer who may be competent to hear it. Costs will abide the result.