
(2015) 02 RAJ CK 0211
In the Rajasthan High Court
Case No : Special Appeal (W) No. 376 of 2013

Madhu

APPELLANT

Vs

B.O.R.

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 10, 10(iv), 16

Citation : (2015) 2 RLW 1191 : (2016) 1 WLN 98

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Kapil Prakash Mathur, for the Appellant; Anand Mishra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant intra court appeal has been preferred against order of the Id. Single Judge dt.2.1.2013. Brief facts of the case are that a revenue suit for declaration and injunction came to be filed by one of the daughter of deceased Onkar along with present appellant who is claiming to be adopted son of Onkar based on registered deed of adoption and indisputably he was 35 years of age on the date of attestation of adoption deed.

2. Taking note of the adoption deed and co-shareholder, the appellant filed a suit which was decreed by the Sub Divisional Officer, Nasirabad, Ajmer in favour of appellant but other co sharers wife of deceased Onkar and one daughter preferred appeal before the Revenue Appellate Authority and the dispute was only confined to the share which was claimed by the present appellant on the strength of registered adoption deed.

3. The Revenue Appellate Authority held that the widow and three daughter are entitled to get 1/4th equal share but as regard the share of present appellant, it was not accepted vide its order dt. 25.2.2009 taking note of Sec. 10(iv) of the Hindu Adoptions and Maintenance Act, 1956 (Act 1956) which clearly mandates

and prohibits that he/she could not be taken in adoption who has completed 15 years of age, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

4. Thus, prima facie sub sec. (iv) of Sec. 10 of the Act 1956 prohibits taking he/she in adoption who has completed 15 years of age and the appellant was indisputably 35 years of age as alleged at the time of adoption and deed was registered after his death and based on mandate of law, the Revenue Appellate Authority did not accept the claim of the present appellant as regards his share and that came to be challenged by filing further appeal before the Board of Revenue and that too came to be dismissed under order dt. 19.11.2012 which further came to be assailed by the appellant by filing writ petition and that also came to be dismissed vide order dt. 2.1.2013.

5. It can be noticed that the adoption deed was registered on 10.12.1999 much after the death of Onkar Gurjar and indisputably the appellant was 35 years of age on the date the adoption deed was executed, not a valid adoption recognized by law under the Act 1956 and as regards the custom or usage is concerned, after objection was raised, nothing came on record and taking into consideration, the Id. Single Judge also approved finding of RAA and Board of Revenue more so the property of the deceased was equally devolved in favour of all the four members of the deceased and that is subject matter of challenge in instant intra court appeal.

6. Counsel for appellant submits that presumption is always to be drawn in favour of registered adoption deed in terms of Sec. 16 unless rebutted by the party placed reliance the very finding recorded by the court below and confirmed by the Id. Single Judge in the facts and circumstances of the case, is not legally sustainable and in support of his submission placed reliance on the judgment reported in Laxmibai (Dead) thr. L.Rs. and Another Vs. Bhagwantbuva (Dead) thr. L.Rs. and Others, (2013) 2 ABR 877 : (2013) 2 AD 377 : AIR 2013 SC 1204 : (2013) 2 JT 362 : (2013) 1 RCR(Civil) 895 : (2013) 2 SCALE 106 : (2013) 4 SCC 97 : (2013) AIRSCW 949 : (2013) 1 Supreme 418 .

7. Counsel for respondent supported the order of Revenue Appellate Authority, Board of Revenue and so also of Id. Single Judge and submits that the adoption as alleged by the appellant is not in conformity with the mandate of law and sub sec.(iv) of sec. 10 of the Act 1956 and there appears was no occasion to led evidence in support thereof and nothing came on record that there was any custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption and submits that after the matter has been examined at least at three levels it may not be open to be examined unless the finding is perverse in instant intra court appeal.

8. We have considered the submissions made by the parties and with their assistance also perused material on record.

9. It is not disputed between the parties that the appellant was 35 years of age at the time of alleged adoption deed was registered and much after the death of Onkar Gurjar and sec. 10(iv) clearly prohibits that he/she could not be taken in adoption who has completed 15 years of age, unless there is a custom or usage applicable to the parties. Ordinarily, as per the prohibition of the mandate of sub sec.(iv) of Sec. 10 of the Act 1956, the present appellant could not have been taken in adoption and as regards in Gurjar community nothing came on record which could prima facie justify the custom or usage of taking child in adoption who has crossed 15 years and this what the Revenue Appellant Authority, Board of Revenue and so also the Id. Single Judge arrived to the conclusion that adoption deed which was made sole basis claiming to be an equal co sharer of the property of the deceased was not justified and it can be noticed that three daughters and widow each of them got their 1/4th share in the property of the deceased.

10. After going through the material which has come on record, we too are satisfied that in the light of Sec.(iv) of Sec. 10 of the Act 1956, the adoption deed on which the appellant placed reliance to claim as one of the co sharer over the property of the deceased was not legally sustainable in law.

11. The submission made by counsel for the appellant in reference to Sec. 16 of the Act to draw presumption regarding registered adoption deed suffice it to say if there is dispute between the parties certainly that can be settled after being provided right of fair opportunity but there is no dispute in reference to factual matrix of the matter as claimed by the appellant and without fulfillment of mandate of law at least could not be claimed and prayed for and as regard judgments which the counsel for appellant has placed reliance is of no assistance as the finding recorded by the civil court was held to be justified as the substantial compliance of mandate of Sec. 16 of the Act 1956 was made.

12. We do not find any error being committed by the Id. Single Judge while passing order dt. 22.11.2004 impugned which may call for interference. Consequently, the special appeal being devoid of merit having no substance and accordingly dismissed. No cost.