
(2018) 03 OHC CK 0045
In the Orissa High Court
Case No : SA No.61 of 1998

Shibashankar Sekhar Deo and others APPELLANT
Vs
Jagannath Sekhar Deo and others RESPONDENT

Date of Decision : 22-03-2018

Acts Referred:

Citation : (2018) 03 OHC CK 0045

Hon'ble Judges : Dr. A.K. RATH

Bench : Single Bench

Advocate : S.B. Sahu, B.B. Baghel, T. Parija, A.K. Jena, Byomkesh Sahoo, S.K Nanda

Final Decision : Dismissed

Judgement

Â Dr. A.K.Rath, J Â

1. This appeal is by the defendant nos. 1, 6 to 8 against the reversing judgment.

2. Plaintiff-respondent no.1 instituted the suit for partition. Case of the plaintiff was that Narendra Sekhar Deo was the common ancestor of the parties. He died leaving behind his three sons Chhatrapati, Sreepati and Balmakund. Chhatrapati died issueless. Sreepati died leaving behind his son Shibshankar-defendant no.1. Balmakund died leaving behind his son Jagannath-plaintiff. There was no partition between the parties by metes and bounds. After death of Chhatrapati, plaintiff and defendant no.1 inherited the suit land. Defendant no.1 made an attempt to forcibly occupy the entire suit land taking a plea that he is the adopted son of Chhatrapati. Specific case of the plaintiff was that defendant no.1 is not the adopted son of Chhatrapati. There was no giving and taking ceremony. The defendant no.1 has sold some portion of the land to defendant no.12. With this factual

scenario, he instituted the suit seeking the reliefs mentioned supra.

3. Defendant no.1 filed a written statement denying the assertions made in the plaint. Case of the defendant no.1 was that Chhatrapati had no issue.

Chhatrapati adopted him. Chhatrapati executed a deed of adoption on 13.9.1978. He is in possession of the suit land as the adoptive son of

Chhatrapati. Other defendants filed a written statement pleading, inter alia, that defendant no.1 is the adopted son of Chhatrapati.

4. Stemming on the pleadings of the parties, learned trial court struck six issues. Parties led evidence. Learned trial court dismissed the suit holding,

inter alia, that the defendant no.1 is the adopted son of Chhatrapati. Chhatrapati was separated from other two brothers. The suit land fell to his share.

The same was recorded exclusively in his name. Plaintiff has no manner of right, title and interest over the same. Being aggrieved, plaintiff filed T.A

No.9 of 1995 before the learned District Judge, Sundargarh. The appellate court came to hold that defendant no.1 is not the adopted son of

Chhatrapati. Held so, it allowed the appeal.

5. The second appeal was admitted on the substantial questions of law enumerated in Ground Nos.M(a), (c), (d) and (e). The same are -

â??(a) The suit was not maintainable in view of the fact that there was no prayer in the suit to declare that the defendant no.1 was not the adopted

child of late Chhatrapati Sekhar Deo.

(c) The suit is bad for non-joinder of necessary parties. All co-sharers (by possible inheritance) had not been impleaded in the suit.

(d) The deed of adoption Ext.A/1 is legal and acceptable. So allowing the appeal on that ground is bad.

(e) Ext.F cannot regate the adoption of defendant no.1 by Chhatrapati.â??

6. Heard learned counsel for the parties.

7. Learned counsel for the appellants submits that defendant no.1 is the adopted son of Chhatrapati. When he was five years old, Chhatrapati adopted

him. Chhatrapati had executed a deed acknowledging adoption vide Ext.A/1. There was giving and taking ceremony in presence of relatives and

friends. Learned appellate court, on a vivid analysis of the evidence on record and pleadings, held that defendant no.1 is not the adopted son of

Chhatrapati. But then, learned appellate court up set the same on untenable and unsupportable grounds. He further submits that after adoption,

defendant no.1 resided in the house of Chhatrapati. He was looking after him during old age. Defendant no.1 also conducted obsequies of his adoptive father.

8. Per contra, learned counsel for the respondent no.1 submits that the defendant no.1 is not the adopted son of Chhatrapati. There is no pleading or proof with regard to giving and taking ceremony. Learned appellate court, on an analysis of the evidence on record, negated the plea of adoption.

There is no perversity or illegality in the said finding.

9. The apex court in the case of Kishori Lal v. Mt. Chaltibai , AIR 1959 SC 504, held that as an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth.

10. In paragraph-4 of the written statement, defendant no.1 stated that Chhatrapati died issueless. He adopted him according to caste and custom and executed a deed of adoption on 13.9.1978. But then, there is no pleading with regard to day or date of adoption and giving and taking ceremony.

Reliance placed on the deed of adoption vide Ext.A/1 is totally misplaced. The same is styled as deed of adoption. The same has been typed in a stamp paper. Ext.A/1 does not reveal the day or date of adoption. It is mentioned that defendant no.1 was adopted, when he was five years old.

Further, in the last sentence of the deed, as it appears, the land appertaining to Khata No.36 measuring an area of Ac.14.22 dec. of Mouza-Khampur,

DistrictSundargarh has been subsequently inserted to. The same raises suspicion.

11. In Rahasa Pandiani (dead) by L.Rs and others v. Gokulananda Panda and others, AIR 1987 SC 962, the apex Court held that if there are any

suspicious circumstances, just as the propounder of the will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been

adopted to dispel the same beyond reasonable doubt. It was further held that experience of life shows that just as there have been spurious claims

about execution of a will, there have been spurious claims about adoption having taken place, and the Court has therefore to be aware of the risk

involved in upholding the claim of adoption if there are circumstances which

arouse the suspicion of the Court and the conscience of the Court is not satisfied that the evidence preferred to support such adoption is beyond reproach.

12. In *Bauri Dei and others v. Dasarathi Sahu and others*, Vol.XLI (1975) CLT 267, this Court held that the creation of documents is not substitute for the fact of giving and taking which must be proved independently de hors any document.

13. Defendant no.1 is the only son of Sripati. As held by the apex Court in the case of *A. Raghavamma and another v. A. Chenchamma and another*,

AIR 1964 SC 136 though there is no legal prohibition, it is well known that ordinarily an only son is neither given nor taken in adoption. Further the

deed of adoption is not a substitute of actual giving and taking ceremony. On an anatomy of pleadings and evidence on record, learned appellate court

came to hold that there is no evidence of giving and taking ceremony. D.W.4 admitted that in the voter's list of the year 1989, he was described

as the son of Sripati and cast vote in the panchayat election, 1992. In the ROR, Ext.F, he is described as the son of Sripati. D.W.3 stated that the

contents of Ext.A/1 were not read over and explained to him and he signed the document on the request of defendant no.1. Ext.A/1 was prepared

after the death of natural father Sripati. Defendant no.1 is the only son of Sripati. It is improbable on the part of natural father to give his only son in

adoption. Defendant no.1 is not the adopted son of Chhatrapati. There is no perversity in the said finding.

14. About 150 years back, the Privy Council in the case of *Tayammaul v. Sashachalla Naiker*, (1865) 10 Moo Ind App 429 held that performance of

funeral rites will not sustain the validity of the adoption, unless it clearly appears that the act itself was performed under such circumstances as would

render it perfectly legal. The substantial questions of law are answered accordingly.

15. Resultantly the appeal fails and the same is dismissed. There shall be no order as to costs.