
(2006) 03 MP CK 0097

In the Madhya Pradesh High Court

Case No : First Appeal No. 251 of 2004

Keerat Singh and Govind Singh

APPELLANT

Vs

Ramjee, Shrikamal and State of M.P.

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Evidence Act, 1872 — Section 32, 68
Hindu Adoptions and Maintenance Act, 1956 — Section 16, 4, 5, 5(2), 6 11
Hindu Minority and Guardianship Act, 1956 — Section 8
Succession Act, 1925 — Section 63
Transfer of Property Act, 1882 — Section 43

Citation : (2006) 3 JLJ 166

Hon'ble Judges : S.L. Jain, J

Bench : Single Bench

Advocate : N.S. Kale and A. Bhowmik, for the Appellant; Divesh Jain, for the Respondent

Final Decision : Allowed

Judgement

S.L. Jain, J.—Invoking appellate jurisdiction of this Court u/s 96 of the Code of Civil Procedure, the appellants have filed this appeal challenging the legality, validity and propriety of the judgment and decree dated 2.4.04 passed by A.D.J., Sohagpur, In C.S.No. 10-A/2000 decreeing the suit of plaintiff/respondent No. 1 for declaring the sale deeds dated 13.5.83 executed by respondent No. 2 in favour of appellants No. 1 and 2 as void.

2. The facts which led to. filing of this appeal in nutshell are that respondent No. 1 filed a suit against the defendants stating that defendant No. 2 is his natural father. He was adopted by one Manak vide registered adoption deed dated 22-5-76. He is governed by Mitakshara Banaras School of Hindu Law. His natural father in addition to him had one son and daughter namely Mahesh and Rama Bai. Mahesh died on 8.10.81.

3. The plaintiff has pleaded that when his age was 13 years, during his minority, his natural father defendant No. 3 Shrikamal executed a sale deed of his property in favour of defendant No. 1 Keerat Singh claiming himself to be his guardian and accepted consideration of Rs. 10,000/-; while the house was in possession of the plaintiff. Similarly on 13.5.83 itself, defendant No. 3 sold 10 acres of land out of land survey No. 442 area 13.51 acres owned by the plaintiff for a consideration of Rs. 40,000/- and delivered possession to defendant No. 4. The consideration received by his natural father was not given to him.

4. Plaintiff has averred that after the aforesaid adoption his natural father defendant Shrikamal had no authority to sell his house and land. Shrikamal did not obtain any permission of District Judge under Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the "Act") for selling the suit property

5. Defendants No. 1 and 4 contested the suit by filing a joint written statement denying that the plaintiff was adopted by Manak. They pleaded that the plaintiff was the only son of Shrikamal therefore, could not have been given in adoption. The adoption deed is not real and is ineffective. It was also the case of the defendants that at the time of execution of sale deeds, defendant No. 3 Shrikamal, his brother Supyar Singh, his mother Resham Bal and plaintiff Ramji had a joint hindu family of which Shrikamal was Karta. The suit land was the joint family property. The defendant No. 3 sold the suit property as a Karta of the joint family for the legal necessity. It was also averred by defendants No. 1 and 4 that accepting Ramji to be the adopted son of Manak, the sale deed executed by Shrikamal as Karta of the family binds the plaintiff. Defendants No. 1 and 4 further averred that documents purporting to be adoption deed at the most may be treated as will. After the death of Manak, Shrikamal being his nephew inherited his property and he was entitled to sell the suit property.

6. Defendants No. 2 and 3 did not file any written statement. They were proceeded ex parte.

7. The trial court framed as many as 12 issues and recorded a finding that plaintiff Ramji is validly adopted son of Manak and the sale deeds executed by defendant No. 3 in favour of defendants No. 1 and 4 without the permission of the District Judge are void. The suit property was not the joint family property of Supyar Singh, Shrikamal and Ramji and, therefore, Shrikamal had no right to sell the suit property as Karta of the joint family. As nephew of Manak, Shrikamal had no right to sell the suit property, therefore, sale deeds executed by Shrikamal in favour of defendants 1 and 4 are void and decreed the plaintiff's suit.

8. It is this judgment and decree of the trial court which is the cause of grievance of the appellants.

9. I have heard Shri N.S Kale, learned senior counsel with Shri A. Bhomick for appellants and Shri Divesh Jain counsel for respondents and perused the record.

10. Learned senior counsel appearing for appellants vehemently submitted that Clause (iv) of Section 6 of the Act provides that no adoption shall be valid unless the same is made in compliance with the conditions mentioned in Chapter II of the Act. Clause (vi) of Sectional of the Act provides that in every adoption the child to be adopted must be actually given and taken in adoption by the parents with intend to transfer the child from the family of its birth to the family of its adoption but no such giving and taking has been proved In the case.

11. It is accepted by Hindu Law that there can be no valid adoption unless the child freely goes from one family to another. A person who claims title on the basis of adoption must prove adoption by evidence of giving and taking ceremony. Evidence in proof of adoption should be free from suspicion. The plaintiff has not given satisfactory evidence to prove the transfer of child from one family to another. To establish the fact of giving and taking there is no other material except the evidence of plaintiff himself.

12. Plaintiff Ramji has stated that he was adopted by Manak when he was 6 years of age and the adoption deed was also executed. Resham Bai informed him that on the date of adoption his tonsure (Mundan) ceremony was performed and he was given in the lap of Manak. Registered adoption deed was also executed. Thus, evidence of Manak with regard to giving and taking is based on the information given to him by Resham Bai. Apparently evidence is hearsay which cannot be said to be a legal evidence. Except the hearsay version of plaintiff there is no other oral evidence to establish the factum of giving and taking. Thus; a necessary requirement of adoption has not been proved. It is not the case of the plaintiff that the witnesses of adoption ceremony are not available. Shrikamal himself who is alleged to have given the plaintiff in adoption has not been examined, therefore, finding of the trial court that requirement of giving and taking in adoption has been fulfilled cannot be countenanced.

13. Learned Counsel for respondent No. 1 submitted that the adoption deed has been proved by giving satisfactory evidence In adoption deed it has been mentioned that giving and taking ceremony was performed.

14. The contention holds no water. Accepting that the facts stated by Manak in the adoption deed EX.D.1-C are admissible u/s 32, Clause (v) of Evidence Act, there is no recital in the document Ex.D1-C to the effect that the plaintiff was given and taken in adoption. What is stated in the document is ****bl laca/k esa tkfr ds vuqlkj iwjh iwjh jhfr jLe gks pqdh gS A****. It has not been specifically stated as to what particular custom was performed. It has not been proved that the custom or usage of physically giving and taking of the child was In vogue in the community of the plaintiff,

15. Where the requirement of giving and taking is essential condition of a valid adoption it must be proved by specific evidence. Mere recital In the document EXD1-C that the customs were performed does not go to establish that giving and taking of child took place at the time of adoption. Section 5 of the Act

provides that no adoption shall be made after the commencement of the Act by or to a Hindu except In accordance with the provisions contained in Chapter II of the Act and any adoption made In contravention of the said provisions shall be void. Sub-section (2) of Section 5 provides that an adoption which is void shall neither create any rights In the adoptive family or in favour of any person which he could not have acquired except by reason of the adoption. There Is no provision in the Act saving customary adoptions. Adoption is now a secular and not sacramental or spiritual affair. Adoption is purely a personal matter now. The adoption by a Hindu must be in consonance with the provisions of the Act.

16. Section 4 of the Act provides that any custom or usage immediately before the commencement of the Act shall cease to have effect, therefore, unless it is established that giving and taking was actually performed, observance of other customs or usage In the absence of evidence of actually giving and taking cannot make the adoption valid.

17. Learned Counsel for respondents vehemently submitted that in ancient adoptions like the present one which took place many years ago where direct evidence was lacking due to long lapse of time every allowance for absence of evidence should be favourably entertained by courts.

18. The contention is not acceptable. The present case cannot be said to be a case of ancient adoption. It is not the case of the respondent No. 1 that due to lapse of time evidence of giving and taking ceremony is not available.

19. Where direct evidence of giving and taking ceremony is available inspite of lapse of time relaxation in appraisal of evidence is not permissible.

20. Learned Counsel for the respondent No. 1 submitted that document Ex.D.1C establishes the factum of adoption. The counsel, relying on Pathivada Ramaswami and another Vs. Korda Surya Prakasa Rao and another, , submitted that the registered document of adoption gives rise to the presumption that adoption has been made in compliance with the provisions of the Act unless disproved.

21. The contention is not acceptable. I am of the humble opinion that law laid down in this decision is not a correct interpretation. It is contrary to the provisions of the statute. It is incumbent upon the person claiming adoption to prove giving and taking as required by the Act. Even where the factum of adoption is established, the fact of giving and taking ceremony has to be proved by alleged adopted son. The physical act of giving and taking is an essential requisite of adoption. This requisite is satisfied only by actual delivery and acceptance of the body, even though there exists an executed deed of adoption. Absence of examination of material witnesses like uncle or other relatives who attended the ceremony makes the adoption doubtful. Natural father of the adopted is a party in the case, He was available for evidence but no attempt was made to produce him as witness.

22. Where the plaintiff could not produce the available evidence to prove that all the necessary ceremonies for a valid adoption as contemplated u/s 11 were gone through, the trial court committed an error in concluding that there was a valid adoption. The plaintiff who stated about the ceremony of adoption on the basis of information given by Resham Bai was a boy of 6 years at the time of adoption. He cannot recapitulate the details of ceremony nor he has stated that he can recapitulate the details of ceremony, therefore, hearsay evidence of child alone is not sufficient to establish the adoption.

23. Learned Counsel for respondent No. 1 also submitted that a registered adoption deed has been filed by the plaintiff. Section 16 of the Act provides that 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 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. It was for the defendants to disprove the adoption. Presumption u/s 16 Is not a mere statutory presumption which could be rebutted In the ordinary manner of rebuttal but the presumption has to be dislodged by disproving the fact. In the presence of registered adoption the burden to prove that the adoption was not in compliance with the provisions of the Act was on the appellants, Appellants have not given cogent evidence to rebut the presumption of valid adoption,

24. This contention also is sans merit. In order to attract the applicability of presumption by Section 16 of the Act fulfillment of the following conditions is necessary :

(1) The document produced before the court must purport to record an adoption made.

(2) It must be signed by the persons giving and taking the child in adoption and

(3) It must be registered under any law for the time being In force.

Proof of these conditions is basic requirement for bringing into play the presumption enacted by Section 16 but admittedly the registered document Ex.P1-C is not signed by the person giving the child in adoption. It is stated that the child was given in adoption by Shrikamal but Shrikamal did not sign Ex.P1-C.

25. Where the adoption deed was accepted only by person taking in adoption the presumption u/s 16 is not available. See Krishnabai Shivram Patil Vs. Ananda Shivram Patil, and a Division Bench judgment of this Court reported in Naresh v. Ichrajbat 1979 MPLJ 591.

26. In Pathivada Ramaswami and another Vs. Korda Surya Prakasa Rao and another, It has been held that where there is a registered document of adoption which raises a presumption of validity the proof of giving and taking of child is not necessary but in Bhooloram (Bhola) and Others Vs. Ramlal and Others, it has been held that presumption from registered document of adoption is rebuttable

presumption. Essential conditions under the provisions are to be satisfied. In the present case the presumption does not apply because the document was not signed by the person giving In adoption. Therefore, contention of the learned Counsel for respondent that in view of the presumption u/s 16 of the Act it was not necessary to prove giving and taking of the child cannot be accepted.

27. The learned Counsel for respondent No. 1. relying on Lakshman Singh Kothari Vs. Smt. Rup Kanwar, , submitted that for giving and taking ceremony no particular form is prescribed

28. This contention also is devoid of merit, The law requires that the natural parents shall handover the adoptive boy and adoptive parents shall receive him. Nature of the ceremony may vary depending upon the circumstances of each case, but giving and taking shall be part of ceremony. Registered document does not reveal that the ceremony of giving and taking was performed, whatever manner of that ceremony might be.

29. Learned Counsel for respondent No. 1. relying on Hirabai and Another Vs. Babu Manika Ingale, submitted that where there is a registered deed of adoption containing a recital that adoption ceremonies were performed according to caste custom, adopted son living with adoptive father, after the death of Makak his name mutated on the agricultural lands, the presumption in favour of adoption is fortified by the conduct of the adoptive father and other circumstances in the case. The plaintiff was accepted as adopted son of Manak by his community.

30. This contention also holds no water. The registered document does not state that the requirement of giving and taking was fulfilled.

31. Where the plaintiff has failed to prove the valid adoption by giving convincing evidence the recognition of the plaintiff as adopted son of Manak and mutation of his name in the revenue record will not make the adoption valid.

32. Owing to agricultural property and getting the same entered in revenue record are two different and distinct things. Mutation entry does not confer right of title to the property. Though the law in this regard is very well settled, I wish to rely on two decisions of the Apex Court in Smt. Sawarni Vs. Smt. Inder Kaur and Others, and Suman Verma Vs. Union of India (UOI) and Others, . In Dalip Singh and Others Vs. Sikh Gurdwara Prabhandak Committee and Others, also it has been held that entries in revenue records cannot prove title to the property unless supported by other evidence.

33. Learned Counsel for respondents vehemently submitted that even if document Ex.P.1 C is not read as a deed of adoption, it is the case of the defendants themselves that it is a Will, therefore, on the basis of will also plaintiff Is entitled to claim the suit property which is admittedly the property of Manak.

34. This contention also cannot be accepted. The document EX.P.1C cannot be read as Will because requirements to prove the Will have not been complied with. For a valid will proper attestation must be proved as required u/s 68 of the

Evidence Act and Section 63 of the Succession Act. The attestator should speak not only about the testator's signature to the will but should also speak that each of the witnesses has signed the will in the presence of the testator.

35. In the present case there is no satisfactory evidence regarding proper attestation of the document, therefore, the same cannot be used as Will also.

36. Learned Counsel for the respondent, relying on Panni Lal Vs. Rajinder Singh and Another, , submitted that provisions of Section 8 of Hindu Minority and Guardianship Act, 1956 are fully devised to protect the property of a minor from the depredations of his parents. Section 8 empowers only the legal guardian to alienate minor's property provided it is for the necessity or benefit of minor or his estate and it further requires that such alienation shall be effected after permission of the Court has been obtained, In the present case, there is no evidence that the father of the plaintiff got the permission of the Court. Learned Counsel for the respondent, relying on AIR 2002 215 (SC) , also submitted that alienation of minor's property by de facto guardian or natural guardian is per se invalid and void ab initio.

37. I am unable to persuade myself to accept this contention also. According to the plaintiff himself the property In dispute belonged to Manak. He has not been proved to be the adopted son of Manak, He cannot challenge the sale of the property of Manak, therefore, the finding of the trial court that sale deeds executed by Shrikamal in favour of defendants No. 1 and 3 are void as against respondent No. 1 Ramji cannot be said to be defensible. Since the property in question belonged to Manak and did not belong to the plaintiff who has not been proved to be the adopted son of Manak, he cannot challenge the sale of the property of Manak on the ground that the sale took place without the permission of the District Judge u/s 8 of Hindu Minority and Guardianship Act.

38. Even if it is accepted that at the time of sale Shrikamal had no right to sell the property, after the death of Manak, he acquired interest in the property as successor of Manak, therefore, the principle of feeding the grant by estoppel will not: impair the rights of transferee in good faith for consideration. In such a case Section 43 of the Transfer of Property Act comes into play. If a transfer is made by a person who had no authority to the property transferred but later on he acquires title to that property, such transfer at the option of transferee operates on any interest which he may acquire in such property. In the present case transferee can enforce his right under said Section 43.

39. For the reasons stated above, it cannot be said that plaintiff is the adopted son of Manak, therefore, he cannot claim any interest In the property of Manak and the sale deeds executed by Shrikamal in favour of appellants can be said to be Illegal or void. The appeal is therefore, allowed. The Judgment and decree of the trial court is set aside and the suit filed by the plaintiff is dismissed. Costs as incurred.