

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 233 OF 1992

Maruti Mahadu Suryavanshi,
Age 76 years, Occu. Agril.,
R/o Nagarsoga, Tq. Ausa,
District Latur.

... Appellant
(Orig. Defendant)

versus

Keshav s/o Maruti Suryavanshi,
Age 10 years, Occu. Education,
minor u/g of
Dashrath Mahadu Suryavanshi,
Age 51 years, Occu. Agri.
R/o Nagarsoga, Tq. Ausa.

... Respondent
(Orig. Plaintiff)

.....
Mrs. S. A. Dhumal, Advocate for the Appellant.
.....

CORAM : V. K. JADHAV, J.
DATED : 15th FEBRUARY, 2018

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed by the District Judge, Latur in Regular Civil Appeal No.162 of 1989, the original defendant has preferred this Second Appeal.
2. The respondent-plaintiff has instituted a suit bearing R.C.S. No.267 of 1988 before the Civil Judge Junior Division, Ausa for declaration as to his status as the adoptive son of the appellant-

original defendant and also for a decree of perpetual injunction. Though summons was duly served on the appellant-defendant and though the appellant appeared in the suit through his counsel, he failed to file his written statement. The trial court has directed to proceed with the suit without the written statement of the appellant-original defendant. The learned judge of the trial court, by judgment and decree dated 27.09.1989, dismissed the suit with costs. Being aggrieved by the same, respondent-plaintiff has preferred Regular Civil Appeal No.162 of 1989 and the learned District Judge, Latur, by judgment and order dated 13.11.1991, allowed the said appeal with costs and quashed and set aside the judgment and decree passed by the trial court and decreed the suit of the plaintiff. The learned District Judge has declared that the respondent-plaintiff is the adoptive son of the appellant-defendant and accordingly, restrained the appellant-defendant from alienating or transferring the suit property. Hence this Second Appeal.

3. The learned counsel for the appellant-defendant submits that the learned Judge of the trial court has rightly observed that the necessary requirements of giving and taking does not find

place in the pleadings and in absence of the specific pleadings to that effect, there was no valid adoption. The learned counsel submits that, however, the first appellate authority has wrongly construed the provisions of Section 16 of the Hindu Adoption and Maintenance Act, 1956 and decreed the suit.

4. On careful perusal of the Record and Proceeding and the pleadings of the respondent-plaintiff, it appears that respondent-plaintiff has instituted the suit for declaration of status on the basis of a registered adoption deed dated 4.6.1987 executed by the appellant-defendant. In spite of service of summons and even appearing in the suit through the counsel, the appellant-defendant has not filed a written statement.

5. Section 16 of the Hindu Adoption and Maintenance Act, 1956 is reproduced below:

“16. Presumption as to registered documents relating to adoption.-

Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has

been made in compliance with the provisions of this Act unless and until it is disproved.”

6. It is thus, clear that whenever any document registered under any law is produced before the Court purporting to record an adoption made and signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of the Act. In view of this presumption, the proof of giving and taking of the child is not necessary. Needless to say that the said presumption would operate so long as there is no denial. In the instant case, the petitioner-defendant-father failed to file his written statement and as such, there is no denial of the execution of the registered adoption deed, leave apart, the procedure followed while making the adoption. In view of this, I find no substantive question of law involved in this Appeal. Hence the following order:

ORDER

The Second Appeal is hereby dismissed. There shall be no order as to costs.

(V. K. JADHAV, J.)

vre/