NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 7165 of 2009

1. Vishwanath aged about 54 years, S/o Keshav alias Keshav Prasad, Caste Swarnkar (Gold Smith), R/0 village – Kotmi Sonar, Tahsil – Akaltara, District Janjgir-Champa (Chhattisgarh)

---- Petitioner

Versus

1. Chhattisgarh Board of Revenue Through : President, Bilaspur (C.G.)
2. Collector (Revenue), District Janjgir-Champa (C.G.)
3. Sub Divisional Officer (Revenue), District Janjgir – Champa (C.G.)
4. Satyanarayan (since deceased)

4A Lalit Kumar Swarnkar S/o Late Satyanarayan, R/o Near Jalaram Mandir, Tikrapara, Bilaspur (C.G.).

4B Anil Kumar Swarnkar S/o Late Satyanarayan, R/o Near Jalaram Mandir, Tikrapara, Bilaspur (C.G.)

---- Respondents

For Petitioner.	-	Mr. V.G. Tamaskar, Advocate.
For Respondent No. 1	-	None.
For Respondents No. 2 & 3	-	Mr. Adhiraj Surana, Deputy Govt. Advocate.
For Respondent No.4	-	Mr. Hari Agrawal, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

01/07/2015

01. Challenge in the present petition is to the orders dated 22.01.2007 passed by Sub Divisional Officer (Revenue), Janjgir-Champa in First Revenue Appeal No.72/A-6/2005-2006, 11.09.2007 passed by the Collector, Janjgir-Champa in Second Revenue Appeal No.23/A - 06/2006-07 and order dated 03.10.2009 passed by the President, C.G. Revenue Board, Bilaspur in Review Case No.RN/06/R-A-6/900/2007, whereby the appeal and revision were dismissed by the Revenue Court.

02. On 04.08.2005, the petitioner Vishwanath filed an application before the Additional Tahsildar, Janjgir-Champa for mutation of the land bearing Khasra No. 19 total area 4.97 acres on the ground that he is

adopted son of Satyabhama Bai W/o Ram Narayan. According to the petitioner, the land was originally recorded in the name of Ram Narayan, who died in the year 1998 and on 16.03.2004 the petitioner was adopted by Satyabhama by a registered deed. The application filed by the petitioner was granted by the Additional Tahsildar holding that as the petitioner was adopted by Satyabhama, he being the legal heir was entitled for recording his name on the land by way of mutation. The order of Additional Tahsildar was challenged by Satyanarayan, deceased Respondent No.4, before the Sub Divisional Officer (Revenue) and vide order dated 22.01.2007 the Sub Divisional Officer set-aside the order passed by the Additional Tahsildar, Janjgir-Champa mainly on the ground that the petitioner was adopted when he was 49 years of age, whereas as per the provision of Section 10 of the Hindu Adoption and Maintenance Act, 1959 (hereinafter referred to as 'the Act 1959'), the adoption of a person more than 15 years of age cannot take place. It has been further held by the Sub Divisional Officer, Janjgir-Champa that no paper publication thereof was made by the Additional Tahsildar and yet the order was for recording the name of the petitioner on the land in question by way of mutation. Against the order of Sub Divisional Officer, an appeal was preferred by the petitioner before the Collector, Janjgir-Champa, however, vide order dated 11.09.2007, his appeal was dismissed by the Collector. The order passed by the Collector was unsuccessfully challenged by the petitioner before the Board of Revenue. However, vide order dated 03.10.2009, the revision petition preferred by the petitioner was also dismissed.

03. In this petition, the petitioner has challenged all the three orders passed by the Revenue Authority i.e. the order dated 22.01.2007 passed by the Sub Divisional Officer, Janjgir-Champa, order dated 11.09.2007 passed by the Collector, Janjgir-Champa and order dated 03.10.2009 passed by the Board of Revenue, Bilaspur.

04. Learned counsel for the petitioner submits :-

(a) That, in fact, the petitioner was adopted during the life time of Ram Narayan itself. However, a formal deed of adoption was registered on 16.03.2004 during the life time of Satyabhama and Satyabhama had duly signed the said adoption deed.

(b) That, once registered adoption deed is there in favour of the petitioner, the authenticity of the same can only be questioned before the civil Court and the revenue authorities have no jurisdiction to hold the said adoption deed illegal or *void ab initio*. Unless proper evidence is adduced before the competent Court of jurisdiction and finding is recorded, validity of the adoption deed cannot be doubted.

(c) that by choosing correct remedy the deceased respondent Ram Narayan had filed a civil suit before the civil Court but the same was dismissed for want of prosecution on 4.4.2012. The fact that the revenue authorities have passed the orders holding the adoption deed as invalid was brought to the knowledge of the civil Court by filing all those documents and yet knowing full well that unless a decree is passed by the civil Court in favour of the deceased respondent, the respondent chose not to pursue the suit which was dismissed for want of prosecution and a decree was also drawn by the civil Court. Unless the said decree is set aside, there would be presumption in favour of the petitioner that he is a valid adopted son of Ram Narayan and Satyabhama. It has been further argued that no application was filed by the deceased respondent for restoration of the suit.

(d) That, the Revenue Authority have erred in law in recording the finding that the adoption deed in favour of the petitioner was null and void as at the time of registration of adoption deed the petitioner was 49 years of age. He also submits that had the proper opportunity been granted before the Civil Court for adjudicating the authenticity of the Will, evidence could have been adduced by the petitioner to the effect that the said Will was a valid one.

He placed reliance on the judgments in the matters of ***M/s Parasram Harnand Rao Vs. M/s Shanti Prasad Narinder Kumar Jain and another, (1980) 3 SCC 565; Dr. P.Nalla Thampy Thera Vs. B.L.Shanker and others, (1984) Suppl. SCC 631*** and ***Mst. Deu and others Vs. Laxmi Narayan and others (1998) 8 SCC 701****.*

05. On the other hand, supporting the impugned orders passed by the Revenue Authority, it has been argued on behalf of the private respondent that as the adoption deed dated 16.3.2004 is *void ab initio*, the revenue authorities are well within their jurisdiction to pass the orders nullifying the illegal mutation in favour of the petitioner. Though the civil suit was dismissed for want of prosecution but once there is a valid order in favour of the respondents, this Court cannot interfere with the orders of the revenue authorities. He submits that presumption under Section 16 of Hindu Adoption and Maintenance Act cannot be drawn as from the adoption deed it is apparent that the petitioner himself has given his adoption to Satyabhama which is not permissible under the law. Lastly it has been argued that in case this petition is allowed, liberty may be given to the private respondents to file appropriate application before the civil Court for reviving the civil suit.

Reliance has been placed on the judgments in the matters of ***Dhanraj Vs. Smt. Suraj Bai, AIR 1975 SC 1103*** and ***Madan Lal Vs. Vinod Kumar and others, (2008) 4 MPHT 418***.

06. Heard counsel for the parties and perused the material on record.

07. The revenue authorities have passed the orders in favour of the private respondent *prima facie* on the ground that the adoption deed dated 16.3.2004 is *void ab initio*. This Court finds it difficult to accept such proposition especially when the deceased respondent filed a suit

for declaration of the adoption deed dated 16.3.2004 as null and void. Here in this case the adoption deed is a duly registered document and unless the validity of the same is decided by the civil Court by giving proper opportunity to the parties to adduce evidence, validity of the same cannot be doubted and the same cannot be held to be null and void. It appears that deceased respondent was rightly pursuing his remedy before the civil Court but having obtained the order from the revenue authorities after bringing all those facts on record before the civil Court, he chose not to pursue the civil suit which was ultimately dismissed for want of prosecution. As long as the registered adoption deed is there in favour of the petitioner, presumption is in favour of the petitioner and not the private respondents regarding validity of the same unless the same is declared null and void by the competent civil court. The judgments cited by the respondents are of no help to them because in the present case the revenue authorities have held the adoption deed to be null and void without any evidence being adduced by the parties.

08. In the facts and circumstances of the case, the orders impugned passed by the revenue authorities cannot be allowed to stand, the same are set aside. It would be open for the private respondent to avail the remedy available to them under the law. The petition is thus allowed.

Sd/

(Pritinker Diwaker)
Judge

Khan