

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 3792 OF 2014

ORDER:

This Revision is filed challenging the order dated 26.8.2014 in I.A.No. 1868 of 2013 in O.S.No. 120 of 2009 of the Senior Civil Judge at Peddapalli.

2. Petitioner herein is the first defendant in the suit. The first respondent herein filed the suit against the petitioner and the other two respondents declaring that he is entitled to half share in the compensation amount awarded by the respondents 2 & 3 in respect of "A" Schedule property and seeking preliminary decree that the plaintiff is the Co-parcener and joint possessor of the suit schedule 'B' and 'C' properties and entitle partition and separate possession of ½ share therein. In the plaint, it is specifically contended by the first respondent that he has been adopted by the first respondent. According to him, the adoption took place on 23.3.2002 and an adoption deed was also executed. The petitioner filed written statement stating that the age of the first respondent was above the permissive age for adoption and his date of birth was 10.1.1982 as per school records and also insurance policy records. They relied upon the date of birth certificate issued by the Head Master, Upper Primary School, Muthunuru Village of Velgatoor Mandal, dated 21.2.2005 showing that the date of birth of the first respondent is 10.1.1982 and contended that the first respondent had even obtained insurance policy No. 683975230 with the LIC of India, near RTC Bus Stand, Mancherial of Adilabad District and for collecting the said policy the first respondent submitted his school certificate showing his date of birth as 10.1.1982. They therefore, contended that on the date of the alleged adoption, the petitioner was aged about 20 years i.e., more than 15 years age and therefore his adoption is invalid under the provisions of Hindu Adoption and Maintenance Act, 1956. The petitioner, therefore, filed an application under Order 16 Rule 17 CPC praying the Court to summon the Manager, LIC, Branch No. 684, Mancherial, along with records of LIC policy No. 683975230 pertaining to LIC belonging to the first respondent and also the proof of the age of the policy holder so that they will be marked in evidence in the suit. This application was opposed by the first respondent contending that he did not insure his life with LIC of India under the above policy; that the LIC of India is not the proper authority to give evidence of date of birth of the first respondent; that the SSC certificate of the first respondent would indicate his age in a different manner and not as alleged by the petitioner and therefore, the application be dismissed.

3. By order dated 26.8.2014, the Court below dismissed the I.A. The Court below misunderstood the pleading of the petitioner and concluded that the petitioner was the natural father as per the school admission certificate. It also held that the suit is old and identified suit and the SSC certificate of the first respondent is sufficient.

4. Challenging the same, this Revision is filed.

5. Counsel for the petitioner contended that the petitioner had never claimed to be the natural father of the first respondent; that even the first respondent has not said so and only claim to be the adopted son of the petitioner; therefore, the age of the first respondent on the

date of the alleged adoption i.e. on 23.3.2002 is an important fact to be decided in the suit because the validity of the alleged adoption depends on that fact; that the first respondent had obtained the above referred insurance policy on the basis of the school certificate showing his date of birth as 10.1.1982; which indicates that he was more than 20 years old on the date of alleged adoption and therefore, such adoption itself is invalid under the provisions of Hindu Adoption and Maintenance Act, 1956. Copy of the status report of the above policy indicating that it stands in the name of the first respondent with Branch No. 648, Mancherial has also been filed along with Revision. In the said status report, the date of birth of the first respondent is indicated as 10.1.1982 on the basis of the school certificate.

6. Counsel for the first respondent, on the other hand contended that no such policy had ever been taken by the first respondent with the LIC of India; that SSC certificate of the first respondent filed along with vacate stay application shows his date of birth as 2.1.1987; and therefore, the Court below had rightly dismissed the said I.A.

7. The dispute between the parties is as to whether the alleged adoption of the first respondent by the petitioner is valid or not, therefore, the age of the first respondent on the date of the alleged adoption is a matter of great importance to be decided in the suit. While the petitioner contends that the first respondent is aged more than 15 years on the date of adoption i.e. 23.3.2002, the first respondent denies it. The petitioner is relying on the fact that the LIC policy bearing the above number was obtained by the first respondent with Branch No. 684, Mancherial of Adilabad District including the school certificate indicating the date of birth of the first respondent as 10.1.1982 while the first respondent denies that he has taken any such policy at all. In my considered opinion, if such a policy exists with the LIC of India, Branch No. 684, Mancherial, Adilabad District, the Manager, LIC of the said branch who is sought to be summoned will produce the record of the said policy along with the age proof furnished by the first respondent. If such a policy does not exist with the said Manager, he will inform the Court that there is no such policy in the name of the first respondent. Therefore, I am of the opinion that the Court below is not correct in dismissing this I.A.No. 1868 of 2013 by mistakenly promising that the petitioner had alleged that the first respondent is natural son. It is also not correct in stating that the petitioner ought to have brought the particulars under Right to Information Act and merely on the ground that the suit is a old suit, come to a conclusion that the SSC certificate alone would be relevant. If the Manager of the LIC of India, Branch No. 684, Mancherial produced the said policy as alleged by the petitioner along with the date of birth certificate furnished by the first respondent at the time of taking such policy, then it would be for the first respondent to explain under what circumstances this happened. Therefore, I am of the opinion the Court below acted perversely in rejecting I.A.No. 1868 of 2013 by the impugned order. It is accordingly set aside and I.A.No. 1868 of 2013 is allowed.

8. Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. The trial Court shall dispose of the suit within six months from the date of receipt of a copy of this Order.

9. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.06.2015
KA