

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.323 of 2002**

Mehboob Ali, adopted son of late Abdul Gaffar Qureshi, aged about 27 years, R/o Mohalla Kawandand, Ambikapur, P.S. & Tahsil Ambikapur, District Surguja (CG). **----Plaintiff**

---- Appellant

Versus

Sadiya Bibi, W/o Nasiruddin (since dead) through her legal heirs:-

- 1A. Mohammad Nasiruddin, Qureshi, H/o late Sadiya Bibi, S/o Bashiruddin Qureshi, aged about 75 years, R/o near Bus Stand, Dharamjaigarh, District Jashpur (CG).
- 1B. Anwari Begam, D/o late Sadiya Bibi, W/o Mohammad Khalid Qureshi, aged about 50 years, R/o Kalal Toli, Ranchi Jharkhand.
- 1a. Shanwary Begam, W/o Jumman Qureshi, D/o Nasiruddin Qureshi, aged about 45 years, R/o Pathalkudua, Ranchi, Jharkhand.
- 1b. Akhabary Begam, W/o Mantu, D/o Nasiruddin Qureshi, aged about 40 years.
- 1c. Asgary Begam, D/o. Nasiruddin Qureshi, aged about 37 years.
- 1d. Amirudding Qureshi, S/o Nasiruddin Qureshi, aged about 20 years.
- 1e. Nastardeen Qureshi, S/o Nasiruddin, aged about 18 years.
- 1f. Islamadding Qureshi, S/o Nasiruddin, aged about 23 years.

All are resident of Dharamjaigarh, near Bus Stand, District Raigarh.

- 2. State of M.P. (Now C.G.) through Collector, Surguja, Ambikapur, District Surguja (CG) **----Defendants**

---- Respondents

For Appellants : Shri Shakti Raj Sinha and
Shri Nishi Kant Sinha, Advocates.
For Respondents No.1 : Shri Sunil Tripathi, Advocate
For Respondent No.2/State: Shri Om Prakash Sahu, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****08/09/2016**

(1) Heard on admission.

(2) This is appellant/plaintiff's second appeal under Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC') challenging the judgment and decree dated 15.07.2002 passed by 4th Additional District Judge, Ambikapur, District Surguja in Civil Appeal No.34-A/2002, affirming the judgment and decree dated 14.10.1997 passed by Civil Judge, Class-1, Ambikapur, District Surguja in Civil Suit No.121-A/1997, whereby the trial Court has dismissed the suit.

(3) The appellant No.1/plaintiff – Mehboob Ali instituted a suit for declaration of title and permanent injunction that he is adopted son of late Abdul Gaffar Kureshi, therefore, he is entitled for grant of share in the suit property of late Abdul Gaffar Kureshi.

(4) The trial Court after scrutiny of the evidence dismissed the suit holding that there is no such custom of adoption prevalent

among the Sunni Muslims as per Hanafi Laws and even otherwise, factum of adoption is not proved.

(5) On appeal being preferred by the appellants, the First Appellate Court has affirmed the finding of the trial Court and dismissed the appeal.

(6) Against which, this second appeal under Section 100 of the Code of Civil Procedure (for short 'CPC') has been preferred by the appellants.

(7) Learned counsel appearing for the appellants, would submit that both the Courts below have concurrently erred in holding that since there is no custom prevalent among the Sunni Muslim, therefore, adoption is not proved. He would further submit that there is no bar in adoption among Muslims and as such, finding of the trial Court is perverse and contrary to the record, therefore, it gives raise to the substantial question of law for determination of this second appeal.

(8) I have heard learned counsel for the parties and perused the records of both the Courts below including judgment and decree impugned.

(9) After hearing learned counsel for the parties and after perusal of the record, I do not find any perversity or illegality in the said finding recorded by the two Courts below holding that the

appellant No.1/plaintiff-Mehboob Ali has failed to prove that he is adopted son of late Abdul Gaffar Kureshi, which is concurrent finding based on the evidence available on record.

(10) Recently, the Supreme Court in the case of **Vishwanath Agrawal, S/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**¹, has held that High Court should not disturb the concurrent finding of fact, unless finding recorded is perverse being based on no evidence. Paras 36 & 37 of the said decision are as under:-

“**36.** In *Major Singh Vs. Rattan Singh*² it has been observed that when the Courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the Courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

37. In *Vidhyadhan Vs. Manikrao*³ it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the Courts below are perverse being based on no evidence or that on the evidence on record no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdictions under Section 100 of the Code of Civil Procedure. This view of ours has been

1 (2012) 7 SCC 288

2 (1997) 3 SCC 546: AIR 1997 SC 1906

3 (1999) 3 SCC 573

fortified by the decisions of this Court in *Abdul Raheem V. Karnataka Electricity Board*⁴.

(11) Keeping in view the ratio of law laid down by the Supreme Court in the aforesaid cases, the concurrent finding of fact recorded by both the Courts below is based on evidence available on record and it is neither perverse nor contrary to the record and no substantial question of law is involved in this appeal.

(12) Consequently, the second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

L/-

4 (2007) 14 SCC 138: AIR2008 SC 956