

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 412 /2014

Vijay Kumar, S/o. Prahlad Sahu, Aged About 32 Years, R/o. Village- Amera, P.H. No.23, R.N.M. & Tahsil- Palari, District Raipur, Now Revenue & Civil District- Baloda Bazar - Bhatapara, Chhattisgarh

---- Appellant

Versus

1. Revati Sahu, S/o. Prahlad Sahu, Aged About 21 Years, R/o. Village- Amera, P.H. No.23, R.N.M. & Tahsil- Palari, District Raipur, Now Revenue & Civil District- Baloda Bazar - Bhatapara, Chhattisgarh.
2. State Of Chhattisgarh, Through : Collector, Raipur, District Raipur, Now Civil & Revenue District- Baloda Bazar - Bhatapara, Chhattisgarh.

---- Respondents

For Appellant : Mr. A.D.Kuldeep, Advocate.

For Respondent No.1 : Mr. Harish Khuntiya, Advocate

For Respondent No.2 : Mr. Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09/03/2016

1. The appeal is against the judgment & decree dated 13.10.2014 passed by the Court of Third Additional District Judge, Baloda Bazar, in Civil Appeal No.213-A/2011. By such judgment & decree, the judgment & decree dated 27.09.2011 passed in Civil Suit No.82-A/2009 by the Civil Judge Class-I, Baloda Bazar, has been affirmed.
2. The brief facts of this case are that a civil suit was filed by Revati Sahu that she owned certain lands bearing Khasra No.182 admeasuring 0.077 hectare, Khasra No.264 admeasuring 0.053

hectare, Khasra No.265 admeasuring 0.146 hectare, Khasra No.271 admeasuring 0.105 hectare, Khasra No.277 admeasuring 0.264 hectare, Khasra No.302/3, 4, Khasra No.859 admeasuring 0.097 hectare, Khasra No.964 admeasuring 0.024 hectare, Khasra No.2779/2 admeasuring 0.073 hectare; total Khasra No.8 admeasuring 0.839 hectare at village Amera (hereinafter shown as suit land). The suit was for declaration and permanent injunction and to get back the possession of the land from the defendant/appellant. It was contended that the land was initially owned by one Prahlad who died 18-20 years back and it was pleaded that he had two wives one was named as Kachra Bai and second was Kalindri Bai. The defendant Vijay Kumar who is son of Shivilal claimed to be the adopted son of Prahlad and got his name mutated in the revenue records. It was stated that when the plaintiff went to village Amera at that time it was disclosed that defendant got his name mutated in revenue records without any right or title, so on the basis of the ownership the right was claimed. The defendant/appellant contended that he was adopted son of Prahlad since Prahlad had no issue. Consequently, the appellant Vijay Kumar was adopted on the basis of adoption deed and on that basis the name of the defendant/appellant was recorded in the revenue records and therefore, it was contended that the suit be dismissed.

3. Learned trial Court after evaluating the pleading, facts and evidence decreed the suit in favour of the plaintiff, which was further subject of appeal before the first appellate Court and the first appellate Court too dismissed the appeal, thereby the decree was affirmed. So the instant appeal against the concurrent finding of fact.

4. Learned counsel for the appellant would submit that the finding of both the Courts below are perverse since the name of the defendant/appellant was recorded on the basis of the adoption deed which was not subject of challenge in the revenue records and thereby he became the owner of the land. He further submits that Ex.D-8 which is placed on record has not been properly considered by both the Courts below, consequently, the wrong finding of fact and therefore the appeal be admitted for hearing.
5. Perused the plaint, evidence and the judgments.
6. The adoption deed has been marked as Ex.D-8 which shows that three witnesses have signed i.e. Manrakhan Lal Sahu, Anand Ram Dhruw and Gehuram. These witnesses have not been examined by the appellant. The defendant had examined himself as DW-1, Bhagwat as DW-2 and Fekuram as DW-3. Though they have stated that they were present at the time of such execution of deed but the written document do not support such contention. As against this, the plaintiff's witnesses have stated that Vijay Kumar, the defendant, was never adopted by Prahlad at any point of time. The defendant Vijay Kumar was son of Shivilal as per the statement of DW-2 Bhagwat and DW-3 Fekuram, they have stated that Shivilal was not present while adoption Ex.D-8 was executed. Therefore, the natural consequences is that while Ex.D-8 was executed the natural guardian was alive. Vijay Kumar, the defendant, in his statement has stated that in the revenue proceedings certain statements were recorded showing the fact that Vijay Kumar has been adopted but those persons have not been examined before the Court. Though such statements/documents have been exhibited but relevancy of such documents becomes doubtful as the person who himself made the statement was not produced and

it is not on record where they were missing or dead. Therefore, the burden was on the defendants to prove such fact.

7. The defendant, Vijay Kumar, at para 4 of the statement of cross examination admitted the fact that the earlier Civil Suit No.109-A/ 2009 wherein he had filed his affidavit, he had shown himself to be son of Shivilal. At para 2, he stated that he has studied upto Class-10th however, no documents have been produced likewise any mark sheet or any transfer certificate to show that he identified himself to be son of Prahlad. Therefore, taking into the totality of the case and the documents, it appears that the finding of fact by the Courts below that Ex.D-8 was not duly proved cannot be faulted with.
8. In the result, no substantial questions of law arises for consideration in this second appeal. Accordingly, the appeal is dismissed at the motion stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge