

A.F.R.

Court No. - 18

Case :- WRIT - B No. - 2714 of 1982

Petitioner :- Munder

Respondent :- Deputy Director Of Consolidation And
Ohters

Counsel for Petitioner :- R.S.Pandey,Ankit Pande,Dr.
Ramsurat Pande,P.C.Ararwal

Counsel for Respondent :- C.S.C.,Edward Sam Julius
Paul,Panna Lal Gupta,T.N.Gupta

Hon'ble Manish Kumar,J.

1. Heard learned counsel for petitioner, Shri Panna Lal Gupta, learned counsel for respondent no. 4 as well as Shri Hemant Kumar Pandey, learned State Counsel.

2. The present writ petition has been preferred for quashing of the impugned Revisional order dated 27.01.1982 passed by respondent no. 1 i.e. Deputy Director Consolidation, the impugned appellate order dated 17.07.1979 passed by respondent no. 2 i.e. Assistant Settlement Officer Consolidation and the judgment and order dated 03.10.1978 passed by respondent no. 3 i.e. Consolidation Officer.

3. During the pendency of present writ petition, the petitioner Munder had expired and in his place, his legal heirs have been substituted and they will be addressed as petitioners. Similarly, after the demise of respondent no. 4, Bhonu, his legal heirs have been substituted and they will be addressed as respondents.

4. Learned counsel for petitioner has submitted that Raghunandan had five sons namely Abhilakh, Kabbil, Badri, Cheekhur and Ram Narayan. Abhilakh was issueless, Kabbil has three sons namely Bhonu, Ram Saran and Ram Samujh. ***Bhonu is respondent no. 4 in the present writ petition.*** Badri has one son Munder i.e. the petitioner in the present writ petition. For the rest, it is not necessary to mention as they are not party to the dispute.

5. It is further submitted that after the demise of Abhilakh (issueless), the uncle of the petitioner, the petitioner has a right in the property of Abhilakh.

6. It is further submitted that the land/property of Abhilakh was inherited by Bhonu alleging himself as an adopted son of Abhilakh by adoption deed dated 15.05.1931.

7. The petitioner filed an objection under Section 9A(2) of the Consolidation and Holdings Act, 1953 (hereinafter referred as Act, 1953) when the village had come under

Consolidation in the year 1972 by moving an application on 17.07.1978 and raised an objection regarding the validity of the adoption deed dated 15.05.1931 on two counts, firstly, the adoption deed was not stamped and secondly it was not registered. The said objection was rejected by the Consolidation Officer by its judgment and order dated 03.10.1978, against which the petitioner had preferred an appeal which was also dismissed by impugned judgment and order dated 17.07.1979. Against the appellate order, the petitioner preferred a revision which was also dismissed by impugned judgment and order dated 27.01.1982, hence, the present writ petition has been preferred.

8. It is further submitted that the adoption deed is mandatorily required to be registered for the reason that by the said adoption deed, the immovable property was going to be transferred in favour of respondent no. 4 Bhonu which is of the value of more than 100 Rupees, as required under Section 54 of the Transfer of Property Act, 1882 in which it has been provided that in the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Here, the transaction by the adoption deed is more than hundred rupees. In support of his submission, learned counsel for petitioner has placed reliance upon the judgment of Hon'ble Supreme Court in the Case of **A. Raghavamma and another versus A. Chenchamma and another, Civil Appeal No. 165 of 1961, reported in 1964 AIR (Supreme Court) 136.**

9. It is further submitted that as per Section 17(b) of the Registration Act, 1908, which provides that documents of which registration is compulsory and sub-section 1(b) of Section 17, provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent to or in immovable property and Sub-Section provides any other instrument required by law for the time being in force, to be registered and the effect of non-registration has been provided under Section 49 of the Registration Act, 1908, that document will not be admissible in evidence. In support of his submission, learned counsel for petitioner has placed reliance upon the judgments quoted below:-

(1) Suraj Lamp & Industries Pvt Ltd versus State of Haryana and another, SLP (C) No. 13917 of 2009, reported in 2011 (29) LCD 2083.

(2) Mohammed Akram Husain and another versus Brij Nath and another in Civil Misc. Writ Petition No. 674 of 2005, reported in 2007 (25) LCD 11.

(3) Vinod Kumar and others versus Sudha Land

Ventures and Homes Pvt. Ltd, First Appeal from Order No. 2222 of 2015.

(4) Yellapu Uma Maheswari and another versus Buddha Jagadheeswararao and others, in Civil Appeal No. 8441 of 2015 (Arising out of Special Leave Petition (Civil) No. 12788 of 2014.

10. It is further submitted that Section 35 provides that the instruments not duly stamped are inadmissible in evidence and in the present case, the adoption deed executed on 15.05.1931 was neither registered nor stamped as per the provisions of the Act, hence it could not be admissible evidence and on the basis of which any judgment and order passed in favour of respondent no. 4 is a nullity and liable to be quashed.

11. On the other hand, learned Standing Counsel and Shri Panna Lal Gupta, learned counsel for respondent no. 4 have submitted that the submission made by learned counsel for petitioner relying upon provisions of different acts are not applicable in the present case as the adoption deed was executed on 15.05.1931. At that time, the registration was not mandatory and it had come by amendment in the year 1977, in the Hindu Adoptions and Maintenance Act, 1956.

12. Learned Standing Counsel has further submitted that it is a devolution of property and not the transfer of property. In support of his submission, he has relied upon following judgments quoted below:-

(1) Raj Kumar Saxena versus Basic Shiksha Parishad, U.P. and others, in Civil Misc. Writ Petition No. 66944 of 2006.

(2) Ravindra Kumar versus State of U.P. and others, in Writ A No. 40700 of 2014.

13. After hearing learned counsel for the parties, going through the records of the case and the judgments relied upon by the learned counsels for the parties, existence of adoption deed dated 15.05.1931 is not disputed between the parties. The petitioner filed his objections on 17.07.1978, before the Consolidation Officer challenging the validity of the adoption deed as it was neither registered nor stamped. In support of his submission, learned counsel for petitioner has submitted that the adoption deed was required to be registered and stamped and has drawn attention of this Court to Section 54 of the Transfer of Property Act, 1882, which is quoted hereinbelow:-

'Section 54:- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.'

14. A perusal of Section 54 of the Transfer of Property Act, 1882, which is very clear and there is no ambiguity and is defining the word 'sale' i.e. transfer of ownership in exchange for a price paid or promised. The adoption deed is not the sale, hence Section 54 of the Transfer of Property Act, 1882 relied by the learned counsel for petitioner is not applicable in the present case. Placing reliance by learned counsel for petitioner on Section 17 (1)(b) and 17(1)(f) to establish his case that registration of the adoption deed is compulsory is quoted hereinbelow:-

Section 17 Documents of which registration is compulsory

Section 17(1) *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,*

Section 17(1)(b):- *other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;*

Section 17(1)(f):- *any other instrument required by any law for the time being in force, to be registered.*

15. The said provisions of Registration Act, 1908, relied upon by learned counsel for petitioner is not applicable in the present case as the adoption deed is not a transaction or declaration of any transfer of property. Adoption deed is a devolution and the said issue has already been decided by this Court in the case of ***Ravindra Kumar and others versus State of U.P. and others in Writ A No. 40700 of 2014***, wherein it has been held, that from the bare perusal of Section 17 of the Registration Act, 1908, nowhere it has been mentioned that for adoption deed registration is compulsory. Compulsory registration of adoption deed has come into force on 26.01.1951 and prior to that, there was no such requirement. This issue has also been decided by this Court in the case of ***Raj Kumar***

Saxena versus Basic Shiksha Parishad, U.P and others in Civil Misc. Writ Petition No. 66944 of 2006, wherein it has been held, that deed regarding adoption of petitioner is subsequent to 26.01.1951, consequently, the deed was required to be compulsorily registered in the State of Uttar Pradesh and it is an undisputed case between the parties in the present case that the adoption deed was executed on 15.05.1931. The petitioner is not disputing the execution of adoption deed but challenging the validity of the same on the ground that it was neither stamped nor registered. And as discussed above, both the things were not required at the time when adoption deed was executed.

16. The petitioner had not challenged the order of mutation passed in the year 1934, in favour of respondent no. 4 under Section 34 of the L.R. Act, 1901 which is also admitted by the counsel for the petitioner that the name of respondent no. 4 was entered in the revenue records and the same was never challenged under the provisions of either Land Reforms Act, 1950 or in the U.P. Tenancy Act. It is also admitted by learned counsel for petitioner that when the U.P.Z.A and L.R. Act, 1950 had come into force w.e.f 26.01.1951, the entry in the name of respondent no. 4 was intact and the petitioner had not challenged the entry under the provisions of the Act, 1950. When the village had come under consolidation in the year 1972, then for the first time on 17.07.1978 i.e. after about more than 45 years the validity of the adoption deed was challenged by the petitioner in the consolidation proceedings.

17. The judgments relied by the learned counsel for petitioner are not applicable in the facts and circumstances of the present case, as far as the judgment relied upon by learned counsel for petitioner in the Case of **A. Raghavamma (supra)** quoting paragraph-14 of the said judgment, that too is not applicable in the present case for the reason that in paragraph-14 of the judgment, the procedure or the custom for adoption was not followed and it was not on the point that the adoption deed was neither registered nor stamped.

18. The judgments relied upon by learned counsel for petitioner in the case of **Suraj Lamp & Industries Pvt Ltd (supra)**, **Mohammed Akram Husain (supra)** & **Vinod Kumar (supra)** deal with validity of an unregistered sale deed as admissible in evidence, so all these judgments pertain to sale deed and not the adoption deed hence the judgments are not applicable.

19. The other judgment relied by learned counsel for petitioner in the case of **Yellapu Uma Maheswari (supra)** also deals with agreement to sale and not related to the adoption deed.

20. The adoption is a devolution and not a transfer of the property of the adoptee. The adopted child for all purposes from the date of adoption, all the ties of the child in family of his or her birth shall be deemed to be severed. On adoption, the adoptee gets transplanted in the family in which he is adopted with same rights as that of a natural born child.

21. The law is otherwise as held by this Court in the case of **Lal Behari vs. Ram Adhar; 1985 LCD 415**, wherein this Court has dismissed the petition wherein the petitioner was claiming his co-tenancy rights under the Consolidation proceedings after 11 years without challenging or making any claim during the first settlement and the second settlement.

22. Here, the petitioner has not raised any objection when the application under Section 34 of the Land Reforms Act, 1901 was allowed in favour of respondent no. 4 whereafter, his name was mutated. Then, the Act, 1950 has come into force on 26.01.1951 and the entry was intact, even at that time, the petitioner had not challenged and for the first time after about more than 45 years, in the consolidation proceedings, the petitioner had raised the objections regarding the validity of the adoption deed, cannot be raised at such a belated stage in the light of the law laid down by this Court in the case of **Ramnath Singh and another vs. D.D.C.** reported in **[2014(32) LCD 659]**.

23. In view of the facts, circumstances and discussion made hereinabove, the present writ petition is devoid of merit and no interference is called for in the judgments dated 27.01.1982 passed by respondent no. 1 i.e. Deputy Director Consolidation, the impugned appellate order dated 17.07.1979 passed by respondent no. 2 i.e. Assistant Settlement Officer Consolidation and the judgment and order dated 03.10.1978 passed by respondent no. 3 i.e. Consolidation Officer.

24. The present writ petition is **dismissed**.

Order Date :- 23.5.2024
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