

(1993) 03 OHC CK 0014

In the Orissa High Court

Case No : Civil Revision No. 373 of 1990

Prahallad Mishra and Another

APPELLANT

Vs

Benga Dibya and Others

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 16

Citation : (1993) 76 CLT 234 : (1993) 2 DMC 283

Hon'ble Judges : A.K. Padhi, J

Bench : Single Bench

Advocate : B.H. Mohanty, R.K. Nayak, B. Das and B.B. Bhuyan, for the Appellant; S.P. Misra, A.R. Dash and A.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Padhi, J.—One Narayan Acharya and Benga Dibya filed Title Suit No. 46 of 1979 claiming for partition. In the said suit one Karuni Acharya was arrayed as defendant No. 1. Suit was decreed preliminary on 24-4-1985 and against the said judgment defendants 10 to 12 had filed Title Appeal No. 44 of 1985.

2. During pendency of the Title Appeal, Karuni Acharya died. Two applications were filed for impletion as respondents in place of late Karuni as his legal representative. The present applicants are claiming to be Class-II heirs being sons of a pre-deceased sister. Another application was filed by one Raghunath Acharya (opp. party No. 2) claiming to be the adopted son of late Karuni Acharya. As dispute arose regarding the question as to who is the legal heir of Karuni, the Appellate Court directed the Trial Court to enquire into the matter under Order 22 Rule 5, C.P.C. Learned Trial Court in pursuance of the order passed by the Appellate Court conducted the enquiry and gave the finding that Raghunath Acharya was validly adopted by late Karuni Acharya and is a Class-I heir. Challenging this finding of the learned Trial Court, the present Civil Revision has been filed.

3. It is admitted by both the sides that in case it found that Raghunath Acharya was not validly adopted, then heirs of Karuni are the present petitioners being the sons of pre-deceased sister. If it is found that Raghunath Acharya was validly adopted by Karuni Acharya, he being a Class-I heir shall be substituted in place of Karuni. Two witnesses have been examined on behalf of Raghunath Acharya before the learned Trial Court to prove adoption and a registered deed acknowledging adoption of Raghunath Acharya has been exhibited petitioners have examined two witnesses to prove that there was no adoption of Raghunath Acharya by Karuni Acharya. Ext. 1 is the document acknowledging the factum of adoption which is of the year 1978 to which the natural parents of Raghunath Acharya and the adoptive father Karuni were executants. In the said document it has been admitted that Karuni Acharya had adopted Raghunath as his son according to Caste custom. This document of acknowledgement of adoption (Ext. 1) satisfies the requirement of Section 16 of the Hindu Adoptions & Maintenance Act, 1956. The requirements of Section 16 of the above Act are that there must be a document, it must be registered under law in force, it must purport to record an adoption which had taken place and the document must be signed by both giver and taker of the child in adoption.

4. In this case, I find that all the requirements as envisaged u/s 16 of the Act have been satisfied. This document has been executed by the adoptive father and natural parents of Raghunath Acharya. The document has also been duly registered and acknowledges the factum of adoption of Raghunath Acharya by late Karuni. In that view of the matter, presumption arising out of Section 16 of the Act is attracted to this document. Besides the witnesses examined on behalf of Raghunath Acharya proved that Raghunath Acharya was validly adopted on the "Dola Purnima" day of 1974. The evidence of the witnesses examined on behalf of the petitioners do not disprove the fact of adoption of Raghunath Acharya.

5. Assessing the facts and circumstances, I am of the opinion that the conclusion arrived at by the Trial Court is unassailable.

6. In the result, the Civil Revision has got no merit and it is hereby dismissed.

7. In the circumstances of the case, there shall be no order as to costs.