

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL MISCELLANEOUS APPEAL No.1336 of 2008

JUDGMENT:

This appeal is preferred questioning order dated 31.05.2008 in Succession O.P.No.1040 of 2001 on the file of District Judge, Vizianagaram.

2. Appellant herein is 1st respondent in S.O.P.No.1040 of 2001 and 1st respondent herein is petitioner. Succession O.P.No.1040 of 2001 is filed for grant of succession certificate in favour of petitioner in the O.P. on the ground that she is legally wedded wife of deceased Tadi Suryanarayana and entitled to receive his retirement benefits. It is contended that 3rd respondent in the O.P. is the first wife of Tadi Suryanarayana and after taking customary divorce with 3rd respondent, the deceased married 1st respondent in the O.P. in the year 1983 and 2nd respondent in the O.P. is the daughter born to said Tadi Suryanarayana through his 1st wife. Appellant herein contended that he is adopted son of late Tadi Suryanarayana and that he is also entitled for a share in the retirement benefits of late Tadi Suryanarayana. On these contentions, learned District Judge conducted enquiry, during which two witnesses are examined and seven documents are marked on behalf of 1st respondent

herein and seven witnesses are examined and nine documents are marked on behalf of appellant herein and 3rd respondent in the main O.P. On a consideration of oral and documentary evidence, trial Court has not accepted the plea of adoption and accordingly granted succession certificate in favour of 1st respondent and 2nd respondent herein. Aggrieved by the said order, appellant, who is 1st respondent in the succession O.P., preferred the present appeal.

3. Heard arguments.

4. Advocate for appellant submitted that trial Court should have seen that as per the registered adoption deed dated 09.06.1993, appellant herein was adopted four years prior to the execution of the deed, through which Tadi Suryanarayana declared appellant herein as his adopted son. He further submitted that all the conditions for a valid adoption are duly established through evidence, but the trial Court has not accepted the said evidence solely on the ground that appellant herein has not proved his age as on the date of adoption and the findings of the trial Court are not valid. He further submitted that there is no rebuttal evidence on behalf of 1st respondent herein, who is petitioner in the succession O.P., and the Court should have drawn statutory presumption under Section 16 of Hindu Adoption and Maintenance Act, 1956, for these reasons, the order of the

trial Court is liable to be set aside.

5. On the other hand, advocate for 1st respondent supported the order of the learned District Judge and submitted from the material on record, the fact remains that Tadi Suryanarayana was a married person as on the date of alleged adoption and also on the date of execution of Ex.B.1, but it was wrongly mentioned in Ex.B.1 that he was a unmarried person. He further submitted that no consent was obtained either from the petitioner in the succession O.P. or 3rd respondent for the alleged adoption. The trial Court by considering the judgments of various Courts with regard to consent, disbelieved the adoption and that there are no grounds to interfere with the findings of the trial Court.

6. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 31.05.2008 in Succession O.P.No.1040 of 2001 on the file of District Judge, Vizianagaram, is legal, proper and correct?

POINT :

7. There is no dispute with regard to relationship between the parties. Admittedly, appellant herein, who is no other than the brother's son of deceased Tadi Suryanarayana. It is also not in dispute that deceased Tadi Suryanarayana was a kalasi in Railways and the succession O.P. is filed for the retirement benefits of said

Tadi Suryanarayana. Natural father of appellant is examined as RW.2 and appellant himself is examined as RW.1. It is clear from the evidence on record that 3rd respondent in the succession O.P. was the first wife of late Tadi Suryanarayana and after obtaining customary divorce, as per the caste custom Tadi Suryanarayana married petitioner in the succession O.P. i.e., 1st respondent herein. So, the fact remains, by the date of alleged adoption, the deceased Tadi Suryanarayana is a married person and the recitals in Ex.B.1 as to marital status of deceased are patently incorrect. There is no dispute with regard to the legal proposition that consent of wife is a must for adoption and in this case there is no material to show that late Tadi Suryanarayana adopted appellant with the consent of either 1st respondent or 3rd respondent herein. Another defect noticed by the trial Court is that the age of appellant was not referred in Ex.B.1 document, on the contra, evidence on record would show that appellant was aged more than the age prescribed in the Act for adoption. Considering these two aspects with reference to the evidence on record, learned District Judge recorded a finding that adoption pleaded by appellant is not correct and that appellant is not entitled for any succession certificate along with 1st and 2nd respondents herein. I do not find any wrong appreciation of evidence or wrong application of law in recording a

finding with regard to plea of adoption. The learned District Judge elaborately considered each and every aspect with reference to facts and law and it is a well considered judgment and there are no grounds to interfere with the findings recorded by the trial Court.

8. For these reasons, I am of the view that the appeal is devoid of merits and the contention of appellant with regard to adoption cannot be accepted.

9. Therefore these reasons, this appeal is dismissed.

No costs.

10. Miscellaneous petitions pending, if any, shall stand closed.

S. RAVI KUMAR, J

10th June 2016.

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