

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

APPEAL SUIT No. 2629 OF 1996

JUDGMENT:

The unsuccessful plaintiff in Original Suit No.30 of 1988 on the file of the Court of Subordinate Judge, Medak (for short, 'the trial Court'), preferred this Appeal challenging the decree and judgment dated 30.12.1995; whereunder and whereby the suit filed by the plaintiff, for declaration of title and perpetual injunction, was dismissed.

2. 1st appellant herein was the plaintiff and the respondents 1 to 5 herein were the defendants before the trial Court. For convenience of reference, the ranks given to the parties in O.S. No.30 of 1988 will be adopted throughout this judgment.

3. During pendency of the Appeal, plaintiff-1st appellant herein died and appellants 2 to 5 herein were brought on record, as his legal heirs, *vide* order of this Court in A.S.M.P. No.251 of 2012, dated 08.10.2013 and the Appeal against 2nd defendant-respondent herein was dismissed for default *vide* Court order dated 09.02.2010.

4. The plaintiff filed the suit seeking a decree for declaration of title and perpetual injunction restraining the defendants 1 to 5 from interfering with his possession and enjoyment over the suit schedule land.

It is the case of the plaintiff that father of the plaintiff and husband of the 1st defendant are natural brothers and the husband of 1st defendant went in illitam adoption during lifetime of Jala Chinna Balaiah and married 1st defendant. The plaintiff, who is the adopted son of 1st defendant and her husband, was taken in adoption during the lifetime of husband of 1st defendant. After the death of husband of 1st defendant, the plaintiff being the adopted son succeeded the

property along with 1st defendant. It is further alleged that the 1st defendant and her husband during life time brought the plaintiff as an adopted son when he was 5 or 6 years old and performed marriage of the plaintiff. After death of husband of 1st defendant, the plaintiff and 1st defendant used to reside in the same house. The name of the plaintiff was mutated in the Government revenue records for A schedule property. The plaintiff being the adopted son of 1st defendant and her husband is entitled to half share in the ancestral property. There were some disputes between 1st defendant and the plaintiff and a panchayat was held on 31.05.1988 in the presence of Village Sarpanch and community elders. Accordingly, the village elders and Sarpanch passed a resolution and the same was accepted and in pursuance of it executed a document. The 1st defendant is entitled to 10 quintals of paddy per year and Rs.200/- agreed to be paid by the plaintiff to the 1st defendant towards maintenance on condition that the 1st defendant shall not sell, mortgage or gift the suit schedule property to any other person; incorporating those conditions an agreement dated 31.05.1988 was executed by 1st defendant in favour of the plaintiff. Defendants 2 to 5 are the third parties no way concerned with the suit schedule property made an attempt to interfere with the peaceful possession and enjoyment of the property of the plaintiff, however, their highhanded act was resisted with great difficulty by the plaintiff. While the matter stood thus, the defendants negotiated to sell the schedule property to the defendants 2 to 5, hence the plaintiff filed the suit for declaration of title and perpetual injunction.

5. The 1st defendant filed written statement contending that the plaintiff is not the adopted son of 1st defendant and her husband, the name of the plaintiff is Chilka Subhash but not Jala Subhash. She admitted about the illatom adoption of her husband by Jala Chinna

Balaiah and performance of her marriage; she denied her residing with the plaintiff in one house while contending that the enumeration list was brought into existence in collusion with the Sarpanch; she also denied mutation of name of the plaintiff in the revenue records for the agricultural land after death of her husband while contending that due to collusion between the revenue authorities and the plaintiff, his name was mutated without her notice and hence the plaintiff is not entitled to claim any title over the schedule property.

The 1st defendant further contended that the 2nd defendant is the husband of 1st defendant's sister; defendants 3 and 5 are the natural sons of defendants 2 and 4, 4th defendant is the wife of 5th defendant. 1st defendant and her husband adopted 3rd defendant Jala Muttaiah about 11 years ago, according to the custom prevailing in the community. Thus, the alleged adoption of plaintiff by 1st defendant and her husband is false and 3rd defendant alone is their adopted son, however, the plaintiff after death of husband of 1st defendant, used to visit 1st defendant and assist her in agricultural operations. Taking advantage of the situation, the plaintiff with a dishonest intention colluded with the Village Officers, got mutated his name in respect of the schedule property. Therefore, there is no adoption much less valid adoption of plaintiff by 1st defendant and her husband and thereby the plaintiff is not entitled to a decree for declaration of title and perpetual injunction. She denied the alleged agreement between the plaintiff and 1st defendant for delivery of 10 quintals of paddy and payment of Rs.200/- to 1st defendant by the plaintiff and finally prayed to dismiss the suit.

6. Defendants 2 to 5 filed a memo adopting the written statement filed by 1st defendant.

7. Basing on the above pleadings, the trial Court framed the following issues:

1) Whether the plaintiff is entitled for declaration and perpetual injunction?

2) Whether the plaintiff is adopted son of the 1st defendant and her husband late Jala Narsaiah?

3) Whether the 1st defendant has executed a document in favour of the plaintiff on 31.05.1988 as alleged?

4) Whether the 3rd defendant is adopted son of 1st defendant and her husband late Jala Narsaiah?

5) Whether the Court fee paid by the plaintiff is correct?

6) To what relief?

8. During course of trial on behalf of the plaintiff, PWs.1 to 4 were examined and Exs.A-1 to A-7 were marked. On behalf of the defendants DWs.1 and 2 were examined, Ex.B-1 (*sic*) was marked.

9. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court dismissed the suit holding that the plaintiff was not the adopted son and thereby not entitled to claim any right in the schedule property.

10. Aggrieved thereby, the unsuccessful plaintiff therein preferred this Appeal on various grounds. The main contentions of the plaintiff-appellant are that the trial Court did not appreciate the evidence in proper perspective and that mutation of name of the plaintiff in the revenue record is a strong circumstance to believe that the plaintiff is the adopted son of 1st defendant and her husband; apart from that, residing with 1st defendant by plaintiff and mentioning the same in the

enumeration lists of the Village is another strong circumstance to believe that the plaintiff is the adopted son of 1st defendant and her husband but the trial Court did not consider the evidence on record in proper perspective and committed an error in dismissing the suit and consequently failed to grant a decree declaring the title of the plaintiff over the schedule property and committed an error.

11. During course of argument, Sri K. Raji Reddy, learned counsel for the plaintiff-appellant, would contend that the 1st defendant herself gave statement before the Tahsildar to the effect that the plaintiff is the adopted son of 1st defendant and her husband and the said statement is sufficient to come to a different conclusion that the plaintiff is the adopted son of 1st defendant and her husband and the said statement is filed along with a separate petition in A.S.M.P. No.403 of 2015 under Order XLI Rule 27 of C.P.C. to receive the documents set out in the last and mark them as exhibits on behalf of the plaintiff-appellant. If the documents produced as additional evidence are considered, no further proof is required to establish adoption of the plaintiff by 1st defendant and her husband during the life time of the plaintiff, therefore, requested to receive the documents and consider those documents along with evidence before the trial Court and pass a decree in favour of the plaintiff setting-aside the decree and judgment under challenge.

12. Sri K. Goverdhan Reddy, learned counsel for the defendants-respondents, argued totally in support of the finding recorded by the trial Court and mainly contended that mere mutation of the name of the plaintiff in the revenue records for the schedule property is not sufficient to believe the adoption, in the absence of proof of giving and taking which is a pre-requisite to accept the adoption of a Hindu. In the absence of proof of ceremony of adoption under Section 11 of the Hindu Adoptions and Maintenance Act, 1956 the Court cannot readily accept the adoption of the plaintiff by 1st defendant and her husband;

when once the adoption is not proved by the plaintiff, he is not entitled to claim share in the property of 1st defendant and her husband and prayed to dismiss the Appeal confirming the decree and judgment of the trial Court.

13. Considering rival contentions, perusing the material available on record including the decree and judgment under challenge, the points that arise for consideration are:

- 1) Whether the plaintiff is the adopted son of 1st defendant and her husband?
- 2) Whether the agreement dated 31.05.1988 is true, valid and binding on the 1st defendant? If not, whether the plaintiff is entitled for declaration of title to the schedule property?
- 3) Whether the plaintiff is in lawful possession and enjoyment of the property as on the date of filing the suit and whether the defendants made any attempt to infringe or invade the legal right of the plaintiff in the suit schedule property? If so, are the defendants be restrained, by granting perpetual injunction, from interfering with the possession and enjoyment of the plaintiff?

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14. **POINT No.1:** The plaintiff filed the suit claiming as adopted son of 1st defendant and her husband and it is pleaded in the plaint that at his 5th or 6th year, 1st defendant and her husband brought him as an adopted son and thereafter performed his marriage. Therefore, he is an adopted son of 1st defendant and her husband. After death of Jala Narsaiah, husband of 1st defendant, he is entitled to half share in the schedule property; whereas, defendants denied adoption of the plaintiff by 1st defendant and her husband while contending that 3rd

defendant is the adopted son of 1st defendant and her husband, therefore, the real controversy is with regard to adoption of the plaintiff by 1st defendant and her husband. In Para 2 of the plaint, it is specifically averred that the plaintiff was adopted by 1st defendant and her husband during his 5th or 6th year but there is no specific pleading as to when he was adopted by the 1st defendant and her husband.

15. When the plaintiff claiming that he is the adopted son of 1st defendant and her husband, it is for him to prove that he is the adopted son of 1st defendant and her husband to claim share in the property of late Narsaiah along with 1st defendant. It is well settled that a person who seeks to displace the natural succession to property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and its validity as held by the Apex Court in

A. Raghavamma and another Vs. A. Chanchamma and another^[1]. It is also true that the evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and probable as to give no occasion for doubting its truth as held by the Apex Court in ***Kishori Lal Vs. Chaltibai***^[2]. For a valid adoption, the physical act of giving and taking is an essential requisite, a ceremony imperative in all adoptions, whatever the caste. And this requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exists an expression of consent or an executed deed of adoption as held by the Apex Court in ***Shoshinath Vs. Krishnasunder***^[3] and in ***Lakshman Singh Vs. Smt. Rupkanwar***^[4], held as follows:

“Under the Hindu Law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and

receiving in adoption is obviously to secure due publicity. To achieve this object it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of handing over the boy or receiving him, as the case may be, to a third party.”

16. The same principle is reiterated in ***L. Debi Prasad (Dead) by L.Rs Vs. Tribeni Devi and others***^[5]. The facts of the above decision are almost identical to the present facts of the case for the reason that on the basis of adoption the plaintiff therein claimed title to the property and sought for declaration of title but the plaintiff failed to prove the requisite of giving and taking as contemplated under Section 11 (vi), the adoption was disbelieved and dismissed the suit.

17. In another judgment of the Apex Court in ***Harnek Singh Vs. Pritam Singh and others***^[6], the Apex Court adverted to Section 11 of the Hindu Adoptions and Maintenance Act referring to the principles laid down by the Apex Court in various judgments including the judgments of Privy Council, Lahore etc., and held that clause (vi) of Section 11 specifically provides that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with the intent to transfer the child from the family of its birth. A child who is abandoned or whose parentage is not known may also be taken in adoption provided the giving and taking ceremony is done from the place of family where it has been brought up to the family of its adoption.”

18. In ***Laxmibai (Dead) through L.Rs. and another Vs. Bhagwantbuva (Dead) through L.Rs and others***^[7], when similar question came up before the Apex Court while deciding the issue of adoption, the Apex Court relied on its earlier judgment in ***Smt. Ramkanya Bai and another Vs. Jagdish and others***^[8]

19. In ***V.T.S. Chandarasekhara Mudaliar (Died) and Others Vs. Kulandaivelu Mudaliar and Others***^[9], the Apex Court observed as follows:

“13. Adoption is made to ensure spiritual benefit for a man after his death. The primary object of adoption was to gratify ancestors by means of annual offerings, and therefore it was considered necessary that the offerer, must as far as possible be a reflection of the real descendant, and must look as much like a real son as possible, and must certainly not be one, who could never have been a son.”

20. Thus, the primary purpose of adoption is to make actual affluence of deceased adopted father. In any view of the matter, it is clear from the provisions of the Hindu Adoptions and Maintenance Act, more particularly, Section 6 which prescribed requisites of valid adoption and similarly Section 11 prescribed other conditions for valid adoption but this Court is not concerned with the requirements under Section 11 (i to iv) of the Act, at best clause (vi) of Section 11 is relevant for the purpose of deciding the issue involved in this matter and it reads as follows:

“The child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth (or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up) to the family of its adoption.”

21. Considering the law declared by the Apex Court in the decisions referred *supra* and Section 11 (vi) of the Hindu Adoptions

and Maintenance Act, giving and taking of the child is essential to accept the adoption as valid adoption but no specific or particular form is prescribed for giving and taking of a child to constitute a valid adoption. Therefore, giving and taking of a child is absolute necessary to validate the adoption under the Hindu Law.

22. In the present case, in Para 2 of the plaint, it is specifically alleged as follows:

“The plaintiff submits that defendant No.1 and her husband took the plaintiff as an adopted son, when the plaintiff was 5 or 6 years old.”

23. A bare reading of the specific pleading in Para 2, the plaintiff was taken by the 1st defendant and her husband at his 5th or 6th year. At best, even if it is believed, the boy was taken by 1st defendant and her husband and there is no need to establish that the natural parents of the plaintiff gave the boy to 1st defendant and her husband. Mere bringing him up and performing marriage of 1st defendant and her husband without proving the essential requirement to constitute a valid adoption as required under Section 11 (vi) of the Hindu Adoptions and Maintenance Act, the alleged adoption of the plaintiff cannot be said to be a valid adoption.

24. When I adverted to the evidence on record, PW.1 as usual testified in his examination-in-chief that 1st defendant and her husband Jala Narsaiah took him as an adopted son; except that there is nothing to establish that the natural parents of the plaintiff gave him to the adopted parents so as to transfer the child from the family of natural parents to the family of adopted parents. In his cross-examination, PW.1 admitted that there was no evidence to prove his adoption but considering the evidence on record of PW.1, there is nothing to establish the requirement as contemplated under Section 11(vi) of the Hindu Adoptions and Maintenance Act *i.e.*, giving and taking of a child

with an intent to transfer the child from the family of natural parents to the family of adopted parents.

25. PW.2 in his examination-in-chief testified that the plaintiff is the adopted son of 1st defendant. In the cross-examination, he asserted that he was present at the time of adoption of 1st defendant and her husband and adoption deed was executed at the house of 1st defendant and it took place about 20 years back. The evidence of PW.2 is totally contrary to the evidence of PW.1 for the reason that PW.1 in his 1st sentence of cross-examination asserted that there was no adoption deed; surprisingly, PW.2 invented a theory of execution of adoption deed in his presence at the house of 1st defendant about 20 years back.

26. Similarly, PW.3, one Srinivasa Reddy, examined on behalf of the plaintiff, also spoke about the adoption but in the cross-examination he admitted that he was not present at the time of adoption and he has not seen deed of adoption of plaintiff by 1st defendant and her husband. The other witness was examined to prove the agreement Ex.A-7 and his evidence needs no consideration to decide the validity of adoption.

27. The evidence of PWs.1 to 3 is totally conflicting to one another and when the evidence is conflicting, the Court can disbelieve the evidence of the witnesses. Even after consideration of entire material afresh by this Court, I find no iota of evidence to establish giving and taking of the plaintiff by his natural parents to the adopted parents. The evidence of PWs.1 to 3 is not inspiring confidence of this Court and the improvement made by PW.2 in his cross-examination led me to disbelieve the evidence of PWs.1 to 3 to establish valid adoption.

28. When there is a conflict of oral evidence on any fact in issue

and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate Court should permit the findings of fact rendered by the trial Court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial Court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. When the Court of original jurisdiction has considered oral evidence and recorded findings after seeing the demeanour of witnesses and having applied its mind, the appellate Court is enjoined to keep that fact in mind. It has to deal with the reasons recorded and conclusions arrived at by the trial Court. Thereafter, it is certainly open to the appellate Court to come to its own conclusion if it finds that the reasons which weighed with the trial Court or conclusions arrived at were not in consonance with law as held by the Apex Court in ***Jagdish Singh Vs. Madhuri Devi***^[10].

29. In the instant case, the trial Court based on the improbable evidence available on record concluded that the plaintiff failed to establish the valid adoption by 1st defendant and her husband at his 5th or 6th age, more particularly, establishing the requirement of ceremony of giving and taking under Section 11 (vi) of the Hindu Adoptions and Maintenance Act.

30. The pleading and evidence on record is totally silent and improved the case in the evidence of PW.2 with regard to nature of adoption. Therefore, the evidence of PWs.1 to 3 is highly doubtful and on the strength of such evidence, it is difficult for me to accept the contention of the plaintiff that he is the adopted son of 1st defendant and her husband. The trial Court, after appreciation of entire evidence taking into consideration of the improbability in the case of the plaintiff, disbelieved the adoption pleaded by the plaintiff and the finding of the trial Court is free from any legal infirmity and does not call for

interference of this Court.

31. Yet, the learned counsel for the plaintiff-appellant would contend that the statement of 1st defendant recorded by the Tahsildar admitting that the plaintiff is the adopted son of 1st defendant and her husband, if taken into consideration, no further proof is required. The alleged statement recorded by the Tahsildar was not brought on record but filed along with a petition in A.S.M.P. No.403 of 2015 under Order XLI Rule 27 of C.P.C. and the same is not received and dismissed the petition today *vide* separate order. But the law declared by the Apex Court is that even if there is a deed of adoption, unless the necessary ceremony of giving and taking is established, the adoption is still not valid. One of the contentions of learned counsel for the plaintiff-appellant is that after death of Jala Narsaiah, the name of the plaintiff was mutated in the revenue records and other concerned records maintained by the panchayat for the schedule property. Mere mutation of name in the records is not sufficient to believe the valid adoption, but still it is the obligation of the plaintiff to establish valid adoption by independent evidence. Therefore, this contention cannot be accepted

32. On over all consideration of the entire material available on record, I find no iota of evidence to establish the valid adoption of the plaintiff by 1st defendant and her husband. Hence, the finding of the trial Court is hereby confirmed holding this point in favour of the defendants and against the plaintiff.

33. **POINT Nos.2 & 3:** In view of my finding on point No.1, the plaintiff failed to establish his valid adoption by 1st defendant and her husband thereby claiming any share being the adopted son does not arise and question of declaring his right in the property would not arise.

34. According to Order XX Rule 5 of C.P.C., it is the duty of the

Court to record finding on each and every issue but, if a finding on one issue is sufficient for decision in any Suit or Appeal, the Court need not record separate finding on the other issues. Hence, in view of the same, detailed and elaborate discussion on Points 2 and 3 is avoided in this Appeal. Hence, these issues are not answered. However, the evidence on record established that the plaintiff is not the adopted son of 1st defendant and her husband consequently not entitled to claim declaratory relief under Section 34 of the Specific Relief Act, 1963 which is purely a discretionary relief. Unless the plaintiff approached the Court with clean hands, the Court shall not exercise such discretion in favour of the plaintiff. Here, the plaintiff approached the Court with false plea of adoption by 1st defendant and her husband and ultimately failed to establish the valid adoption of the plaintiff by the 1st defendant and her husband. In such case, I am unable to exercise my discretion under Section 34 of the Specific Relief Act. Hence, the trial Court did commit no error warranting interference of this Court. Hence, the finding of the trial Court is hereby confirmed holding these points in favour of the defendants and against the plaintiff.

35. In view of my foregoing discussion, I find that the Appeal Suit is devoid of merits and deserves to be dismissed.

In the result, the Appeal Suit is dismissed confirming the decree and judgment dated 30.12.1995, passed in Original Suit No.30 of 1988 by the learned Subordinate Judge, Medak.

In consequence, miscellaneous petitions, if any, pending in this Appeal, shall stand dismissed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 01-06-2015.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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- [\[1\]](#) 1964 (2) SCR 933
[\[2\]](#) 1959 Supp 1 SCR 698
[\[3\]](#) (1881) LR 7 IA 250
[\[4\]](#) (1962) 1 SCR 477
[\[5\]](#) AIR 1970 SC 1286
[\[6\]](#) AIR 2013 SC 3789
[\[7\]](#) AIR 2013 SC 1204
[\[8\]](#) AIR 2011 SC 3258
[\[9\]](#) AIR 1963 SC 185
[\[10\]](#) AIR 2008 SC 2296