

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

A.S.No.1092 OF 1997

JUDGMENT:

The unsuccessful plaintiffs in O.S.No.1 of 1995 before the agent to the Government, East Godavari, Kakinada preferred this appeal challenging the decree and judgment dated 14-03-1996, wherein the suit filed by the plaintiff for declaration of his title and for permanent injunction from interfering with the possession and enjoyment of the plaint schedule property and recovery of possession was dismissed.

For convenience of reference, the ranks given to the parties before the agent to Government will be adopted throughout the judgment.

The plaintiff filed suit for the aforesaid reliefs alleging that the plaintiff is the adopted son of Allada Venkata Rao and Satyanarayanamma of D.Bhimavaram village of Addateegala Mandal. The family of Venkat Rao and Satyanarayanamma possessed the properties, which are described in the schedule annexed to the plaint. Venkat Rao, adoptive father of the plaintiff died when the plaintiff was young and later his adoptive mother Satyanarayanamma died about four years prior to filing suit. During her life time, the plaintiff's adoptive mother used to manage the family affairs and subsequently, the plaintiff is looking after the affairs of the family.

After the death of Satyanarayanamma, the defendants colluded together and put the plaintiff under threat of fear, unauthorizedly occupied the plaint schedule property in the last week of April, 1990 and took away the usufruct, caused damage to the trees, however their highhanded act was resisted till December, 1991. Later the defendants threatened the plaintiff with dire consequences. Immediately, the plaintiff approached the revenue and police authorities, made a representation to provide protection to his life and property. The efforts made by the plaintiff became invain. The elders of the village also advised the defendants and their men not to interfere with the possession and enjoyment of the plaintiff over the schedule property. But the defendants openly proclaiming that they will not vacate the land and nobody will eject from the land. The plaintiff was waiting for the last three years approaching the authorities constantly, but his efforts became invain. Therefore, the plaintiff was compelled to file suit for declaration and recovery of possession of schedule property and for consequential injunction.

The 1st defendant filed written statement denying the adoption of the plaintiff by Allada Venkata Rao and Satyanarayanamma of D.Bheemavaram village of Addateegala Mandal. The name of plaintiff is Kattagarula Satyanarayana not Alladai Veera Venkata Satyanarayana. He is the son of Kattagarula Maridayya and Veeramma of Lingamparthi village in Yeleswaram Mandal. The said Veera Venkata Satyanarayana is not related to Allada Venkata Rao and Satyanarayanamma, the alleged adoptive parents.

The plaint schedule property is the exclusive property of said Allada Venkata Rao and Satyanarayanamma. They were not blessed with any children and there are no legal heirs to them and they never adopted the plaintiff. After death of her husband, Satyanarayanamma enjoyed the plaint schedule property till her death. As there are no legal heirs to Satyanarayanamma, the plaintiff filed the suit for wrongful gain.

The defendant denied the alleged threat to interfere with the possession and enjoyment of the property and occupation of the property without any manner of right.

The defendant specifically contended that the 1st defendant married Naram Pandamma, the daughter of Dukkari Chinthalayya and Singaramma. Said Chinthalayya served late Satyanarayanamma as farm-servant for a period of 20 years and subsequently due to his old age, he appointed his daughter Naram Pandamma as farm-servant under Satyanarayanamma till the death of Satyanarayanamma. During the life time of said Satyanarayanamma, she gave licence to Naram Pandamma, who is the farm-servant of Satyanarayanamma to cultivate the schedule property on lease without any rent, out of love and affection. The said Pandamma also used to do household work due to old age of Satyanarayanamma. Thus, Satyanarayanamma was totally dependant upon Pandamma, wife of 1st defendant and she is in peaceful possession and enjoyment of the schedule property for the last 14 years as a licensee. Therefore, the plaintiff is not entitled to claim any right in the schedule property, consequently not entitled to claim declaration of title and recovery of possession and other consequential reliefs. Therefore, on this ground, the suit is liable to be dismissed.

It is further contended that the suit is bad for non-joinder of necessary parties and the suit is liable for dismissal on this ground also.

Finally, it is contended that the suit is filed to grab the property of Satyanarayanamma, under whom the 1st defendant was working as farm-servant and she was permitted to cultivate the land and enjoy the usufruct thereof. Hence, prayed to dismiss the suit.

The 2nd defendant filed written statement denying the adoption of late Allada Venkata Rao and Satyanarayanamma, while denying their interference with the possession of plaintiff over the schedule property. Further it is specifically contended that Satyanarayanamma borrowed Rs.6,000/- from the 2nd defendant on 22-06-1989 and executed an agreement of sale in favour of this defendant and thereby, the 2nd defendant is entitled to cultivate the land for a period of eight years without paying maktha or rent and the said period is commenced from 1989. The defendant agreed to hand over the schedule property to Satyanarayanamma. As per the said agreement, Rs.6,000/- was paid to late Satyanarayanamma and on the date of agreement, late Satyanarayanamma delivered possession of the schedule property to this defendant and since then, the 2nd defendant is in possession, and enjoyment of the property. The 2nd defendant also contended that the plaintiff was never in possession and enjoyment of the property and therefore, he had no legal right to continue in possession, since, he is no way related to Venkata Rao and Satyanarayanamma and prayed for dismissal of the suit.

During the course of trial, on behalf of the plaintiff, Pws.1 and 2 were examined. Exs.A-1 to A-7 were marked. On behalf of the defendants, DWs 1 to 4 were examined and Exs.B1 to B-4 were marked.

After hearing the argument of both counsel and considering oral and documentary evidence on record, Agent to Government held that the plaintiff miserably failed to prove that he is the adopted son of Venkata Rao and Satyanarayanamma and thereby disentitled to claim any of the reliefs claimed by the plaintiff and dismissed the suit.

Aggrieved by the decree and judgment of Agent to Government, the plaintiff

being unsuccessful, preferred the present appeal on various grounds mainly contending that the plaintiff is the adopted son and produced Ex.A.1 certified copy of registration extract of adoption deed, which clinches the issue and sufficient to establish the adoption of plaintiff by the defendants but the Agent to Government did not consider the evidence on record in proper perspective, disbelieved the adoption, dismissed the suit and finally prayed to allow the appeal.

Whereas, during the argument, the learned counsel S.A.Razack, while reiterating the contentions raised in the grounds of appeal contended that the defendants 1 and 2 have nothing to do with the schedule property and even if they are in possession of the property, it is only permissive. When the plaintiff is able to establish that he is adoptive son of Venkat Rao and Satyanarayanamma, he will step into the shoes of natural son and became coparcener from the date of adoption and he is entitled to claim ownership over the property and recovery of possession along with consequential relief of perpetual injunction. But the Agent to the Government advertent to the provisions of Hindu Adoption and Maintenance Act dismissed the suit by improper appreciation of evidence and prayed to set aside the judgment of the agent to the Government and pass a decree in favour of the plaintiff.

None appeared for the respondents, despite service of notice.

Considering the contentions of counsel for the appellant, oral and documentary evidence on record, perusing the decree and judgment of the agent to the Government, the points that arise for consideration are as follows:

1. Whether the plaintiff is adopted son of Venkat Rao and Satyanarayanamma, if so, is he entitled to declaration of title to the schedule property and recovery of possession?
2. Whether the plaintiff is entitled to consequential permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the property?

POINT No.1:

It is the claim of the plaintiff that he is the adopted son of Venkat Rao and Satyanarayanamma and he was adopted during the life time of Venkat Rao about two years prior to execution of Ex.A.1 dated 25-06-1959. As seen from the contents of Ex.A.1, the alleged adoptive parents

of plaintiff acknowledged the adoption of the plaintiff about two years prior to execution of Ex.A-1. Therefore, in view of adoption deed it is difficult to accept the adoption of the plaintiff and the plaintiff has to prove the conditions required for valid adoption as contemplated under Section 6 of Hindu Adoptions and Maintenance Act (for short "the Act") besides proof of other conditions contemplated under Section 11 of the Act. Therefore, keeping in mind the conditions required under Sections 6 and 11 of the Act, I have to examine the evidence available on record.

The plaintiff himself examined as PW.1 and his evidence at best shows that his original parents by name Kattagarula Maridayya and Veeramma of Lingamparthi village in Yeleswaram Mandal. But whereas the alleged adoptive parents, Venkat Rao and Satyanarayanamma are the residents of D.Bhimavaram. The plaintiff did not speak anything about the execution date of adoption except testifying that he was adopted by Satyanarayanamma and Venkat Rao about two years prior to execution of Ex.A.1. Therefore, he does not know the exact date of adoption. In that view of the matter, in the entire evidence of PW,1 there is nothing to accept that the plaintiff was given by his natural parents and taken by his adoptive parents, which is basic requirement of Section 11(6) of the Act to establish valid adoption of the plaintiff. In the absence of proof of giving and taking, it is difficult to accept the alleged adoption of plaintiff by Venkat Rao and Satyanarayanamma.

According to Section 16 of the Act, "***whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act, unless and until it is disproved.***"

Thus, to draw a presumption under Section 16 of the Act, the document must be signed by both persons giving and taking. But in the present case, original of Ex.A.1 was not signed by the person giving but signed by the person taking. Therefore, the drawing of presumption under Section 16 of the Act shall not arise as adoption took place in contravention of the provisions of the Act.

According to Section 5 of the Act if adoption has taken place in contravention

of provisions of the Act, such adoption shall be void. In the present case, the plaintiff failed to prove the major requirement of giving and taking of boy in adoption i.e. plaintiff by natural parents to the adoptive parents as required under Section 11 (6) of the Act. Therefore, the contravention of Section 11(6) of the Act voids the adoption in view of Section 5 of the Act.

The plaintiff examined PW.2, who is the attestor of original of Ex.A.1. Even his evidence is silent as to his presence at the time of adoption of the plaintiff by Venkat Rao and Satyanarayanamma and did not speak anything about ceremony of giving and taking, which is

sina qua non to valid adoption under the provisions of the Act, which allegedly took place subsequent to commencement of Hindu Adoptions and Maintenance Act, 1956. His evidence at best helpful to prove the execution of original of Ex.A.1 for proving the factum of adoption. Therefore, Agent to Government found no evidence to accept the plea of adoption raised by the petitioner to claim the property being adopted son of Venkat Rao and Satyanarayanamma. The agent to Government disbelieved the adoption of the plaintiff by Venkat Rao and Satyanarayanamma on the ground that the plaintiff failed to prove the requirements of valid adoption contemplated under Section 6 and 11 of the Act. More particularly, due to failure to prove “giving and taking” and execution of document by the person giving. Therefore, the finding of the Agent to Government is free from any legal infirmity warranting interference of this Court. Even after reappraisal of the entire evidence, I find no illegality or irregularity in the finding recorded by the Agent to Government.

The plaintiff claimed that he is the adopted son of Venkat Rao and Satyanarayanamma. Of course, he failed to establish the same. He claimed declaratory relief under Section 34 of the Specific Relief Act (S.R.Act) and recovery of possession under Section 5 of S.R Act and consequential perpetual injunction. The plaintiff approached the Court with specific case that he is the adopted son of Satyanarayanamma which is the basis for him to claim declaratory relief under Section 34 of S.R.Act, which is equitable and discretionary in nature. The plaintiff must approach the Court with clean hands to claim the same. The plaintiff set up a claim that he is the adopted son, but he failed to establish the same. Therefore, he is disentitled to claim equitable and discretionary relief under Section 34 of S.R.Act.

In a suit for declaration, when the plaintiff claimed title to the property, it is

form him to establish his title by producing cogent and satisfactory evidence and he cannot be allowed to take advantage of weakness in the defence set up by the defendants in the suit. Therefore, failure to prove that defendant No.1 is in possession of the property as a licensee, while working as farm-servant under Satyanarayanamma, so also failure to prove permission granted by Satyanarayanamma to defendant No.2 to continue in possession and the failure to prove any of the defences is not sufficient to grant decree in favour of the plaintiff.

The agent to Government directed to take delivery of possession by the M.R.O. at the end of the judgment, since, Satyanarayanamma and Venkat Rao had no legal heirs. But challenging the said finding, no appeal is filed by any of the defendants, so, finding of the Agent to Government is hereby confirmed. Hence, I find no merit to reverse the finding recorded by the Agent to Government to grant decree declaring title of the plaintiff and for the relief of consequential Perpetual Injunction and recovery of possession.

POINT NO.2:

In view of finding on point No.1, the plaintiff was not declared as owner of the property and no direction was given to deliver the vacant possession of the schedule property by the defendants. Thereby, the question of granting consequential permanent injunction under Section 38 of the S.R.Act does not arise.

In view of my findings on points 1 and 2, I find that the appeal is devoid of merits and deserves to be dismissed.

In the result, the Appeal is dismissed. In consequence, Miscellaneous Petitions, if any, pending in this Appeal shall stand dismissed.

M. SATYANARAYANA MURTHY, J

03-09-2015

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



A.S.NO.134 OF 1997

26-08-2015

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