

(2006) 07 JH CK 0040
In the Jharkhand High Court

Nemai Pandit and Others

APPELLANT

Vs

Akrur Pandit and Others

RESPONDENT

Date of Decision : 18-07-2006

Acts Referred:

Citation : (2007) 1 JCR 155

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—This appeal is against the judgment and decree of affirmance passed by the Second Additional Sessions Judge, Fast Track Court, Jamtara in Title Appeal No. 10 of 1991 upholding the judgment and decree passed in Title Suit No. 19 of 1973 by the Sub Judge I, Jamtara.

2. The plaintiff filed the suit for adjudication and declaration that Akrur Pandit is a legally adopted son of Dukhu Pandit and is next nearest heir and the successor of the estate left by Dukhu Pandit and that the defendants are liable to be ejected from the land possessed by them. Plaintiff also prayed for a preliminary decree for partition of moiety share of the plaintiff in Schedule "B" property and 1/3 share in Schedule "C" property and appropriate decree for Schedule "A" and Schedule "D" properties.

3. The defendants contested the suit by filing three separate sets of written statements. One by the defendant No. 1, another by the defendants No. 2 and 3 and the third set was filed on behalf of the respondent No. 4 through guardian-ad litem. The defendant No. 1 claimed that his daughter defendant No. 13 is the adopted daughter and sole heir of late Dukhu Pandit. The defendants No. 2 and 3 claimed that Mundia Kumharin was Dukhu's third wife and she had become insane and Dukhu Pandit also had become blind and was in a pitiable condition and these defendants looked after him. After the death of Dukhu Pandit, they came in possession of the properties and continued as such and that the plaintiff

has got no right or title over the suit property.

4. Learned Additional Subordinate Judge framed several issues on the basis of the pleadings. The parties adduced their evidences. The Additional Subordinate Judge disposed of the suit by judgment and decree dated 9.4.1985 holding that the plaintiff is entitled for half share out of the properties left by Dukhu Pandit and the remaining half share would go to the adopted daughter Pramila Panditain who is defendant No. 13 in the suit. The suit was partly decreed and partly dismissed. Thereafter two appeals were preferred, being Title Appeal No. 26 of 1985/2 of 1987 and Title Appeal No. 28 of 1985/1 of 1988. The said appeals were heard and decided by a common judgment of the 1st Additional District Judge, Dumka, who heard the appeal and remanded the case to the trial Court for a fresh decision. Learned Subordinate Judge 1, Jaintara, thereafter, considered the case afresh by framing the issues in the light of the observations made by the Appellate Court. The trial Court, thereafter, considered all the facts and evidences, oral and documentary in detail and while deciding issues No. 3 and 4 came to the finding that Akrur Pandit, the plaintiff, as well as Parmila Panditam were adopted son and daughter of said Dukhu Pandit and they are entitled to inherit the property in equal share. The Court below has further found that there was no partition among the family members and decreed the suit of the plaintiff holding him entitled to 1/2 share of the properties left by Dukhu Pandit. The defendant No. 1, thereafter, preferred title appeal in the Court of the District Judge, Jamtara, which was registered as Title Appeal No. 10 of 1991, who died later on and was substituted by his legal heirs. The said appeal was heard and disposed of by the impugned judgment and decree by the 2nd Additional Sessions Judge, Fast Track Court, Jamtara. The Lower Appellate Court discussed all the evidences in detail and concurred with the finding of facts arrived at by the trial Court holding that the plaintiff as well as the said Parmila Panditain were the adopted son and daughter of said Dukhu Pandit. However, the Lower Appellate Court varied the share of Parmila Pandit and dismissed the appeal.

5. Learned Counsel appearing on behalf of the appellants submitted that the Courts below have not properly considered the contents of the adoption deeds and the other evidences on record and have arrived at erroneous finding. Learned Counsel submitted that there was no valid adoption in favour of the plaintiff, yet the Courts below have erroneously decreed the suit on the basis of the said adoption.

6. Having considered the submissions made by learned Counsel for the appellants and perusing the records, including the impugned judgment and decree, I find that the trial Court as well as Lower Appellate Court have thoroughly considered the evidences documentary and oral adduced by the parties and have arrived at the finding on due appraisal thereof. The deed of adoption in favour of the plaintiff, Akrur Pandit has been held to be valid by both the Courts below on discussion of the facts, evidences and the provisions of law.

I find no ground made out to interfere with the said judgments and decrees. No substantial question of law thus arises for consideration by this Court in this second appeal. This second appeal is, accordingly, dismissed.