

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 240 of 2006

- 1. Sikul Say s/o Roop Say, aged about 55 yrs
 - 2. Bodra Say, s/o Roop Say, aged about 50 yrs
 - 3. Surendra Say, s/o Roop Say, aged about 28 yrs
- all by caste Kanwar, r/o vill. Farsabahar, tehsil Kunkuri Distt. Jashpur, CG

---- Appellants/ Plaintiffs

Versus

- 1. Dhankunwar d/o Chamar Say aged about 48 yrs
 - 2. Syani wd/o Bikul Say s/o Roop Say, aged about 60 yrs
- Both by caste Kanwar, r/o vill. Farsabahar, tehsil Kunkuri Distt. Jashpur, CG
- 3. State of Chhattisgarh through Collector, Jashpur, Distt Jashpur CG

---- Respondents

For Appellant/ Plaintiff	:	Mr. A.K. Prasad, Advocate
For Respondents No. 1 & 2	:	Mr. Anurag Dayal Shrivastava, Advocate
For State/ Respondent No. 3	:	Ms. Shivali Dubey, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

11.07.2019

- 1. Heard on admission and formulation of substantial question of law for determination in the plaintiff's second appeal under Section 100 of Civil Procedure Code.
- 2. The plaintiff's suit for declaration of title, confirmation of possession and permanent injunction was decreed by the trial Court which was reversed by the first appellate Court against which this second appeal has been preferred.
- 3. Mr. Prasad, learned counsel for the plaintiff would submit that the first appellate Court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court holding that Surendra Sai is the

adopted son of Bikul Sai, as such, the finding is perverse and no substantial question of law is involved in this second appeal.

4. I have heard the learned counsel for the plaintiff/ appellant and considered his submission and went through the record with utmost circumspection.
5. The suit property was originally held by Bikul Sai. The plaintiff No. 3(Surendra Sai) claimed that he is the adopted son of Bikul Sai. Therefore, he is entitled to inherit the property of said Bikul Sai, which the trial Court accepted that he is adopted son, but the first appellate Court held that he is not adopted son and set-aside the judgment and decree of the trial Court and dismissed the suit.
6. Section 10(iv) and Section 11(vi) of The Hindu Adoptions and Maintenance Act, 1956 states 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) to (iii) x x x x x x x.

(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. Other conditions for a valid adoption- In every adoption, the following conditions must be complied with:

(I) to (v) x x x x x x x.

(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.

7. It appears from the record that the fact of adoption has not been duly established. The plaintiff has failed to plead and lead the evidence that

he was actually given in adoption by their natural parents and taken in adoption by Bikul Sai and his wife. The adoption deed Exhibit P-3 has been filed in which it nowhere bears the signature of natural parents of Surendra Sai. Even otherwise, the age of Surendra Sai is not mentioned in the said Exhibit P-3. The first appellate Court has rightly held that the essential condition for valid adoption is absolutely lacking in the said Exhibit P-3 and I reached to right conclusion that fact of adoption of Surendra Sai by Bikul Sai and his wife is not established.

8. I do not find any perversity or illegality in the said finding. Therefore, the second appeal is liable to be and is hereby dismissed at the admission stage itself without notice to the other side. No substantial question of law is involved. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge