

(1981) 01 AHC CK 0025

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3315 of 1974

Ramji

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 30-01-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Adoptions and Maintenance Act, 1956 — Section 12, 16
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)
Uttar Pradesh Land Revenue Act, 1901 — Section 44
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 172

Citation : (1981) AWC 204 : (1981) RD 48

Hon'ble Judges : N.D. Ojha, J; H.N. Seth, J

Bench : Division Bench

Advocate : H.P. Dubey and V.K.S. Chaudhary, for the Appellant; V.P. Sinha, K.N. Tripathi, R.K. Malviya and Prakash, for the Respondent

Final Decision : Allowed

Judgement

R.S. Singh, J.—This writ petition under Article 226 of the Constitution of India arises out of proceedings under the U.P. Consolidation of Holdings Act (hereinafter referred to as the Consolidation Act). The dispute was in respect of Khata no. 96 which was bhumidhari Khata. The land of this khata was recorded in the basic year in the name of Ramji, adopted son of Murlidhar, the Petitioner, and Respondent nos. 2 to 4. An objection u/s 9-A (2) of the Consolidation Act was filed on behalf of Ram Kripal, Respondent No. 2 (hereinafter referred to as the Respondent) on the allegation that Murlidhar died issue-less and his half share in the holdings in dispute was inherited by Respondent nos. 2 to 4. It was further alleged that the Petitioner is not the adopted son of Murlidhar or his widow Smt. Moti Rani. The case set up by the Petitioner was that he was adopted by Smt. Moti Rani. Therefore, he is the adopted son of Smt. Moti Rani and Murlidhar.

2. The Consolidation Officer rejected the objection of the Respondent and allowed

the claim of the Petitioner holding him to be the adopted son of Smt. Moti Rani and Murlidhar. The Respondent preferred an appeal against the order of the Consolidation Officer which was dismissed by the Assistant Settlement Officer (Consolidation). The order of the Assistant Settlement Officer (Consolidation) was challenged by Respondent No. 2 in revision which was allowed by the Deputy Director of Consolidation by his order dated 22-5-74 with the finding that the Petitioner is not the adopted son of Smt. Moti Rani and Murlidhar. It is this order of the Deputy Director of Consolidation which is sought to be quashed in the present writ petition by this Court.

3. Before dealing with the respective submission made by the learned Counsel for the parties it would be necessary to have some more facts. A pedigree has been given in the order of the Deputy Director of Consolidation, the correctness of which has not been challenged by the Respondent. According to this pedigree Murlidhar had half share in the holding in dispute. There is no dispute about this fact between the parties in this case that Murlidhar had one half share and Smt. Moti Rani was his widow. After the death of Murlidhar the name of Smt. Moti Rani, his widow, was mutated in his place. According to the case of the petitioner he was adopted by Smt. Moti Rani and a registered adoption deed dated 2-8-1960 was also executed by her. Smt. Moti Rani died in the year 1968. Thereupon by order of the Supervisor Kanoongo dated 11-10-1969 the name of the Petitioner as adopted son of Murlidhar was mutated in place of Smt. Moti Rani. The Respondent moved an application on 10-12-1970 before the Tehsildar for mutation of his name in place of Smt. Moti Rani. After issue of notice on the mutation application of the Respondent a proclamation was issued. The Petitioner contested the mutation application on the allegation that he is the adopted son of Smt. Moti Rani and Murlidhar. Therefore, his name has been rightly mutated in place of Smt. Moti Rani by order of the Supervisor Kanoongo and the present application for mutation is liable to be rejected. The mutation application was accordingly rejected by order of the Tehsildar dated 26-8-1971 on the finding that the Petitioner is the adopted son of Smt. Moti Rani and his name has been rightly ordered to be mutated by the Supervisor Kanoongo. The order of the Tehsildar was challenged in revision which was finally dismissed by the Board of Revenue by order dated 12-9-1972. In the meanwhile the consolidation proceedings started in the Village and the litigation again started between the Petitioner and the Respondent.

4. The main question for consideration in this case is as to whether the Petitioner was adopted son of Smt. Moti Rani and is entitled to inherit the property of Murlidhar. According to the case of the Petitioner he was adopted by Smt. Moti Rani whereas according to the case of the Respondent no adoption took place. The claim of the Respondent was repelled by the Consolidation Officer and the Assistant Settlement Officer (Consolidation) but was accepted by the Deputy Director of Consolidation.

5. It has been contended by the learned Counsel for the Petitioner that the

Deputy Director of Consolidation committed a manifest error of law in setting aside the concurrent orders passed by the two subordinate consolidation authorities. It was pointed out that while reversing the orders passed by the two subordinate consolidation authorities, the Deputy Director of Consolidation placed wrong burden of proof on the Petitioner and took into consideration several circumstances but none of them was relevant for the correct decision of the case. Whereas according to the contention of the learned Counsel for the Respondent the burden of proof was rightly placed on the Petitioner and the Deputy Director of Consolidation has correctly decided the case after taking all relevant circumstances into consideration. He further contended that according to the provisions of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the Adoption Act), the son taken in adoption by the Hindu widow is only her son and not of her husband's son. Therefore, even assuming that the Petitioner was the adopted son of Smt. Moti Rani he will not inherit the land in dispute u/s 172 of the U.P. Zamindari Abolition and Land Reforms Act as it originally belonged to Murlidhar.

6. I have considered the contentions of the learned Counsel for the parties. In this case the question of adoption by a Hindu widow is concerned. The Adoption Act which received the assent of the President on 21st December, 1956 was published in the Government of India Gazette on 22nd December, 1956. Before the enforcement of the Adoption Act a widow governed by Mitakshara Law was permitted to take any son in adoption with prior consent of her husband and whereas the widows governed by other laws were permitted to take any children in adoption even without the prior consent of their husbands. Under the law prior to the enforcement of the Adoption Act unmarried women had no right to adopt any child but the widows had a right to take a son in adoption with the prior consent of their husbands and the son adopted by the widow was deemed to be the son of her husband. But after the enforcement of the Adoption Act even unmarried women have been given a right to take a child in adoption and the Hindu widow can take any son in adoption even without the prior consent of her husband and a person taken in adoption will be deemed to be her son, In a case of adoption the act of taking and giving is necessary under the present Act as well as it was necessary under the old Act. In order to curtail too much evidence on the point of giving and taking ceremonies Section 16 of the Adoption Act was enacted which reads as follows :

16. Presumption as registered documents relating to adoptions :

Where any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.?

7. According to this provision in a case of a registered document relating to adoption there would be a presumption that the adoption has been made in

compliance with the provisions of the Adoption Act until and unless it is disproved. Under this provision the burden is on the person who disproves the adoption and not on the person who asserts adoption. In this case no doubt there is a registered document relating to adoption but the same has not been signed by the natural father of the Petitioner. Therefore, this document will not raise a presumption of a valid adoption. Presumption of valid adoption according to Section 16 of the Adoption Act is raised where the document has been signed by the person giving and the person taking the child in adoption. Only in such cases the Court shall presume that the adoption has been made in compliance with the provisions of the Adoption Act. The learned Counsel for the Petitioner has urged that the natural father of the Petitioner had deposed in the case that he gave his son in adoption to Smt. Moti Rani and thus this is a sufficient compliance of Section 16 of the Adoption Act to raise the presumption under this provision of the Adoption Act. From the provisions of the Adoption Act it appears that Section 16 is an important provision to curtail too much evidence on the point of taking and giving ceremonies. In case the document is registered as required u/s 16 of the Adoption Act much evidence will be curtailed. In case the document is not registered as required u/s 16 of the Adoption Act then in order to find out as to whether sufficient compliance has been made or not will again depend on the evidence. In that view of the matter the purpose of Section 16 of the Adoption Act will not be served. Therefore, I am of the view that u/s 16 of the Adoption Act the Court shall presume that the adoption has been made in compliance with the provisions of the Adoption Act only where the document is signed by the person giving and the person taking the child in adoption and not otherwise. Thus, in the present case as the document was not signed by the natural father of the Petitioner Section 16 of the Adoption Act is not attracted. Therefore, the burden did not shift u/s 16 of the Adoption Act on the Respondent to disprove the adoption on this account. Looking from another aspect of the matter I find that the burden will be on the Respondent to disprove the adoption as in the basic year khatauni the name of the Petitioner is recorded as the adopted son of Murlidhar. According to the provisions of the U.P. Consolidation of Holdings Act the person who wants to dispute the correctness of the basic year entry has to prove the fact that the basic year entry is incorrect and further according to Section 44 of the U.P. Land Revenue Act there is a presumption about the correctness of the entry and the burden lies on the person who [wants to dispute it. In view of these facts the burden lies on Respondent to prove that the Petitioner is not the adopted son of Murli Dhar and his name is incorrectly recorded in the khatauni. In *Ashrafi Kuwar v. Roop Chand*, ILR 30 All. 197 it was held that where the Plaintiff asks for a declaration that the alleged adoption is invalid but cannot claim immediate possession by reason of the intervention of a widow's estate, the burden is still on him to make out a prima facie case that the adoption challenged by him is an invalid in law or never took place in fact.

8. The Deputy Director of Consolidation reversed the finding recorded by his two subordinate authorities taking into consideration certain irrelevant circumstances

and ignoring certain relevant factors and wrongly placed the burden of proof on the Petitioner also.

9. One of the circumstances taken by the Deputy Director of Consolidation into consideration is that the mutation application was moved on behalf of the Petitioner long after the death of Murli Dhar. But according to the learned Counsel for the Petitioner the name of the Petitioner was mutated by the order of the Supervisor Kanoongo without any application of the Petitioner. It is the Respondent who moved an application after the death of Smt. Moti Rani which was rejected by the Tahsildar with the finding that the Petitioner is the adopted son of Moti Rani and his name was rightly ordered to be mutated by the Supervisor Kanoongo. The Deputy Director of Consolidation had drawn wrong inference that the adoption deed is farzi as the name of the Petitioner was not mutated in the revenue papers soon after the execution of the adoption deed. As a matter of fact the adoption took place after some years of the death of Murli Dhar and in the meantime the name of Smt. Moti Rani had already been mutated. Therefore, there was no occasion for the mutation of the Petitioner's name soon after the death of Murli Dhar. The Deputy Director of Consolidation in order to hold that the adoption deed is farzi also took the fact into consideration that the Prohit and Nai have not been produced. But according to the Petitioner the Prohit and Nai had already died. Therefore, they could not be produced at the time of evidence in this case. It was an irrelevant circumstance taken into consideration by the Deputy Director of Consolidation. Similarly other circumstances taken into consideration by the Deputy Director of Consolidation were also irrelevant.

10. The judgment of the Deputy Director of Consolidation was a judgment of reversal. The statement of the Petitioner relied upon by the subordinate consolidation authorities had been totally ignored by the Deputy Director of Consolidation. The adoption deed is an admissible document although no presumption can be raised u/s 16 of the Adoption Act. Therefore, the statement regarding the adoption made in this document which was relied by the subordinate authorities was illegally ignored by the Deputy Director of Consolidation. In a case of judgment of reversal the Deputy Director of Consolidation was required to consider all the relevant evidence which were relied upon by the subordinate authorities and only after giving reasons for not accepting the evidence relied upon by the subordinate authorities and after giving due consideration to the material evidence on the record and the relevant circumstances the Deputy Director of Consolidation could have taken a contrary view.

11. As regards the legal question raised on behalf of the Respondent that in view of Section 12 of the Adoption Act the Petitioner could be the adopted son only of Smt. Moti Rani and not of Murlidhar and he, therefore, could not inherit the property of Murlidhar. This point is left open as it could be effectively decided only when the correct finding on the question of adoption is arrived at.

12. In view of what has been discussed above the order of the Deputy Director of Consolidation cannot be sustained in law and deserves to be quashed as it is based on certain irrelevant considerations and ignoring the relevant evidence on record which were relied upon by the two subordinate consolidation authorities - See Suraj Rai v. Deputy Director of Consolidation, Civil Misc. Writ Petition No. 1753 of 1976 decided on 21-12-1976.

13. In the result, the petition succeeds and is accordingly allowed. The order of the Deputy Director of Consolidation dated 22-5-1974 is quashed and the Deputy Director of Consolidation is directed to decide the revision afresh according to law and in the light of the observations made above. The parties shall, however, bear their own costs.