
(2013) 01 RAJ CK 0077
In the Rajasthan High Court
Case No : Civil Writ Petition No. 20899 of 2012

Madhu

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 16

Citation : AIR 2013 Raj 99

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Neeraj K. Tiwari, for the Appellant;

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition, filed by petitioner, seeks to challenge order passed by Revenue Appellate Authority dated 25-2-2009 and the Board of Revenue dated 19-11-2012, both of whom have set aside order of Sub-Divisional Officer, Nasirabad, dated 31-8-2007 declaring petitioner to be adopted son of deceased Omkar Gurjar and respondent No. 2 Smt. Kara on the strength of adoption deed dated 10-12-1999. Contention of learned counsel for petitioner is that the Revenue Appellate Authority and the Board of Revenue have erred in law in holding that adoption of petitioner was not valid because he was 35 years of age on the date of registration of adoption-deed. It is contended that there are certain communities where custom of adoption is prevalent even at late age and someone could be taken in adoption at 35 years of age. His alternative submission is that adoption had in fact taken place when petitioner was a child of less than 15 years of age but the deed got registered after death of Omkar, by his widow Smt. Kani. This aspect of the matter has been overlooked by the Revenue Appellate Authority and the Board of Revenue. It is also contended that learned S.D.O. has rightly held that since the adoption deed was registered, a presumption would arise as to its validity according to Section 16 of the Hindu Adoptions and Maintenance Act, 1956.

2. Perusal of the order passed by the Revenue Appellate Authority clearly indicates that the petitioner was not able to show by any iota of evidence that he was less than 15 years of age when he was adopted. The Board of Revenue has also in its judgment held that the petitioner could not prove the fact that he was adopted by deceased Omkar Gurjar during his life time when petitioner was still a minor or less than 15 years of age. The deceased was survived by three daughters and has no son. The mutation of entire disputed land was attested in favour of Smt. Kani, his widow.

3. Merely because adoption deed is registered, a Court is not precluded from examining whether or not the deed is legal. In the facts and circumstances of the case when age of petitioner at the time of adoption is shown to be 35 years, despite its registration, the Revenue Appellate Authority and the Board of Revenue cannot be held to have committed any mistake of law in holding that adoption was invalid:

4. I, therefore, do not find any infirmity in the impugned orders and writ petition is accordingly dismissed.

5. At this stage, learned counsel submits that a liberty may be granted to petitioner to approach the civil Court. If any such remedy is available to him, it is upto the petitioner to avail such remedy. Consequent upon dismissal of writ petition, stay application filed therewith, does not survive and same is also dismissed.