

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.664 of 2010

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Biresh Kumar @ Biresh Kumar Yadav, Son of Late Vishwamohan Rai ,
Resident of Village- Fatehpur Chain, P.O.- Ramgarha, (Basant), P.S.-
Awatar Nagar, District-Saran **-Plaintiff-Appellant- Appellant.**

Versus

1. General Manager, N.E. Railway, Gorakhpur, P.S. & District-Gorakhpur,
U.P. now East Central Railway at Hajipur , District-Vaishali.
2. Divisional Railway Manager, N.E. Railway , Sonapur Division, now
East Central Railway, at Sonapur, P.S.-Sonapur, District-Saran.
3. Divisional Personal Officer at D.R.M. Office at Sonapur N.E. Railway,
now East Central Railway, P.S.-Sonapur, District-Saran.
4. Divisional Mechanical Engineer, at D.R.M. Office at Sonapur,
N.E.Railway , now East Central Railway, Sonapur, P.S.-Sonapur,
District-Saran.
5. Divisional Accounts Officer, at D.R.M. Office, at Sonapur,
N.E.Railway , now East Central Railway, Sonapur, P.S.-Sonapur,
District-Saran .
6. Chief Crew Controller, Locoshed Sonapur, at Sonapur, N.E.Railway ,
now East Central Railway, Sonapur, P.S.-Sonapur, District-Saran .
- 6.A. Union of India through General Manager, Gorakhpur, P.S.& District-
Gorakhpur, U.P. now East Central Railway, at Hajipur, District-Vaishali.
7. Saraswati Devi W/o Late Vishwamohan Rai , Resident of Village-
Fatehpur Chain, P.O.- Ramgarha, (Basant), P.S.- Awatar Nagar,
District-Saran, presently residing at Sahpur Diara, P.O. & P.S.- Sonapur,
District-Saran. **-Defendants/Respondents/Respondents**

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Appearance :

For the Appellant/s : Mr. Suresh Pd. Singh-1
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

7 12-08-2015

Heard the learned counsel for the appellant.

The plaintiff is the appellant in this appeal

against the judgment and decree of affirmance dismissing the suit.

The plaintiff has filed the suit for declaration that he is adopted son of Late Vishwamohan Rai who was an employee in the railway department and he is entitled to all the benefits accruing to late Vishwamohan Rai after his death. Two sets of defendants are there in the suit; the first set is railway officials and the second set i.e. defendant no.7 is widow of Late Vishwamohan Rai.

The plaintiff in his plaint has given the details of the adoption and the ceremony thereto. It has also been the case of the plaintiff that his adoptive mother i.e. defendant no.7 has taken a reverse stand under the influence of her brother and has been denying the fact of adoption. The defendants including the defendant no.7 in the written statement have contested the claim of the plaintiff. It has been the specific case of the defendant no.7 that her husband never adopted the plaintiff as alleged and she had never given consent for the alleged adoption.

The trial court returned the finding on all the issues against the plaintiff and has come to the conclusion that the plaintiff has failed to establish that he had been adopted by Vishwamohan Rai with the consent of his wife (defendant no.7).

In appeal by the plaintiff, the appellate court after reappraisal of evidence has concurred with the findings of the trial court and dismissed the appeal by the impugned judgment and decree.

The learned counsel for the appellant has submitted that all the witnesses of the plaintiff have supported the fact that the adoption ceremony was held in presence of the friends and relatives and as such both the courts below ought to have held that the plaintiff was adopted by Vishwamohan Rai. It has also been submitted that Vishwamohan Rai had filed affidavit before the defendants-railway officers stating the fact regarding the adoption of the plaintiff Vishwamohan Rai by and the affidavit was also forwarded by the Divisional Manager alongwith a forwarding letter. It has, however, been accepted by the learned counsel that the plaintiff did not make prayer before the court to issue a direction to the defendant railway officers to produce the said affidavit or the forwarding letter but the learned counsel has prayed that the hearing of this appeal may be adjourned to enable the appellant to obtain the said information under the Right to Information Act and produce the same before this Court. No other submission has been made on behalf of the appellant.

After perusal of the judgments of both the

courts below and considering the submissions, it is limpid that both the courts below after scrutiny of the pleadings and evidence of the parties have concurrently come to the finding that the plaintiff has failed to establish his valid adoption by Vishwamohan Rai. In particular, both the courts below have also concluded that the plaintiff has failed to lead cogent evidence to show that the consent of the wife of Vishwamohan Rai had been obtained before the adoption of the plaintiff, in view of the specific denial in that regard by the wife of Vishwamohan Rai who is defendant no.7 in the suit. With regard to the failure of the plaintiff to make appropriate prayer before both the courts below for production of the affidavit or forwarding letter as claimed by the plaintiff to be there with defendant railway offices, the courts below have rightly come to the conclusion that the plaintiff has failed to establish the said fact also. This Court is not persuaded to find perversity or unreasonableness in the findings recorded by the courts below on the basis of the evidence on record. So far as the prayer on behalf of the appellant for adjournment to enable him to seek instruction under the Right to Information Act is concerned, this Court declines the same for the reason that at the second appellate stage no fresh evidence can be allowed to be adduced to interdict

the concurrent findings of facts and that too when such evidence was within the knowledge of the plaintiff during the pendency of the suit and no effort has been made to bring the same on record.

Ex consequenti, this Court does not find any substantial questions of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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