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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******SECOND APPEAL NO.651 OF 2015******WITH******CIVIL APPLICATION NO.1387 OF 2015***

Balu @ Mahatraba Jijaba Chore

..Appellant.

V/s.

Jijaba Balu Chore & Ors.

..Respondents.

Mr.Akshay Deshmukh with Sumit Kate i/b. Uday Warunjikar for the Appellant and the Applicant.

Mr.Milind Deshmukh for Respondent Nos.2, 3, 5 & 6.

Coram : N.M.Jamdar, J.***Date : 2 May 2017*****ORAL ORDER**

The Appellant has challenged the concurrent Judgments and Orders passed by the learned Civil Judge and District Judge, Pune whereby the suit filed by the Appellant was dismissed and the counter-claim filed by Defendant Nos.1 and 2 was decreed.

2. The Appellant filed Special Civil Suit No.1119 /2003 for

a declaration that he is an adopted son of Defendant Nos.1 and 2- Respondent Nos.1 and 2 and that the sale deed executed by Defendant Nos.1 to 4 on 14 November 2003 in favour of Defendant Nos.5 to 9 is not binding on his share. Defendant Nos.1 to 4 filed their written statement. They denied the factum of adoption. According to them, the Appellant had committed fraud by executing certain documents. A counter-claim was filed by them seeking an order that the Appellant be restrained from treating himself as an adopted son of Defendant Nos.1 and 2. The learned Civil Judge, Senior Division dismissed the suit by the Judgment and Order dated 4 February 2006 holding that the Appellant has not proved that there was a valid Adoption Deed. Civil Appeal No.481/2006 filed by the Appellant was dismissed by the learned District Judge on 4 December 2014.

3. The learned counsel for the Appellant submitted that the Adoption Deed is registered and Defendant Nos.1 and 2 have put their signatures on the same. He submitted that Defendant Nos.1 and 2 have voluntarily come to the taluka place for registration of the Adoption Deed and, therefore, there was no fraud played. It was contended that no action was taken by Respondent-Defendants from 1991 till 2003. Only when a suit was filed by the Appellant, a counter-claim was filed. He submitted, therefore, that both the Courts were not right in holding that the Adoption Deed was not proved. The learned counsel for the Respondents submitted that

there is substantial variance *inter se* between the evidence of the witnesses and the pleadings. He submitted that both the Courts have taken note of the same and have rendered a correct factual finding that the Adoption Deed was not proved. He submitted that even the priest who is stated to have performed the religious rites in the year 1991 had expired in the year 1986.

4. As both the Courts have observed, the burden is on the Appellant to prove the Adoption Deed as the suit is filed by him on that basis. In the present case, Defendant Nos.1 and 2 themselves have denied the factum of Adoption Deed. Both the Courts have found that not only the evidence of the Appellant is not sufficient but there is a deceit played by the Appellant. One of the glaring example is that the Priest who was stated to have performed the religious rites in the year 1991 had expired five years back. In the plaint, it is stated that the Appellant was taken in adoption on the date of execution of the deed in the year 1991, however, in the evidence it is stated that the Appellant was taken in adoption much earlier when he was a minor. Even the genetic father of the Appellant has stated a different version. The deed itself is prepared by the Appellant.

5. If these factors are considered in totality, as has been done by both the courts, it cannot be said that the Appellant has discharged his burden regarding the validity of the Adoption Deed.

As far as the contention of the learned counsel for the Appellant regarding registration is concerned, merely because registration of the Adoption Deed is done, it does not dispense with the proof of actual ceremony and unless the adoption is as per law, the registration of the same will not make it unquestionable. It is after the Appellant started asserting his rights based on the so called Adoption Deed in the year 2003, a counter-claim had to be filed.

6. In these circumstances, the appreciation of evidence by both the Courts to conclude that the Adoption Deed was not valid, cannot be termed as perverse. No substantial question of law arises in this appeal. The Second Appeal is accordingly dismissed. In view of the disposal of the Second Appeal, the Civil Application is also disposed of.

(N.M.Jamdar, J.)