(2011) 11 AHC CK 0066

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19739 of 2006

Narayan Swaroop APPELLANT

Vs

The Board of Revenue, U.P. Camp at Agra and Others RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 16
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 229B

Citation : (2011) 11 AHC CK 0066

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble A.P. Sahi, J.—This is a writ petition arising out of two declaratory suits filed by the contesting respondents questioning the claim of the petitioner and also asserting their own independent claim for succession to the agricultural holdings of late Kanhai Ram. The name of the petitioner came to be mutated over the holding as the petitioner claimed himself to be the adopted son of late Kanhai Ram for which the petitioner also relied on a registered deed of adoption dated 28th October, 1976.

2. Ram Nath the father of the respondent nos. 6 to 8 claiming him self to be the sister''s son of late Kanhai Ram filed a suit u/s 229-B for a declaration that the said respondents being the closest collaterals/cognates entitled to succeed should be recorded as the tenure holders of the land in dispute.

3. The respondent no. 9 late Bhagwan Devi now represented by her substituted heirs set up an unregistered will dated 16.10.1978 and filed her own suit seeking a declaration that she is entitled to succeed to the entire holding on the basis of the said unregistered will.

4. The petitioner was a defendant in both suits filed by the respondents. The defence set up by the petitioner was on the strength of his adoption as

mentioned hereinabove. The trial court framed issues and held that neither the respondents claiming succession had been able to prove their rights nor the will set up by the respondent no. 9 was proved and consequently dismissed the suits.

5. One of the issues framed was with regard to the defence set up by the petitioner on the basis of adoption. The same was also disbelieved and consequently the defence of the petitioner claiming right, title and interest on the basis of adoption was also rejected.

6. Consequently the trial court having found none of the parties to be the heir entitled to succeed to the property of Kanhai, vested the property for management in the Gaon Sabha.

7. Aggrieved the parties including the petitioner filed appeals which were dismissed. The parties went up in second appeal and four appeals were filed against the judgment and decree of the trial court as affirmed by the first appellate court. The second appellate court, namely the Board of Revenue came to the conclusion that the respondent no. 9 herein who was claiming title on the basis of a registered will has been unable to prove it and consequently dismissed her appeal. The same position was with regard to the appeal filed by the petitioner and his claim was also dismissed.

8. However while considering the claim of the respondent nos. 6 to 8, the learned Member held that the trial court and the first appellate court having found the evidence inadequate, could not have rejected the claim based on natural succession u/s 171 of the U.P. Z.A. & L.R. Act, 1950. Accordingly, the appeal of the respondent Nos. 6 to 8 was allowed and the case has been remanded back for trial only in relation to the claim of respondent Nos. 6 to 8 after allowing the plaintiffs therein to adduce additional evidence.

9. At the very outset it may be relevant to mention that Learned Counsel for the parties do not dispute the fact that the respondent no. 9 aggrieved by the said judgment of the courts below, including that of the impugned order of the Board of Revenue filed writ petition No. 18757 of 2006 which was dismissed on 6th April, 2006. Thus, so far as the claim of the respondent no. 9 and her heirs are concerned the same has been finally adjudicated by this Court, and hence, the claim of an unregistered will that was set up by them has attained finality.

10. The dispute now survives only in relation to the claim of the petitioner in the present writ petition as against the claim of succession by the respondent nos. 6 to 8. The respondents including the Gaon Sabha have already filed a counter affidavit to which a rejoinder has been filed and I have heard Sri Vishal Khandelwal for the petitioner, Sri N.S. Chahar for heirs of the respondent no. 9 and Sri Vivek Srivastava for the respondent Nos. 6 to 8. No one has turned up on behalf of the proposed respondents Smt. Mithilesh who claims to have succeeded to the disputed property from Bhagwan Devi the respondent no. 9 under a will. The said applicant namely Smt. Mithilesh is claiming succession through Smt. Bhagwan Devi whose writ petition has already been dismissed as noted herein

above by the judgment dated 6.4.2006 quoted herein under:

Hon''ble Janardan Sahai,J

Kanhai Ram was the tenure holder of the property in dispute. Bhagwan Devi the petitioner filed a suit u/s 229B of the U.P.Zamindari Abolition & Land Reforms Act calming to have succeeded on the basis of a Will said to have been executed by Kanhai Ram. It appears that there were also other claimants, namely Ram Nath respondent no.2 who claimed on the basis of inheritance and Narayan Swaroop who claimed being adopted son of Kanhai Ram. They also filed suits. The petitioners'' suit as well as the suit of the respondents 2 and 3 were dismissed and it was held that the property in dispute in absence of any heirs vests in the Gaon Sabha. The petitioner preferred appeal which was dismissed on 4.4.05 by the Addl. Commissioner. The second appeal filed by the petitioner has also been dismissed on 3.1.06 by the Board of Revenue. The Board of Revenue however allowed the appeal of Ram Nath who claimed on the basis of inheritance and has remanded the case. The finding recorded by the courts below is that the Will relied upon by the petitioner was not proved. The Will in question is said to be an unregistered one. Counsel for the petitioner conceded that the petitioner is not directly related to the deceased tenureholder. The trial court discussed the evidence on the record including the statement of the witnesses of the petitioner and recorded a finding that the Will was surrounded by suspicious circumstances, which have not been explained and material contradictions in the statement of the witnesses were also found. The findings have been affirmed by the appellate court and by the IInd appellate court. The finding that the Will is not proved is a finding of fact. No ground of interference has been made out. Dismissed.

11. Accordingly her fate also stands sealed as the respondent Bhagwan Devi''s writ petition has already been dismissed.

12. The contention raised by Sri Khandelwal is that in view of the provisions of Section 16 of the Hindu Adoption and Maintenance Act, 1956, there is a valid presumption in favour of adoption. Once the adoption deed has been registered, and even otherwise when the same was proved by producing the attesting witnesses, the scribe of the deed, and the statement of the natural father of the petitioner, Sri Khandelwal submits that the grounds for disbelieving the adoption namely the statement of the witnesses Jayanti and Mahavir as also the non-production of the petitioner himself as witness could not have been the basis for rejecting the petitioner''s claim and hence the trial court by wrongly shifting the burden on the petitioner, has erroneously discarded the succession of the petitioner.

13. Sri Khandelwal further submits that on account of the misreading and misconstruing of the evidence the findings recorded by the courts below are perverse, which was a substantial question of law, and the Board of Revenue without even framing a substantial question of law on the said issue straight away proceeded to summarily dismiss the appeal. He therefore contends that the

Board of Revenue has also committed a patent error hence the impugned orders deserve to be set aside.

14. Learned Counsel for the respondent Nos. 6 to 8 contends that the very adoption of the petitioner was under a serious cloud and his age was also disputed in view of the nature of the evidence that was brought on record, and he submits that the date of birth as reflected in the school certificate clearly indicates that the adoption deed is manipulated and fake. He therefore contends that the conclusions drawn by the courts below disbelieving the adoption of the petitioner does not deserve any interference as well as the findings on the said issue are concluded on facts. He further submits that no question of law arose much less a substantial question of law to allow the appeal of the petitioner and hence the Board has not committed any error to the detriment of the petitioner.

15. Learned Counsel for the respondent no. 9 and his heirs could not advance any plausible submission nor he could be possibly allowed to contest the matter in view of the dismissal of the writ petition filed by the respondent no. 9 on 6.4.2006.

16. I have also heard learned Standing Counsel as well as the Learned Counsel for the Gaon Sabha.

17. The case of the petitioner is that the adoption was carried out in accordance with the provisions of law and the custom of adoption as prevalent in Hindu Society. It is urged that all the ceremonies necessary for a valid adoption were performed in the presence of the natural parents of the petitioner as also the adoptive parents. Not only this the deed was executed and registered and the witnesses to the said deed have proved the actual execution of the adoption as set up by the petitioner.

18. It is further contended that the statement of the witnesses nowhere varied in relation to the actual evidence having been placed and no evidence to the contrary was led either documentary or oral by the contesting respondents to dislodge the factum of adoption. It is further submitted that through the counter affidavit, the contesting respondents seek to introduce a school certificate of Class III of the petitioner to dispute his date of birth which cannot be permitted at this stage as the same was not an evidence either pressed into service before the trial court or relied upon by the trial court for rejecting the claim of the petitioner. He therefore submits that the said evidence cannot be the basis to non-suit the petitioner.

19. Having considered the rival submissions and the evidence brought on record, it is apparent that the petitioner was non-suited on account of the opinion expressed by the courts below that there was a conflicting version in the statement of Mahavir and Jayanti, the two witnesses of adoption that led the court to disbelieve the same. From a perusal of their statement as recorded in the impugned orders what appears to be is the variation about the description of the parties but both of them do indicate the happening of the event. The scribe

Ramji Lal states that the execution of the deed took place almost 18 years hence and he remembers having transcribed the document. Ramji Lal was not a witness to the adoption itself. In the cross-examination it also comes out that the name of the priest was not known to the witnesses.

20. Suffice it to say that when the evidence is being recorded after 18 or 20 years, there is a chance of the person testifying to suffer a loss of memory about the name of the priest. If the name of the priest is not known by the witnesses, that by itself would not wipe out their statement about the actual adoption. What is important is the taking place of the event in order to prove the factum of the ceremony of adoption. It is not the case of the parties that there was no priest at all or the parents did not participate in the ceremony of adoption. It is true that the petitioner was not produced in the witness box but his natural father did depose to establish the factum of adoption.

21. What is more important is that there is a valid presumption in support of the execution of a registered deed. This aspect has been taken care of in a recent decision of this Court in the case of Rajendra Prasad Vs. Board of Revenue, U.P. at Allahabad, 2010 (110) RD 84. this Court while discussing the impact of a registered deed also explains the ingredients of Section 16 of the Hindu Adoption and Maintenance Act, 1956. In my opinion, also these factors have not been taken into account in depth while proceeding to either believe or disbelieve the issue of adoption relating to the petitioner.

22. Once the remand was being made by the Board of Revenue for the purpose of allowing evidence to be led in favour of those who are claiming succession, then this aspect as well ought to have been also looked into, inasmuch as, the validity and the presumption of the registered deed did raise a substantial question of law. The Board of Revenue, therefore, committed an error by allowing the second appeal in so far as the respondent nos. 6 to 8 are concerned without even pointing out the substantial question of law and on the other hand without even framing and answering the questions of law that arose in relation to the adoption of the petitioner. The cursory disposal of the second appeal by the impugned order therefore cannot be appreciated and the impugned order is unsustainable.

23. Accordingly, the writ petition is allowed. The impugned orders including the judgment of the Board of Revenue dated 3rd January, 2006 in so far as it negates the claim of the petitioner and allows a reconsideration of the claim of the respondent Nos. 6 to 8 only is set aside. The matter shall now stand remitted to the trial court for a fresh look at the matter and a decision thereon in between the petitioner and respondent nos. 6 to 8 only, as the respondent no. 9 and her successors have already lost the battle with the dismissal of writ petition No. 18757 of 2006.

24. The writ petition is partly allowed with the aforesaid directions.