

(1972) 05 OHC CK 0001
In the Orissa High Court
Case No : First Appeal No. 221 of 1966

Konchada Laxminarayan Subudhi and Another	APPELLANT
Vs	
Konchada Padmanav Subudhi and Others	RESPONDENT

Date of Decision : 11-05-1972

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 16

Citation : AIR 1973 Ori 3

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : Y.S.N. Murty and A.N. Rao, for the Appellant; P.V. Ramdas, R. Mohanty and R.C. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The plaintiffs are in appeal against the decree of the learned Subordinate Judge, Berhampur dismissing their suit for possession and mesne profits. The plaintiffs laid claim on the footing that they were reversioners. The genealogy appended below shows the mutual relationship.

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LACHANNA SUBUDHI | ----- | | |
| Bhavanna Subudhi Gangadhar Pandayya Subudhi Venkayya (died) Subudhi
(died) (died 1925) Subudhi | | | Chinna Magatha Rajagopalam
----- Subudhi (died) (adopted) | | | (pre-deceased) Nilakautham
Rajagopalam ----- Subudhi (adopted) | | | Brundaban Surya
Narayan ----- (d-3.) (d-4.) | | plaff.1 plaff.2 |
----- | | Wife Son Sundaramma Chinna |
Adinarayanna Subudhi Padmanaya(d-1.) Satyamma(died 1943).
    
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The four brothers Bhavanna, Gangadhar, Pandayya, and Venkayya were admittedly separate. Pandayya died in 1925. His adopted son Rajgopalam had predeceased him leaving behind a widow Sundaramma who died on 15-7-1965. Kajgopalam's son Adi-narayanna died in 1928. He had left a widow Satyamma

who lived up to 1943. The present dispute is in relation to properties of Pandayya Subudh.

Venkayya left behind two sons Nilakantham and Rajgopalam. Rajgopalam had been taken in adoption by Pandayya. The two sons of Nilakantham are the plaintiffs. Gangadhar's branch became extinct. Defendants 3 and 4 are the grandsons of Bhavanna. Sundaramma adopted defendant No. 1 on 17-3-1965 and acknowledged the adoption by a deed dated 20th of March, 1965 (Ext. B) and conveyed valuable properties to the first defendant. On 15th of March, 1965 she made a registered deed of settlement in favour of the second defendant who happens to be the mother of the first defendant conveying properties to her. The plaintiffs contend that there has been no valid adoption and Sundaramma had no right to adopt. It is also contended that Sundaramma had no right to alienate the property of Adinarayanna, the last male holder. Defendants 3 and 4 supported the plaintiffs. The real contest came from defendants 1 and 2. According to the contesting defendants, the adoption was valid. Sundaramma had the right to adopt and as a matter of fact, defendant No. 1 was taken in adoption in accordance with law. By registered agreement dated 31-7-1934 filed in O. P. No. 30 of 1934 (the pauper proceedings), Sundaramma had received the properties upon the death of Satyamma and she became full owner u/s 14(1) of the Hindu Succession Act. The other allegations of the plaintiffs were denied.

2. The learned trial Judge upheld the adoption both in fact and in law. He found that Sundaramma had got absolute title to the property u/s 14(1) of the Hindu Succession Act.

3. Mr. Murty, learned counsel for the plaintiff-appellants contends that Sundaramma made the adoption to her husband and not to herself. Her right to take in adoption to her husband under the general Hindu law had terminated long before and had vested in Satyamma, her daughter-in-law and could not revive again. In support of such proposition of his, he relies upon a decision of their Lordships of the Supreme Court in the case of Gurunath alias Bhimaji Vs. Kamalabai, Kom Kenchangauda Nadgaudar and Others, . The Hindu Adoptions and Maintenance Act authorises a widow to adopt for herself and when such adoption takes place, as decided by their Lordships of the Supreme Court (See Sawan Ram and Others Vs. Kala Wanti and Others, , the adopted child is also taken to have been adopted to her husband. But the widow is not entitled to adopt to her husband in law. Section 4 of the Hindu Adoptions and Maintenance Act saves the old shastric law relating to the widow's right to adopt, but Sundaramma had no such right, it having got extinguished. Accordingly the adoption is bad.

4. The main point for determination is as to whether Sundaramma made the adoption to herself or to her deceased husband. The adoption in question is subsequent to 1956 and is, therefore, governed by the Hindu Adoptions and Maintenance Act. There is no dispute that the widow has a statutory right to adopt. Mr. Murty does not dispute that the adoption made by the widow would be

to her husband (see *Sawan Ram and Others Vs. Kala Wanti and Others*, . If the adoption fs to herself, it must be taken to be in terms of the statute and its validity would be no more open to dispute. Section 5 of the Hindu Adoptions and Maintenance Act provides:--

"(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void."

Section 8 declares the capacity of a female Hindu to take in adoption. The requirement of Clause (c) of Section 8 is admittedly satisfied in this case.

We shall now proceed to decide whether Sundaramma took defendant No. 1 in adoption to herself or to her deceased husband. The deed of acknowledgment (Ext. B) in paragraph 2 refers to this adoption. When translated into English, the material portion of this narration would run thus:--

"My daughter-in-law Satyamma during her lifetime did not make any adoption. Konchada Droupadi is my niece being the daughter of my sister Smt. Tumulu Muttamma, wife of Tumulu Lokanath, resident of Bachuari Sahi in the town of Berham-pur. You happen to be her eldest son and are a grandson of mine. For the purpose of perpetuating the line of my husband and for offering solace to the ancestors of my husband and for his sake, I intended to adopt you and approached your natural father and mother Konchada Kusa Subudhi and Konchada Droupadi. They having agreed to offer you in adoption on 17-3-65, Wednesday at 10-30 in the morning in the presence of relations and other gentlemen, your natural parents offered you in adoption to me and I have received you in adoption according to caste custom and treated you as my Aurasa son and have brought you to my family for rearing work."

In that document there is also a narration requiring defendant No. 1 as adopted son to offer Pinda to Sundaramma herself as also her husband and his ancestors. Mr. Murty relies upon the statement that the adoption was for her husband. Reading the entire narration as a whole, we find, there is some ambiguity and, therefore, the oral evidence may be referred to as guidance for finding the true intention. P.W. 1 stated in cross-examination thus:--

"I object to Sundaramma's adopting a child from anybody other than us as we are the only reversioners. Sundaramma had no right to adopt from any other family..... I would not have attended even if Sundaramma had invited me for the alleged adoption..... Sundaramma expressed her desire to take my second son in adoption before she left for Kusa Subt.idhi's place..... I said to Sundaramma "If I do not give my child in adoption, what will you do?"....."

This statement of P.W. 1 who is the first plaintiff clearly shows that Sundaramma was really thinking of adopting to herself. D.W. 3 states that Sundaramma had expressed before him that she would adopt the son of the second defendant. D.W. 6 has said that Sundaramma adopted defendant No. 1. D.W. 7 is the natural

father of defendant No. 1, He has said that Sundaramma adopted his son. The third defendant who was also examined as a witness stated that the adoption was by Sundaramma. D.W. S is an old and professional scribe. It appears that he obtained general instructions regarding scribing of the document and the terms have been put in by himself. On a reading of the narration in the document and the oral evidence on record, we have no doubts in our mind that the adoption was really by Sundaramma to herself and not to her deceased husband.

Mr. Murty does not dispute the capacity of Sundaramma to make such an adoption. In fact it is specifically conferred by Section 8 of the Hindu Adoptions and Maintenance Act. Even if Mr. Murty's contention that in law the capacity of Sundaramma to adopt to her husband was extinguished under the old law, by virtue of the right conferred under the Adoptions Act, she was entitled to make the adoption. Defendant No. 1 though adopted by Sundaramma must be taken to have been the adopted son of Sundaramma and her deceased husband.

5. Mr. Murty next contended that even if it is found that Sundaramma had a right to adopt, the adoption as a fact has not been established. We find that the learned trial Judge has referred to the oral evidence in paragraph 20 of his judgment. He has rightly discarded the evidence of the other D.Ws. excepting D.Ws. 6, 7 and 8. In addition to the evidence by these witnesses, Ext. B supports the adoption. The presumption arising u/s 16 of the Adoptions Act applies to this case. The burden really lay on the plaintiffs to negative the adoption and on the plaintiff's side there is virtually no evidence which can be, considered for dislodging the presumption. In the circumstances, the adoption as a fact must be taken to have been established.

6. It is conceded by Mr. Murty that if the adoption of defendant No. 1 is sustained, the plaintiff's right to claim as reversioners cannot be sustained. The suit at their instance has, therefore, to fail.

7. It is not necessary, in law of the conceded position which we accept as justified, to examine the various other contentions raised in the appeal. The alienation by Sundaramma in favour of the defendant No. 1's mother under Ext. A or the alienation in favour of defendant No. 1 under Ext. B cannot be impugned at the instance of the plaintiffs as reversioners in the presence of the adopted son. It is not necessary to examine whether Sundaramma's right acquired under the settlement of 1934 became absolute by operation of Section 14(1) of the Hindu Succession Act. The appeal has no merit and has, therefore, to be dismissed. We accordingly dismiss the appeal and sustain the decree of the trial Court. The defendant-respondents shall have their costs.

B.K. Ray, J.

8. I agree.