

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.67 of 2003**

Santram, son of Monudev, aged about 42 years, Caste – Kalar, Occupation – Agriculturist, resident of village Jhankadarha, Tah. Gharghora, Distt. Raigarh (Chhattisgarh)

---- Appellant/Defendant No.1

Versus

- 1A. Sukhdev Kalar Son of Balakram, aged about 65 years, Resident of Village Jhankadarha, Tahsil Gharghoda, District Raigarh (CG) (Husband)
- 2B Smt. Janki Bai Wife of Satyanarayan, aged about 47 years, Resident of Village Madanpur, Tahsil Kharsiya, District Raigarh (CG) (Daughter)
- 1C Ravindra Kumar son of Sukdev, aged about 45 years, Resident of Village Jhankadarha, Tahsil Gharghoda, District Raigarh (CG) (Son)
- 1D Ramesh Kumar Son of Sukdev, aged about 43 years, Resident of Village Jhankadarha, Tahsil Gharghoda, District Raigarh (CG) (Son)
- 1E Smt. Madhri Bai Wife of not known, Resident of village Murra (Bhupdevpur), Tahsil Kharsiya, District Raigarh (CG) (Daughter)
- 2.1 Bhagat Ram, aged about 57 years, son of Late Munudau, resident of Ward No.13, Gharghora, Police Station-Gharghoda, Distt. Raigarh (CG)
- 2.2 Salik Ram, aged about 55 years, son of late Munudau, resident of Gharghora, Police Station – Gharghoda, Distt. Raigarh (CG)
- 2.3 Malik Ram, aged about 51 years, son of late Munudau, resident of Gharghoda, Police Station – Gharghoda, Distt. Raigarh (CG)
- 3.1 Murlidhar, aged about 65 years, son of late Bedram, resident of Village-Shekharapur, Tahsil Patthalgaon, Distt. Jashpur (CG)
- 4. The State of Chhattisgarh, through Collector, Distt. Raigarh (Chhattisgarh)

---- Respondents

For Appellants/defendant No.1	: Mr.Vivek Bhakta, Advocate
For Respondents No.1 to 3/plaintiffs	: Mr.Rajendra Tripathi, Advocate
For Respondent No.4	: Ms K. Tripti Rao, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

08/03/2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by defendant No.1 is as under:-

“Whether the finding of the first appellate Court was justified in reversing the judgment and decree of the trial Court only on the ground that the adoption deed executed in favour of the appellant Santram did not disclose any date or other specific details about the adoption ?

[For the sake of convenience, the parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit land was originally held by Ram Charan. He had no male issue. Plaintiff-Shanti Bai, daughter of Ram Charan, filed a suit that she is sole owner of the suit land after death of her father and his father-Ramcharan has not adopted defendant No.1-Santram, who is her cousin (uncle's son) and therefore, decree for declaration of title and confirmation of possession and entry made in revenue records is not binding on her.
3. Defendant No.1 set up a plea that Ram Charan had no male issue and therefore, he has adopted him during his life time and to confirm the adoption and to dispose off his share of property, Ram Charan has executed a deed on 17.3.1983 (Ex.D/11A), as such, the suit deserves to be dismissed. The trial Court after appreciating oral

and documentary evidence available on record, by its judgment and decree dated 26.6.2000, dismissed the suit. On appeal being preferred by the plaintiff, the First Appellate Court set aside the judgment and decree of the trial Court and held that the plaintiff is sole owner of the suit land. Questioning legality and validity of the impugned judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been preferred by the appellant/defendant No.1, in which substantial question of law has been formulated, which has been set out in the opening paragraph of this judgment.

4. Mr.Vivek Bhakta, learned counsel for the appellant/defendant No.1, would submit that the first appellate Court is absolutely unjustified in reversing the well merited judgment and decree of the trial Court only on the ground that adoption deed (Ex.D/11A) executed in his favour does not disclose the particulars about the adoption. He would further submit that there is sufficient evidence on record and admission is available to hold that Ram Charan has adopted defendant No.1 as adopted son, therefore, the judgment and decree of the first appellate Court deserves to be set aside restoring the judgment and decree of the trial Court.
5. On other hand, Mr.Rajendra Tripathi, learned counsel for respondents No.1 to 3/plaintiff, would support the impugned judgment and decree.

6. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
7. Admittedly, Ram Charan had no male issue, who died on 15.9.1983 leaving her daughter plaintiff herein. In order to prove the adoption, defendant No.1 has filed the document Ex.D/1A, which is an agreement in which plaintiff-Shanti Bai has admitted the factum of adoption of Santram by his father and during cross-examination, she has admitted her signature in the said document. Likewise, Ex.D/2A is the document, which is an agreement signed by defendant No.1 as well as the plaintiff executed on 17.3.83 in which both have agreed to have a partition of the suit land left by Ramcharan as per share. Likewise, Ex.D/3A is batwara faisla, in which it has clearly been stated that defendant No.1-Santram is adopted son of Ram Charan and in order to prove Ex.D/3A, one of the panchas Ashiq Khan Qadri has been examined as DW-3 and document bears the signature of plaintiff-Shanti Bai. Likewise, Ex.D/11A is also an agreement signed by father of the plaintiff in which he has clearly stated the fact of partition between his adopted son Santram and daughter Shanti Bai, plaintiff herein, which has been proved by Dev Singh (DW-4).
8. From perusal of the aforesaid documents, it is quite vivid that Ram Charan has not only adopted Santram as adoptive son, but also given the property as son along with the plaintiff by Ramcharan. These documents have been discarded by the first appellate Court

only on the ground that it is not registered in accordance with Section 16 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter called as “the Act of 1956”) as Section 16 of the Act of 1956 gives presumption to the registered documents relating to adoption. Exs.D/1A to D/3A and Ex.D/11A are not the documents relating to adoption, but these are the documents in which the plaintiff, defendant No.1 and their father Ram Charan have admitted the fact of adoption of Santram, as such, Section 16 of the Act of 1956 is not applicable and the first appellate Court has clearly misdirected himself by applying Section 16 of the Act of 1956 to discard the said documents. So far as the fact of adoption is concerned, the defendant has examined Brajbandhu Das (DW-2) who has clearly deposed the fact of adoption as per custom. Deed of adoption is not one of the document which requires registration (See Param Pal Singh through father v. National Insurance Company and another¹.)

9. The Supreme Court in the matter of Kamla Rani v. Ram Lalit Rai alias Lalak Ram (Dead) through legal representatives and others² has held that factum of adoption and its validity has to be duly proved though formal ceremony of giving and taking is essential ingredient for valid adoption, long duration of time during which a person is treated as adopted cannot be ignored. Para-6 of the report states as under:-

¹(2013) 3 SCC 409

² (2018) 9 SCC 663

“6. We cannot lose sight of the principle that though the factum of adoption and its validity has to be duly proved and formal ceremony of giving and taking is an essential ingredient for a valid adopted, long duration of time during which a person is treated as adopted cannot be ignored and by itself may in the circumstances carry a presumption in favour adoption. In this regard, we may refer to the observations of this Court in *L. Debi Prasad v. Tribeni Devi*³ : (SCC pp. 681-82, para 9)

“9. There is no doubt that the burden of proving satisfactorily that he was given by his natural father and received by Gopal Das as his adoptive son is on Shyam Behari Lal. But as observed by the Judicial Committee of the Privy Council in *Rajendrao Nath Holdar v. Jogendro Nath Banerjee*⁴; that although the person who pleads that he had been adopted is bound to prove his title as adopted son, as a fact yet from the long period during which he had been received as an adopted son, every allowance for the absence of evidence to prove such fact was to be favourably entertained, and that the case was analogous to that in which the legitimacy of a person in possession had been acquiesced in for a considerable time, and afterwards impeached by a party, who had a right to question the legitimacy, where the defendant, in order to defend his status, is allowed to invoke against the claimant every presumption which arises from long recognition of his legitimacy by members of his family; that in the case of a Hindu, long recognition as an adopted son, raised even a stronger presumption in favour of the validity of his adoption, arising from the possibility of the loss of his rights in his own family by being adopted in another family. In *Rup Narain v. Gopal Devi*⁵ the Judicial Committee observed that in the absence of direct evidence much value has to be attached to the fact that the alleged adopted son had without controversy succeeded to his adoptive father's estate and enjoyed till his death and that documents during his life and after his death were framed upon the basis of the adoption. A Division Bench of the Orissa High Court in *Balinki Padhano v. Gopalkrishna Padhano*⁶]; held that in the case of an ancient adoption evidence showing that the boy was treated for a long time as the adopted son at a time

3 (1970) 1 SCC 677

4 1871 SCC OnLine PC11

5 1909 SCC On Line PC 3

6 1963 SCC OnLine Ori 33

when there was no controversy is sufficient to prove the adoption although evidence of actual giving and taking is not forthcoming. We are in agreement with the views expressed in the decisions referred to above.”

10. Reverting to the facts of the present case in the light of principle of law laid down by the Supreme Court in Kamla Rani (supra), it is quite vivid that there is overwhelming evidence brought on behalf of defendant No.1 in the shape of Exs.D/1A to D/3A and Ex.P/11A and oral testimony of defendant's witnesses to clearly establish that Ram Charan, plaintiff's father, has not only adopted defendant No.1 during his life time, but also given property along with plaintiff-Shanti Bai treating him as his adoptive son, which is evident on record, which has been accepted by the plaintiff in the documents Exs.D/1A to D/3A, which she is not entitled to resile, as such, the first appellate Court is absolutely unjustified in setting aside the well merited judgment and decree of the trial Court by recording a finding, which is perverse on record.
11. For the foregoing reasons, the judgment and decree passed by the first appellate Court is hereby set aside and that of the trial Court is hereby restored. The substantial question of law is answered accordingly.
12. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).
13. A decree be drawn up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge