

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.52 of 2001

Bharatlal, aged 28 years, adopted son of Maniram Chandnahu, R/o Village Raikona, Tahsil Bilaigarh, District Raipur.

---- Appellant/
(Plaintiff)

Versus

1. (a) Chherkinbai, aged 55 years, widow of Salikram;
(b) Vimlabai, aged 25 years, daughter of Salikram;
(c) Rameshkumar, aged 20 years;
All R/o Village Bardula, District Raigarh.
2. Kamlabai, aged 30 years, W/o Nandram Chandnahu, R/o Ulkhar, Tahsil Sarangarh, District Raigarh.
3. Bahrata, aged 30 years, S/o Dhaniram Chandnahu, Cultivator and R/o Bardula, Tahsil Sarangarh, District Raigarh.
4. State of M.P. (now State of C.G.), through Collector, Raipur.
5. Hiraram, S/o Haricharan Sahu.
6. Rupram, S/o Haricharan Sahu;
7. Kanhaiyalal, S/o Chaitram Satnami;

Nos.5 to 7 R/o Village Raikona, Tahsil Bilaigarh, District Raipur.

---- Respondents/
(Defendants)

For Appellant: Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.
For Respondents No.1(a), (c), 2, 3, 5 and 6: -
Mr. Vivek Tripathi, Advocate.
For Respondent No.4 / State: -
Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

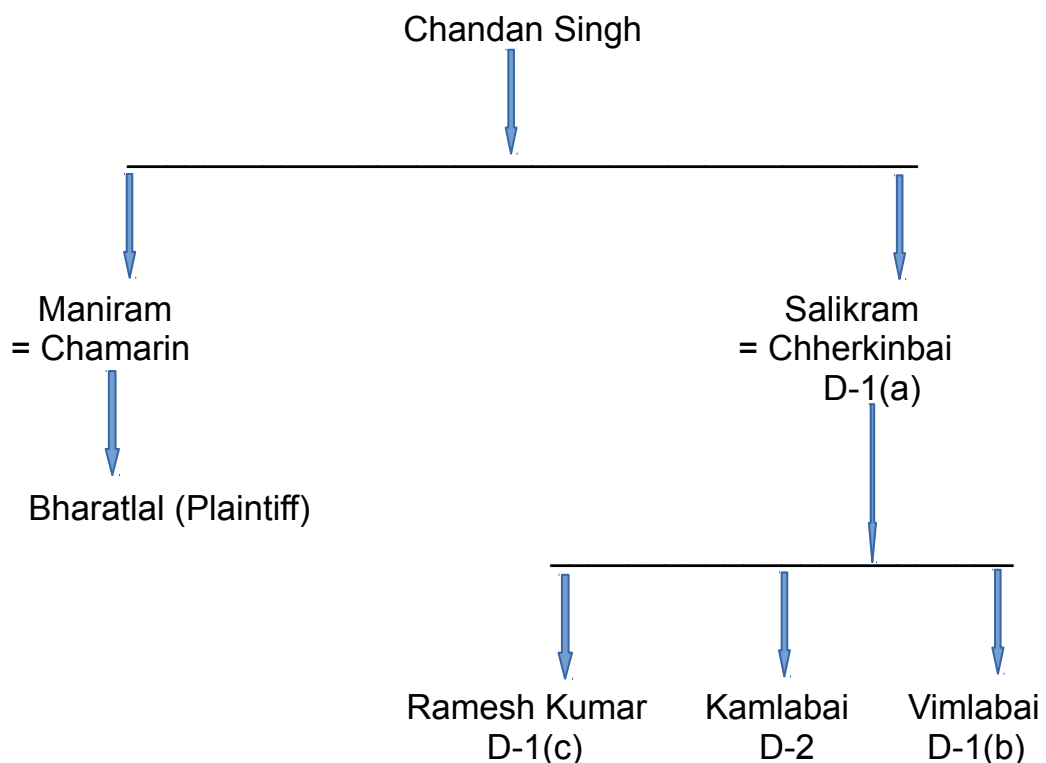
11/09/2018

1. The substantial questions of law involved, formulated and to be answered in the plaintiff's second appeal are as under: -

“1). Whether on the facts and in the circumstances of the case the Courts below were justified in holding that the plaintiff has failed to prove the adoption in accordance with law?

2). Whether the Courts below were justified in not placing their absolute reliance on the deed submitted by the plaintiff?”

2. The following genealogical tree would show the relationship between the parties: -



3. Maniram and Salikram forming a Hindu Undivided Family held the suit properties mentioned in Schedule-A, B, C, D, Ka and Kha. It is the case of the plaintiff that Maniram and his wife Chamarin had no issue and therefore plaintiff Bharatlal, since his infancy, was living with Chamarin and was being treated as her son while his natural father is Sunderlal. It is also the case of the plaintiff that Sunderlal gave his son Bharatlal to Smt. Chamarin while Smt. Chamarin took Bharatlal as her son and when Bharatlal attained the age of 16 years, a registered deed was executed by Chamarin acknowledging that Bharatlal was taken as her son ten years before the execution

of registered deed dated 22-6-1990 vide Ex.P-13. According to the plaintiff, Chamarin died on 20-1-1991 and her estate was inherited by Bharatlal, her adopted son. However, Kamlabai claiming herself to be an adopted daughter of Maniram and Chamarin relying upon a document Ex.D-1 dated 15-2-1968 sold certain properties to defendants No.5 to 7 on 28-1-1992 despite the plaintiff's protest leading to filing of a suit by the plaintiff claiming partition, allotment of half share and separate possession over the properties mentioned in the plaint which was opposed by the defendants by filing written statement.

4. The trial Court after appreciating oral and documentary evidence on record held that plaintiff Bharatlal is not the adopted son of Chamarin, wife of Maniram, and further held that Ex.P-13 does not bear the signatures of Bharatlal's natural parents; no consent of Jankibai, wife of Sunderlal, is recorded therein; requisites of Sections 9 and 10 of the Hindu Adoptions and Maintenance Act, 1956 were lacking; and the Pandit performing *datta homam* has not been examined, as such, the alleged adoption deed has not been established beyond all reasonable doubts and thus, dismissed the suit.
5. On appeal being preferred, the first appellate Court has affirmed the reasonings and findings negating the plea of adoption of Bharatlal by Smt. Chamarin thereby affirming the judgment & decree of the trial Court leading to filing of second appeal before this Court in which substantial questions of law have been framed which are set out in the opening paragraph of this judgment.

6. Mr. Anurag Singh, learned counsel appearing for the appellant / plaintiff, would submit that both the Courts below are absolutely unjustified in dismissing the suit of the plaintiff ignoring the material piece of evidence available on record, as such, the judgment & decree passed by the first appellate Court deserve to be set aside, as there is sufficient evidence on record to hold that the plaintiff was adopted in accordance with law by Late Chamarin, and the substantial questions of law be answered in favour of the plaintiff / appellant herein.
7. On the other hand, Mr. Vivek Tripathi, learned counsel appearing for the defendants, would support the impugned judgments and submit that the concurrent findings recorded by the two Courts below are findings of fact based on the evidence available on record, the said findings are binding on this Court and no interference is warranted in the second appellate jurisdiction of this Court, as such, the appeal deserves to be dismissed.
8. I have heard learned counsel for the parties and considered their rival submissions and went through the records with utmost circumspection.
9. The short question for consideration would be, whether the fact of adoption of the plaintiff by Chamarin is established that he is the adopted son of Chamarin?
10. In order to consider the said plea, it would be appropriate to notice the necessary provisions in this regard contained in the Hindu Adoptions and Maintenance Act, 1956 (for short, 'the Act of 1956'). Section 10 of the Act of 1956 provides as under: -

“10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely—

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.”

11. Section 10 of the Act of 1956 states about the persons who may be adopted. Section 11 speaks about the other conditions for a valid adoption. Clauses (4) and (6) of Section 11 are relevant which are extracted herein-below: -

“11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:

(i) to (iii) xxx xxx xxx

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) xxx xxx xxx

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of *datta homan*, shall not be essential to the validity of an adoption.”

12. For a valid adoption, the physical act of giving and taking is an essential requisite. The give and take in adoption is a requirement

under Section 11(vi) of the Act of 1956 and stands as a *sine qua non* for a valid adoption (see Jai Singh v. Shakuntala¹).

13. In the matter of Kishori Lal v. Chaltibai², the Supreme Court has held that as an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicions of fraud and so consistent and probable as to leave no occasion for doubting its truth.

14. The said judgment has further been followed in the matter of Madhusudan Das v. Smt. Narayanibai (Deceased) by L.Rs. and others³ in which it has been held that a person who seeks to displace the natural succession to property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and its validity. It has been further held as under: -

“For a valid adoption, the ceremony of giving and taking is an essential requisite in all adoptions, whatever the caste. This requisite is satisfied in its essence only by the actual delivery and acceptance of the boy, even though there exists an expression of consent or an executed deed of adoption. In some cases, to complete the adoption a “datta homam” has been considered necessary, but in the case of the twice-born classes, no such ceremony is needed if the adopted boy belongs to the same gotra as the adoptive father.”

15. Section 10(iv) of the Act of 1956 clearly provides that in order to be taken in adoption, the person to be adopted, he or she, must not have completed the age of 15 years, unless there is a custom or usage applicable to the parties which permits adoption of a person

1 (2002) 3 SCC 634

2 AIR 1959 SC 504

3 (1983) 1 SCC 35

of more than 15 years of age.

16. Reverting to the facts of the present case, in the instant case, it is the case of the plaintiff that since Maniram and his wife Chamarin had no issue, plaintiff Bharatlal is staying / living with Chamarin since his infancy and was being treated as her son while his natural father Sunderlal gave his son Bharatlal, the plaintiff, to Chamarin and deed was executed vide Ex.P-13 acknowledging the fact of adoption, on 22-6-1990.
17. In order to further consider the plea, it would be appropriate to notice the adoption deed filed as Ex.P-13 which has been signed by the plaintiff's natural father Sunderlal and originally signed by Chamarin. The deed of adoption (Ex.P-13) reads as follows: -

गोदपत्र

गोद लेने वाली:- श्रीमती चमारिन, उम्र-65 वर्ष, बेवा-मनीराम चन्दनाहू कास्तकार, साकिन-रायकोना, पोस्ट-रायकोना, तहसील-बिलाईगढ़, जिला-रायपुर

गोद लिये जाने वाला भरतलाल, उम्र-16 वर्ष, पिता-सुन्दरलाल चन्दनाहू याने अब दत्तक पुत्र कास्तकार, साकिन व पोस्ट-रायकोना, तहसील-बिलाईगढ़, जिला-रायपुर

मेरे पति मनीराम का लगभग 16 वर्ष से अधिक हुये देहावसान हो गया । हमारी कोई संतान नहीं है । गोद लिये जाने वाला उक्त भरतलाल मेरा सजातीय एवं पारिवारिक सदस्य है जिसे मैंने उसके जन्म से ही अपना गोद पुत्र बनाने की घोषणा उसके माता पिता की सम्पत्ति से कर दी है । उक्त भरतलाल के पालन पोषण में मेरा शुरू से सहयोग रहा है एवं मैं उसे अपने पुत्र के समान मानती आ रही हूं । यह भरतलाल अब मेरे पास ही रहता है । मैंने इस भरतलाल को विधिवत गोद लेकर अपना पुत्र बना लिया है और अब इस गोदपत्र के जरिये घोषित करती हूं कि आज और अभी से उक्त भरतलाल मेरा दत्तक पुत्र हुवा एवं उसे मेरे पुत्र के अब सभी अधिकार प्राप्त हुवे । यही भरतलाल बतौर एवं बहैसियत मेरे पुत्र के मेरा एकमात्र उत्तराधिकारी है एवं इसे मेरे सभी प्रकार के चल अचल सम्पत्ति पर मेरे पुत्र के अधिकार प्राप्त होंगे । अब अभी से उक्त भरतलाल मेरा पुत्र हुवा एवं उसके पिता का नाम अब मेरे पति याने मनीराम हुवे । अतः यह गोदपुत्र लिखाकर समझकर

निशानी अंगुठा बांया कर अपनी स्वीकृति प्रदान की कि सनद रहे । फ.ता.
22.06.1990 प्रारूप टाइप एवं बकलम:-परमेश्वर दयाल मिश्र, दस्तवोज लेखक,
क्रमांक 28, बिलाईगढ़

निशानी अंगुठा बांया श्रीमती चमारिन

18. On a careful perusal of the aforesaid adoption deed, it would be quite appropriate notice that the age of the plaintiff is shown to be 16 years and the said Chamarin had stated that she had already declared to take Bharatlal as her adopted son, she is also treating Bharatlal as her son and he was staying with her, and now, she had adopted him lawfully and declared by this adoption deed from the date of execution of the adoption deed i.e. 22-6-1990 to be her adopted son and all the rights he would get by adoption from the date of adoption and he is the successor of her. It would be quite evident on the tenor and texture of the aforesaid adoption deed that it nowhere mentions that Bharatlal – plaintiff had already been adopted by Smt. Chamarin and ceremony as required under Section 11(vi) of the Act of 1956 has been performed and that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned with intent to transfer the child from the family of its birth. But it flows from the adoption deed that though Smt. Chamarin desired to adopt the plaintiff as her adopted son and maintaining him also, but actually adopted the plaintiff as on 22-6-1990 by giving him all the rights and making him successor of the property from the date of execution of adoption deed which is in clear violation of Section 10(iv) of the Act of 1956, as the plaintiff's age shown in the adoption deed is more than 15 years i.e. he had already completed the age of 15 years on the date of

adoption vide Ex.P-13. If the plaintiff would have been adopted prior to the date of execution of adoption deed, there was no reason not to mention it in the adoption deed, as the intention of Chamarin to adopt the plaintiff and maintaining him and treating him as her son has already been recorded, but that would not amount to adoption in absence of physical act of giving and taking which is an essential requisite as stated in Section 11(vi) of the Act of 1956.

19. The trial Court has clearly recorded a finding that the plaintiff has failed to establish the act of adoption 10 years prior to filing of the suit and thereafter, in furtherance of adoption, the deed was executed on 22-6-1990 (Ex.P-13) in his favour. The said finding has been affirmed by the first appellate Court which is neither perverse nor contrary to record.

20. In the considered opinion of this Court, both the Courts below are absolutely justified in holding that the plaintiff has failed to plead and establish the deed of adoption in his favour by Chamarin. As a result, the substantial questions are answered against the plaintiff and in favour of the defendants.

21. Consequently, the second appeal is dismissed affirming the judgment & decree passed by the first appellate Court reaffirming the decree of the trial Court. There will be no order as to cost(s).

22. A decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge