

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: February 01, 2017*

+ **RSA 105/2016**

SURESH KUMAR ..... Appellant  
Through: Mr.Ravinder K.Tyagi, Advocate with  
appellant in person.

versus

BANWARI LAL ..... Respondent  
Through: Mr.Santosh Kumar & Mr.Rajiv  
Ranjan Mishra, Advocates with  
respondent in person.

**CORAM:**  
**HON'BLE MS. JUSTICE PRATIBHA RANI**

**JUDGMENT (Oral)**

**RSA 105/2016**

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 is filed by the appellant/defendant impugning the concurrent decision of the two courts below; i.e. judgment dated 28<sup>th</sup> March, 2016 passed by the First Appellate Court in RCA No.5/2016 and judgment dated 14.12.2015 passed by the learned Trial Court in Civil Suit No.882/2012, decreeing the suit filed by the respondent/plaintiff for possession and permanent & mandatory injunction with respect to Property No.9492, Gali Mata Wali, Tokri Walan, Delhi as shown green in the site plan Ex.PW3/4.

2. Both the parties are claiming to be adopted sons of Late Sh.Babu Lal and Smt.Bundo Devi who was stated to be owner of property in dispute.

Civil Suit No.197/2005 (New No.882/2012) was filed by Sh.Banwari Lal pleading as under:-

- (i) Sh.Babu Lal and Smt.Bundo Devi were issueless and they adopted him as son vide registered adoption deed dated 24<sup>th</sup> December, 1973.
- (ii) Sh.Babu Lal expired on 20<sup>th</sup> March, 1978 and Smt.Bundo Devi died on 27<sup>th</sup> November, 2002 and after their death, he has inherited their estate by operation of law.
- (iii) The ground floor of the suit property consists of two rooms Mark 'X' and 'Y' which were in possession of the respondent/plaintiff. The access to room 'Y' was only through room 'X'.
- (iv) On the first floor, there are rooms with tin sheet where appellant/defendant was residing in his capacity as licensee of late Smt.Bundo Devi.
- (v) After the death of Smt.Bundo Devi on 27<sup>th</sup> November, 2002 the appellant/defendant trespassed into the room 'X' at the ground floor on 15<sup>th</sup> December, 2003 and started harassing the respondent/plaintiff and his family.
- (vi) Police complaints were made against the appellant/defendant and legal notices were also served upon the appellant/defendant terminating his licence and asking him to handover the vacant and peaceful possession of the portion in respect of which he was a licensee as well of the room 'X' which was forcibly occupied by him and also seeking damages in respect of the above property.

3. The suit was contested by the appellant/defendant pleading as under:-

- (i) He is the adopted son of late Sh.Babu Lal and Smt.Bundo Devi and has been brought up by them and got married by Smt.Bundo Devi as her son which is proved from his wedding card (Ex.DW1/1).

- (ii) He had been taking care of late Smt.Bundo Devi during her life time and even her last rites were performed by him.
- (iii) Half of the said property had been sold to him by Smt.Bundo Devi vide registered GPA and Will on 3<sup>rd</sup> March, 2000 as well by entering into an agreement to sell. He had paid entire consideration to her during her life time and after her death, he had become owner of the entire property.
- (iv) The respondent/plaintiff was never adopted as son by Late Sh.Babu Lal and Smt.Bundo Devi. He had not committed any trespass in respect of the room Mark 'X' and admitted that room Mark 'Y' can be accessed only through room Mark 'X'.
- (v) The appellant/defendant denied his liability to pay any damages or his status as licensee earlier under Smt.Bundo Devi and thereafter under her alleged adopted son i.e. the respondent/plaintiff.

4. Considering that the real dispute between the parties was as successor-in-interest of the property owned by Smt.Bundo Devi both claiming to be their adopted son, the learned Trial Court framed the following issues on 17<sup>th</sup> April, 2006:

- (i) *Whether plaintiff has no locus standi to file the present suit? OPD*
- (ii) *Whether defendant is the owner of the suit property? OPD*
- (iii) *Whether plaintiff is entitled to the relief of possession as prayed for? OPP*
- (iv) *Whether plaintiff is entitled to the relief of mandatory injunction as prayed for? OPP*
- (v) *Whether plaintiff is entitled to mesne profit and damages, if yes at what rate and for what period? OPP*

*(vi) Whether plaintiff is entitled to the relief of permanent injunction as prayed for? OPP*

*(vii) Relief.*

5. The learned Trial Court while relying on the deed of adoption Ex.PW3/1, which was earlier exhibited as Ex.PW2/A, held the respondent/plaintiff to be the adopted son of late Sh.Babu Lal and Smt.Bundo Devi for the reasons:-

(i) As per the adoption deed when the plaintiff Sh.Banwari Lal was adopted, he was two years of age and adoption was after complying with the rituals prescribed in this regard.

(ii) At the time of execution of adoption deed, Sh.Banwari Lal was 22 years of age and the document bears the signature of biological parents as well as adoptive parents.

(iii) No evidence had been led by the appellant/defendant to disprove the said adoption deed and by virtue of Section 16 of Hindu Adoption and Maintenance Act, 1956 presumption was drawn that adoption has been made in compliance of the provision of the Act.

(iv) Plea of the appellant/defendant that he had purchased half of the property vide registered GPA and Will against sale consideration of ₹1 lac was disbelieved recording that description of the half property for which he was appointed as attorney was not clear in the sale documents.

(v) The manner and time when the sale consideration was stated to have been paid by the appellant/defendant was not in consonance with the sale documents.

(vi) The respondent/plaintiff was held to be the adopted son late Sh.Babu Lal and Smt.Bundo Devi – owner of the property and on failure of the

appellant/defendant to prove the ownership in respect of the said property, the property devolved on the adopted son.

(vii) On failure of the appellant/defendant to prove his title, he was directed to handover the vacant and peaceful possession of the suit property to the respondent/plaintiff and the claim of the respondent/plaintiff to seek damages and mesne profit was declined by the learned Trial Court.

6. The First Appellate Court concurred with the finding of the learned Trial Court and rejected the claim of the appellant/defendant to be owner in possession of the suit property or the adopted son of late Sh.Babu Lal and Smt.Bundo Devi for the following reasons:-

*'17. It is then the case of the defendant that half of the suit property was sold to him by Late Smt. Bundo Devi and he has relied upon the documents executed in his favour i.e. General Power of Attorney, Deed of Will and Agreement to Sell and he had produced DW2 in the witness box who had proved the General Power of Attorney and Will dated 03.03.2000 executed by Smt. Bundo Devi in favour of the defendant. The defendant had also produced DW3 who had proved the sanction of electricity connection in the name of Shri Suresh Kumar and copy of receipt as Ex.DW3/1, the application form as Ex.DW3/2, electricity bill as Ex.DW3/3, Indemnity Bond as Ex.DW3/4, affidavit as Ex.DW3/5 and dues undertaking as Ex.DW3/6. Further DW4 had stated about the execution of the General Power of Attorney which is Ex.DW1/2 in his presence and he had stated about signing the same as also the Will Ex.DW1/3 and the Agreement to Sell Ex.DW1/4. He had also stated that at the time of execution of Ex.DW1/2, Ex.DW1/3, Ex.DW1/4 Smt. Bundo Devi was in good state of mind and health and she had not executed the documents under any pressure.*

*18. During crossexamination, DW1 stated that on the date of execution of Ex.DW1/2, Ex.DW1/3 and Ex.DW1/4, no other document was executed and that he had only signed the said documents and no other document. He had denied the*

suggestion that he had also signed similar copies of Ex.DW1/2, Ex.DW1/3 and Ex.DW1/4. However he admitted that Ex.DW4/P1 and Ex.DW4/P2 bore his signatures. He had stated that on the day of execution of documents, Smt. Bundo Devi had not shown any site plan. She had shown the house in which she was residing. Area of the house of Smt. Bundo Devi was 35 sq. yards. Smt. Bundo Devi stated that she was selling out her house to Shri Suresh Kumar and she had no other immovable property apart from the said house. The house of Smt. Bundo Devi was adjacent to the house of Smt. Geeta Devi. He stated that at the time of execution of the documents, age of Smt. Bundo Devi was 8285 years. He had stated that at the time of execution of the documents, Shri Babu Lal was owner of 9490, 9491, 9292 and 9493. A perusal of the documents on which reliance has been placed by the defendant shows that in the Agreement to Sell, the sale consideration was not mentioned though during crossexamination, DW1 had stated about purchasing the property for a sale consideration of Rs. 1 lac which was given to Late Smt. Bundo Devi in two installments of Rs. 50,000/ each and that one installment was paid prior to the execution of Will and another installment was paid to Late Smt. Bundo Devi on the marriage of one of her relatives. However the Learned Trial Court has rightly held that the Will and Agreement to Sell were executed on the same day i.e. 03.03.2000 and in the Agreement to Sell it was mentioned that Late Smt. Bundo Devi had received the full and final payment i.e. on the day of execution of the Will, she had received the entire payment so there was no question of any amount being paid to her prior to the execution of the Will or after the execution of the Will or that on the day of execution of Agreement to Sell only part of the sale consideration was paid to her and not the entire payment. Moreover as held by the Learned Trial Court in the General Power of Attorney, the boundary of the property for which the defendant was appointed as attorney was not provided and as such description of property for which the defendant was appointed as attorney was not clear. Even in the Agreement to Sell and the Will, the description of the property was not clear. This clearly casts doubt on the factum of execution of the said documents in favour of the defendant by Late Smt. Bundo Devi and even the

*description of the property is not clear and the exact boundary of the portion sold or bequeathed to the defendant was not clear. Thus the said documents cannot be said to confer a clear title on the defendant.'*

7. The substantial question of law being raised by learned counsel for the appellant/defendant is in respect of the adoption deed Ex.PW2/A as per which on the date when this adoption deed was executed, the age of the plaintiff was 22 years thus being above 15 years of age could not have been adopted. Since the claim of the respondent/plaintiff has been decreed by both the Courts below, relying on the adoption deed and treating him to be adopted son of late Sh.Babu Lal and Smt.Bundo Devi, it is contended that the findings of the Courts below that it was a valid adoption is illegal and perverse.

8. Learned counsel for the respondent/plaintiff submit that the adoption deed has rightly been held valid by both the Courts below for the reason that it is a registered document. The adoption deed incorporates that the adoption has taken place after performing all the necessary rituals when the age of the respondent/plaintiff was about two years. The adoption deed being executed by the biological parents as well adoptive parents by putting their respective thumb impression is a valid document and cannot be questioned by the appellant. The claim of the appellant/defendant to be owner in respect of the half of the suit property by way of sale documents which are vague, not even specifying which portion has been sold to him and whether any consideration was paid and if so, at what stage has rightly been disbelieved by both the Courts below. It has been contended that being the adopted son, the suit property stands inherited by the respondent/plaintiff, hence the concurrent findings of fact in this regard cannot be interfered with by this Court in second appeal.

9. It is settled legal position that if there is mis-appreciation of facts by the courts below, the second appeal can be entertained.

10. In the decision reported as Jai Singh vs. Shakuntala AIR 2002 SC 1428 it was held as under :-

*'It is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible it is a rarity rather than a regularity and thus in fine it can thus be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection. This is, however, without expression of any opinion pertaining to Section 100 of the Code of Civil Procedure.'*

11. In another case reported as Union of India vs. Ibrahim Uddin & Anr. (2012) 8 SCC 148 the Apex Court has held as under:-

*'57. There may be exceptional circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100 CPC. It may be necessary to do so for the reason that after all the purpose of the establishment of courts of justice is to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction. In second appeal the court frames the substantial question of law at the time of admission of the appeal and the Court is required to answer all the said questions unless the appeal is finally decided on one or two of those questions or the court comes to the conclusion that the question(s) framed could not be the substantial question(s) of law. There is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal.'*

12. I have carefully perused the oral as well as documentary evidence to ascertain whether the documentary evidence in respect of the adoption and

the statement of the parties in this regard have been appreciated by the Courts below in correct legal perspective.

13. Before examining the rival contentions, it is necessary to record that on 23<sup>rd</sup> August, 2005 the appellant/defendant made the following statement before the learned Trial Court:-

*'I undertake to state that the tin shed room in question at the first floor of the suit premises in question as well as one room shown as room X in the site plan by red colour are in my exclusive possession since the very beginning. The passage and entry to room No.Y is however, through room No.X which is in my possession. The said room Y is in possession of plaintiff Banwari Lal. I have no intention to create any third party interest in the room X and tin shed room at first floor during the pendency of the suit.'*

14. Let us first understand the status of the parties in respect of the suit property during life time of Smt.Bundo Devi and thereafter to consider whether the adoption deed, which was executed and registered when the respondent/plaintiff had already attained the age of 22 years was just to stake a claim on the property of Smt.Bundo Devi or there is any evidence to prove that the respondent/plaintiff was adopted by them when he was aged about two years and it was acted upon also and this event was recorded after about twenty years of adoption.

15. PW-3 Sh.Banwari Lal – respondent/plaintiff in his affidavit Ex.PW3/A while reiterating the averments made in the plaint placed on record certain documents Ex.PW3/1 to 19 out of which Ex.PW3/17 and Ex.PW3/18 being photocopies were de-exhibited. FIR marked as PW3/19 already stands exhibited as Ex.PW1/A though mode of exhibition was objection to at that time.

16. In his cross examination, PW-3 Sh.Banwari Lal – respondent/plaintiff has stated that he has four brothers and one sister but he was given in adoption to Sh.Babu Lal and Smt.Bundo Devi as they were issueless. The property in question consists of house Nos.9491, 9492 & 9493 out of which house No.9491 was given by him (PW-3) to Geeta Devi who was having her share in the property. (It remains unexplained how Geeta Devi got share in the property if he was the sole adopted son). PW-3 has admitted that the appellant/defendant Suresh is son of sister of Smt.Bundo Devi and residing in the suit property since his childhood which falsified his claim that Suresh Kumar was a licensee in the property of Smt.Bundo Devi. He stated that Sh.Babu Lal - his adoptive father executed a Will during his life time in his favour but no such Will has been placed on record. He further stated in his cross examination that adoption deed was executed when he was aged 2-3 years but it is a matter of fact that the adoption deed has been executed in the year 1973 when he was 22 years old. He has admitted that marriage of appellant/defendant Suresh Kumar was solemnized in this property by Smt.Bundo Devi and bride also started living in the same property since date of marriage and all the children of the appellant/defendant were born in the same property. He also admitted that between Smt.Bundo Devi and Suresh Kumar there was no contract for payment of rent or licence fee in respect of the suit property. However, he denied execution of sale document by Smt.Bundo Devi in favour of Suresh Kumar but admitted that the appellant/defendant had been residing in the suit property since his childhood.

17. From the above admission of the respondent/plaintiff, it is clear that so far as appellant/defendant is concerned, his (appellant/defendant) status in the suit property was not that of a licensee of Smt.Bundo Devi. Rather, on

the death of her sister, Smt.Bundo Devi, who was issueless, brought up the appellant/defendant and in that capacity, he continued living in the suit property alongwith Smt.Bundo Devi so there was no question of he being a licensee under Smt.Bundo Devi and required to pay any licence fee to the respondent/plaintiff.

18. The appellant/defendant, in his evidence by way of affidavit, has also reiterated the pleas taken in the written statement. In his cross examination, the appellant/defendant Sh.Suresh Kumar has admitted that after the death of his mother, he started living with his Mausi (Smt.Bundo Devi) but volunteered that she had adopted him. He has placed on record his wedding card Ex.DW1/1 wherein he has been referred to by Smt.Bundo Devi as her son. He has also placed on record the copy of the ration card Mark-A wherein name of Smt.Bundo Devi, wife of Sh.Babu Lal appeared at Serial No.1 and name of the appellant/defendant is mentioned at Serial No.2 as Suresh, son of Sh.Ram Gopal. Though not properly exhibited, this document being filed by the appellant/defendant himself atleast indicate that Sh.Babu Lal was not his adoptive father and he was simply brought up by his Mausi like a son but he continued to be son of Sh.Ram Gopal.

19. Before examining the adoption deed Ex.PW2/A forming basis of the claim of the respondent/plaintiff, it is advantageous to refer to the decision of the Supreme Court in the case reported as Rahasa Pandiani (Dead) by L.Rs. and Ors. v. Gokulananda Panda and Ors. AIR 1987 SC 962, wherein it was observed as under:-

*'Be it realized that setting up a spurious adoption is not less frequent than concocting a spurious will, and equally, if not more difficult to unmask. And the Court has to be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the*

*propounder of the will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the : conscience of the Court by the Parity contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a will, there have been spurious claims about adoption having taken place. And the Court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the Court and the conscience of the Court is not satisfied that the evidence preferred to support such adoption is beyond reproach.'*

20. The appellant/defendant, in his cross examination, has admitted that in the suit property, there are two electricity meters, one in the name of Sh.Banwari Lal i.e. the respondent/plaintiff and another in his name but denied any knowledge about the plaintiff being adopted by Sh.Babu Lal and Smt.Bundo Devi by way of *Godnama* Ex.PW2/A, however, he admitted notices having been served upon him by the respondent/plaintiff.

21. The sole claim of the respondent/plaintiff which has been relied upon by the Courts below is based on the *Godnama* Ex.PW2/A which was admittedly executed when the respondent/plaintiff was 22 years of age. Surprisingly, the respondent/plaintiff had not placed on record any document of his childhood, education, election card, ration card, adhar card to prove that Sh.Babu Lal and Smt.Bundo Devi were recorded as his parents since his childhood. When PW-3 Sh.Banwari Lal – the respondent/plaintiff appeared in the witness box he was aged about 62-63 years as stated by him. The suit has been filed in the year 2005 and by that time in natural course he would

be having plenty of documents to show that preparation of adoption deed though a subsequent event recording the factum of adoption, infact it was acted upon by his adoptive parents since the date of adoption when he was just two years old and eligible to be given in adoption.

22. The best proof of adoption having taken place when he was just two years of age is whether the adoption has been acted upon. The adoption deed Ex.PW2/A talks of the adoption having taken place in the past as per rituals. Thus, the document Ex.PW2/A is only a record of the past event of the respondent/plaintiff being adopted at the age of two years by Sh.Banwari Lal and Smt.Bundo Devi and stated so in the adoption deed. As already noted, there is not even a single document pleaded and placed on record by the respondent/plaintiff that for all practical purposes in every record he has been shown as son of Late Sh.Babu Lal and Smt.Bundo Devi. Accordingly, it has to be held that by holding the respondent/plaintiff to be adoptive son of late Sh.Babu Lal and Smt.Bundo Devi, both the Courts below have committed complete illegality and perversity in this regard.

23. At this stage, both the parties, who are first cousin in the sense that mother of appellant/defendant Suresh Kumar and mother of respondent/plaintiff Banwari Lal were sisters of late Smt.Bundo Devi and they had been residing with late Smt.Bundo Devi who treated them like her sons and both of them are admittedly in possession of the suit property. With a view to live in the suit property peacefully, they have settled their dispute amicably. They have also placed on record the Compromise and Settlement Agreement now exhibited as Ex.C-1 which is duly signed by them as well their respective counsel. Both the parties have also put their left hand thumb impression on the Compromise and Settlement Agreement.

24. At joint request of the parties, the impugned judgments dated 28<sup>th</sup> March, 2016 passed by the First Appellate Court in RCA No.5/2016 and dated 14.12.2015 passed by the learned Trial Court in Civil Suit No.882/2012 are set aside.

25. This Regular Second Appeal is disposed of as compromised.

26. LCR be sent back alongwith copy of this order.

27. As prayed, copy of the order be given dasti to learned counsel for the parties.

**CM No.13440/2016**

Dismissed as infructuous.

**PRATIBHA RANI  
(JUDGE)**

**FEBRUARY 01, 2017**

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