

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 397 of 2006**

- Thakur Gajendra Singh, S/o Thakur Pratap Singh, aged about 36 years, Occupation cultivation, R/o Village – Baldidih, Tahsil Mahasamund, District Mahasamund (C.G.)

-- Appellant/Defendant

Versus

- Thakur Arun Kumar Singh Adopted son of Thakur Umrao Singh, The then Jamindar, Kodiya Jamindari, Tahsil Mahasamund, District Mahasamund (CG) aged 29 years, At Present residing at Mukhiguhda, District Kala Handi (Orissa) Divisional Account Officer, Power House Division, Mukhiguda, Kalahandi (Orissa)

---- Respondent/Plaintiff

For Appellant

:Shri Awadh Tripathi, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****09.05.2019**

1. This Second Appeal has been preferred by the defendant under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the propriety of the judgment and decree dated 30.09.2005 passed by the 1st Additional District Judge, Mahasamund (C.G.) in Civil Appeal No.37-A/2003, by which, the lower appellate Court, while affirming the judgment and decree dated 14.10.2003 passed by the 3rd Civil Judge, Class-1, Mahasamund in Civil Suit No.59-A/2001, has dismissed the appeal.

2. Briefly stated the facts of the case are that the plaintiff instituted a suit claiming declaration to the effect that he is the adopted son of Thakur Umrao Singh and his wife Lalit Kumari Devi and also for injunction restraining the defendant from claiming himself to be the adopted son of the said couple, i.e.,

Thakur Umrao Singh and Lalit Kumari Devi. It is pleaded in the plaint that after the death of said Thakur Umrao Singh in the year 1971 issueless, his wife Lalit Kumari Devi has adopted him as her son, as per Hindu rites and rituals and for the memorandum of the said fact, a registered deed of adoption was executed on 27.03.1979. It is pleaded further that a judgment (Ex.P.3) was passed by the Deputy Director of Consolidation of Holdings, Bargarh, on 21.12.1982, in which, it has been observed that the plaintiff is the adopted son of said Umrao Singh and Lalit Kumari Devi. According to the plaintiff, a suit was instituted earlier by the defendant, registered as Civil Suit No. 13-A/1992 (re-numbered as 4-A/1995) for possession where an application was made by him under Order 1 Rule 10 of CPC for his impleadment on 04.01.1994. However, the said application was rejected by the said Court on 29.03.1996 by observing that the plaintiff may file a separate suit claiming himself to be the adopted son of said Umrao Singh and Lalit Kumari Devi, giving rise to the filing of the suit in the instant nature, instituted on 28.06.1997.

3. While denying the aforesaid claim, it is pleaded by the defendant that plaintiff Thakur Arun Kumar Singh is not the adopted son of Thakur Umrao Singh and his wife Lalit Kumari Devi. It is contested further on the ground that no deed as such was ever executed on 27.03.1979. According to the defendant, a succession certificate was issued in his favour and prior to issuance of the said certificate, no objection was raised by any of the parties, which itself shows that the plaintiff is not the adopted son of said Umrao Singh and Lalit Kumari Devi. The plaintiff's claim is, therefore, liable to be dismissed.

4. After considering the evidence led by the parties and by considering the documentary evidence like deed of adoption dated 27.03.1979 and also

by considering the judgment passed by the said Deputy Director of Consolidation of Holdings (Ex.P.3), the trial Court has arrived at a conclusion that plaintiff Thakur Arun Kumar Singh was adopted in the year 1973 and for the memorandum of the said fact, a registered deed of adoption was made on 27.03.1979 in presence of the witnesses and also in presence of the natural father and mother of the plaintiff. As a consequence, the trial Court has decreed the plaintiff's claim.

5. The aforesaid finding of the trial Court has been affirmed further by the lower appellate Court in an appeal preferred by the defendant.

6. Being aggrieved, the defendant has preferred this appeal. Shri Tripathi, learned counsel for the appellant submits that the judgment and decree as passed by the Courts below holding that plaintiff Thakur Arun Kumar Singh is the adopted son of said couple, i.e., Thakur Umrao Singh and Lalit Kumari Devi are apparently contrary to law. He submits further that in order to establish the said fact, the plaintiff was required to adduce cogent and reliable evidence, however, in absence thereof, it cannot be held that he is the adopted son of said couple. According to his further submission, a suit was earlier filed by defendant Gajendra Singh along with others for possession with regard to schedule 'A and B' property, as mentioned in the said suit, which was registered as Civil Suit No.4-A/1995 and was decreed by compromise on 16.10.2000, however, it was not questioned by the plaintiff. Therefore, it cannot be held that the plaintiff is the adopted son of said Thakur Umrao Singh and Lalit Kumari Devi.

7. I have heard learned counsel for the appellant and perused the entire record carefully.

8. A suit was instituted by the plaintiff by alleging, inter alia, that after the

death of one Thakur Umrao Singh, who expired issueless in the year 1971, his wife, namely, Lalit Kumari Devi has adopted him in 1973, after performing Hindu rites and rituals. Since no deed was executed in this regard, therefore, for its memorandum, a registered deed of adoption was made on 27.03.1979. Shiv Prasad Bhoi, attesting witness of this document, who was examined as P.W.3, has duly established regarding the alleged factum of adoption made in 1973 and deposed further that since the document was not executed in this regard, therefore, for its memorandum, the alleged deed of adoption was executed on 27.03.1979. A bare perusal of the contents made in the alleged deed of adoption vis-a-vis the statement of its attesting witness, it is evident that the plaintiff has been adopted as such in the year 1973 and for its memorandum, the document has been registered. Initial burden is, thus, discharged by the plaintiff, which could not have been rebutted by the defendant. After considering the said materials, the Courts below have rightly come to the conclusion that after the death of Thakur Umrao Singh in 1971, plaintiff Thakur Arun Kumar Singh was adopted by his wife Lalit Kumari Devi in 1973 and for its memorandum, the alleged deed of adoption was executed on 27.03.1979. The finding so recorded is based on due and proper appreciation of the evidence led by the parties, and as such, deserves to be and is hereby affirmed.

9. In view of the foregoing discussions, I do not find any question of law, much less, the substantial questions of law, which arise for determination in this appeal. The appeal, being devoid of merit, is liable to be and is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge