
(2010) 08 JH CK 0104
In the Jharkhand High Court
Case No : Second Appeal No. 543 Of 2003

Pritam Singh

APPELLANT

Vs

Arjun Singh and Ors

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Code Of Civil Procedure, 1908 — Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2)
Limitation Act, 1963 — Article 59

Citation : (2011) 1 JLJR 409

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Kaushalendra Prasad

Final Decision : Dismissed

Judgement

Narendra Nath Tiwari, J

1. This is the plaintiffs second appeal against the concurrent judgment and decree of learned lower appellate Court holding the suit barred by law of limitation. The original plaintiff-Kodo Singh filed Title Suit No. 43 of 1990 praying therein, inter alia, for declaration that the defendant No. 1 is not validly adopted son of the plaintiff and for cancellation of the registered deed of adoption bearing No. 58 dated 3-6-1982. The case of the plaintiff was that though the deed of adoption said to be executed by him adopting defendant No. 1 as his son, he had no knowledge about the said deed of adoption.

2. The defendants contested the suit stating, inter alia, that the defendant No. 1 was adopted after observing all the rituals of 'giving and taking' which was also subsequently recorded in the registered deed of adoption dated 19-3-1982. After sometime, said Kodo Singh was gained over by the interested person and he had executed and registered the deed of cancellation of the said adoption on 19-9-1987. According to the defendants, the suit was wholly false and malicious and it is apparently barred by limitation. On the basis of the pleading, the

defendants had prayed for hearing the issue of limitation as preliminary issue.

3. Learned trial Court, after hearing the parties, took up the said preliminary issue of limitation. Learned trial Court held that the suit, inter alia, was for a decree for cancellation of the registered deed of adoption bearing No. 58 dated 3-6-1982. The period of limitation for cancellation of the deed, as prescribed by Article 59 of the Indian Limitation Act, is three years from the date of knowledge. It has been stated that since original plaintiff-Kodo Singh had himself executed the said deed of adoption dated 19-3-1982 and got the same registered, he had knowledge about the said deed. Said Kodo Singh subsequently had purportedly registered the deed of cancellation on 19-9-1987. Learned trial Court found that he had full knowledge of contents of the said deed of adoption and the deed of cancellation dated 19-9-1987. The suit was filed after expiry of three years even from the said date of cancellation dated 19-9-1987 and the suit is obviously barred by limitation. Learned trial Court, thus, decided the said issue against the plaintiff and dismissed the suit.

4. Against the said judgment and decree, heir substituted after the death of the original plaintiff, filed appeal in the Court of District Judge, Dumka.

5. The said appeal, on transfer, was finally heard and disposed of by 1st Additional District Judge, Dumka.

6. Learned lower appellate Court, after hearing the parties and considering the facts and materials on record, concurrently held that the plaintiff had knowledge about the deed of adoption dated 19-3-1982. He had himself executed and registered the deed of cancellation on 19-9-1987 and at any rate, said Kodo Singh admittedly had knowledge when he had cancelled the deed of adoption by registered deed dated 19-9-1987. The suit was brought after expiry of three years on 19-12-1990 and obviously the suit was filed beyond three years even after execution of deed of cancellation dated 19-9-1987. Learned lower appellate Court, thus, affirmed and upheld the judgment and decree of the trial Court and dismissed the appeal.

7. In this second appeal, two points have been raised against the impugned judgment. It has been first contended that learned trial Court had committed serious error of law in picking up one issue out of several issues framed in the suit and decided the entire suit on the basis of one preliminary issue of limitation against the provisions of Order XIV, Rule 2 of the Code of Civil Procedure. It has been next contended that after the death of original plaintiff-Kodo Singh, Pritam Singh (present appellant) was substituted in his place by the order of this Court. In view of substitution of the appellant, the issue of heirship stands finally concluded. No further issue remained to be decided by learned Courts below.

8. I have heard learned counsel for the appellant and considered the submissions in the light of the facts and materials on record.

9. Though Rule-2(1) of Order XIV of C.P.C. provides for decision of the suit on all

the issues. The same is subject to sub-rule (2). Sub-rule (2) carves out exception to the said normal rule and provides for determination of any preliminary issue, which relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force.

10. In the instant case, the suit, which has been decided as preliminary issue, is regarding a bar to the suit created by law of limitation. Learned trial Court as well as learned lower appellate Court has found that the deed of adoption was executed and registered by plaintiff-Kodo Singh on 19-3-1982 and for cancellation, the suit ought to have been filed within three years from that date. Said Kodo Singh himself had subsequently executed and registered deed of cancellation purportedly cancelling the registered deed of adoption on 19-3-1982 and at any rate from the said admitted date three years expired on 19-9-1990 and the suit was filed after expiry of three years on 19-12-1990 and obviously the suit was barred by law of limitation. I find no error in the said finding nor I find that the decision on the issue of limitation was contrary to Order XIV, Rule 2 of C.P.C.

11. As regards second point, I find no substance in the submission of learned counsel for the appellant that substitution of a person as heir under the provisions of Order XXII of C.P.C. finally decides the issue of heirship and inheritance. The provisions of Order XXII of C.P.C. are meant for substituting legal representative of the deceased party only for the purpose of proceeding with the suit and the substitution of a person, as legal representative cannot be said to be final decision on the issue of heirship or succession.

12. Further, in the instant case, the plaintiff had filed suit, inter alia, for cancellation of deed of adoption, which is held to be time barred by learned Courts below. There was no issue of heirship or succession. The second point, thus, raised by the appellant at this stage is also riot relevant to the context. I, therefore, find no ground made out in this appeal attracting any substantial question of law to be framed and decided in this second appeal. This appeal is, accordingly, dismissed.