

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No. 209/2013**

% **14th February, 2019**

SWARUPI DEVI AND ORS. Appellants

Through: Mr. Vijay Kumar Shukla, Advocate
(Mobile No. 9810120927).

versus

SURESH NAGAR Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the Judgment of the trial court dated 15.03.2013 by which the trial court has decreed the suit filed by the respondent/plaintiff for partition of the suit property bearing no. 495, Block-A, Ganesh Nagar, Shakarpur, Delhi-110092. The respondent/plaintiff is the son of the appellant no.1/defendant no.1. Appellant no.2/defendant no.2 is the brother of the respondent/plaintiff and appellant no.3/defendant no.3 is

the sister of the respondent/plaintiff. The suit property for which partition is sought was the property of Sh. Sauda Ram, the father of the respondent/plaintiff and the husband of the appellant no.1/defendant no.1. Appellants no. 2 and 3/defendants no. 2 and 3 are the other son and daughter of Late Sh. Sauda Ram.

2. The respondent/plaintiff pleaded that his father, Sh. Sauda Ram, was the owner of the suit property and the father, Sh. Sauda Ram, died intestate in 1996 leaving behind four legal heirs who were parties to the suit. The respondent/plaintiff therefore sought the decree of partition claiming $1/4^{\text{th}}$ share in the suit property.

3. The appellants/defendants contested the suit and denied that the respondent/plaintiff was the son of Sh. Sauda Ram as it was pleaded that the respondent/plaintiff, who was the natural son of Sh. Sauda Ram, was adopted by Sh. Khila Ram the elder brother of Sh. Sauda Ram in the year 1958.

4. The following issues were framed in the suit:-

- “1. Whether the plaintiff has not approached the court with clean hands, if so, its legal effect? OPD.
2. Whether there is no cause of action in favour of the plaintiff and against the defendants? OPD.

3. Whether the plaintiff had been adopted by Sh. Khila Ram in the record of Samvat 2014? if so, its effects. OPD.
4. Whether the plaintiff is/has been deriving his rights from his natural parents? OPD.
5. Whether the plaintiff is entitled to relief of partition? OPP.
6. Whether the plaintiff is entitled to relief of possession? OPP.
7. Whether the plaintiff is entitled to relief of permanent injunction? OPP.
8. Relief.”

5. The parties led evidence and these aspects are recorded in the following portion of the impugned judgment:-

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“In order to prove his case the plaintiff has examined himself as PW1 and filed his affidavit Ex.PW1/1 wherein he has supported his case as mentioned by him in his plaint.

PW2 is Sh. Uma Shankar Sharma, a teacher from Sarvodaya Bal Vidhayalaya, Mandawali, Delhi-92. He has proved the school certificate of the plaintiff as Ex.PW2/A.

The defendants have examined four witnesses in support of their case.

The defendant no. 1 examined herself as DW1 and filed her affidavit Ex.DW1/A, wherein she has supported her case as mentioned in the written statement.

DW-2 is Smt. Ram Kali. She is the real sister of the defendant no.1. She has filed her affidavit Ex.DW2/A, wherein she has stated that the plaintiff was adopted by Sh. Khela Ram as Sh. Khela Ram was not having any issue.

DW-3 is Sh. Sita Ram Sharma. He is Purohit by profession. He has filed his affidavit Ex.DW3/A, wherein he has stated that his forefathers were Purohits of Nagar family. His father expired in the year 1985 and since then he is performing the role of Purohit for Nagar family. He also

stated that Sh. Khela Ram did not have any child and he adopted the plaintiff.

DW4 is Smt. Shanti who also happens to be a sister of D-1. She has filed affidavit Ex.DW4/A, wherein she has corroborated the version of defendant no. 1 and DW2 Smt. Ram Kali regarding the adoption of the plaintiff by his uncle Sh. Khela Ram.”

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6. The trial court has held, and in my opinion rightly so, that the appellants/defendants have failed to prove that the respondent/plaintiff was adopted by Sh. Khila Ram, the elder brother of Sh. Sauda Ram. Admittedly, there is no registered adoption deed. The only document to show the existence of the adoption was in the form of a statement made in a *pothi* maintained by the *Purohit* who deposed as DW-3. The narration in this *pothi* was proved as Ex.DW3/D1. The trial court has rightly held that there was no adoption because if there was adoption of the respondent/plaintiff by Sh. Khila Ram then surely there would be some positive documentary evidence to prove the adoption. Not only the appellants/defendants failed to prove the adoption in terms of any documentary evidence, on the other hand the respondent/plaintiff proved as Ex. PW2/A the School Leaving Certificate of the school Sarvodaya Bal Vidhayala at Mandawali, Delhi, and as per this record, the respondent/plaintiff

when studying in Class VII, left the school, and in this School Leaving Certificate Ex. PW2/A the respondent/plaintiff is shown to be the son of Sh. Sauda Ram. This document Ex. PW2/A is of the year 1968 and for the period of study from the year 1966 to 1968 i.e. 44 years prior to the filing of the suit and 30 years prior to the death of Sh. Sauda Ram. The respondent/plaintiff also proved the ration card as Ex.PW1/E, and this ration card showed the respondent/plaintiff as the son of Sh. Soda Nagar. This ration card is dated 27.06.2005 i.e. five years before filing of the subject suit on 25.08.2010. The respondent/plaintiff also proved the election identity card as Ex.PW1/D which showed that as on 01.01.2008 respondent/plaintiff was of 52 years of age and son of Sh. Soda Ram Nagar. Smt. Raghbiro Devi was the wife of Sh. Khila Ram, the alleged adoptive mother of the respondent/plaintiff, and the respondent/plaintiff has proved in his favour the General Power of Attorney and Will executed by Smt. Raghbiro Devi, wife of Sh. Khila Ram, with respect to the property situated at Ganesh Nagar in village Mandawali, and in these documents Ex.PW1/F, the respondent/plaintiff is shown to be the son of Sh. Sauda Ram and not of Sh. Khila Ram and Smt. Raghbiro Devi.

7. An adoption is a serious fact. Just because the appellant no.1/defendant no. 1 deposed that she had given up the respondent/plaintiff in adoption to her elder brother-in-law, Sh. Khila Ram, the same would not mean that simply because a mother says that she has given her son in adoption, adoption will become a *fait accompli*. Oral evidence is not enough to prove adoption, in the facts of the present case, once school leaving certificate of 1966-1968 has been proved by the respondent/plaintiff as Ex.PW2/A showing that he was son of Sh. Sauda Ram. The meaning of the deposition of appellant no. 1/defendant no. 1 in the face of the documentary evidence led by the respondent/plaintiff would mean that at best the respondent/plaintiff would have lived with Sh. Khila Ram and his wife, Smt. Raghbiro Devi as they had no children of their own.

8. For the self-same reason, the oral evidence of the sister of the appellant no. 1/defendant no. 1, Smt. Shanti, who deposed as DW-4, does not help the appellants/defendants to prove the factum of adoption.

9. The Ld. counsel for the appellants/defendants argued that respondent/plaintiff has inherited the property of Sh. Khila Ram,

however, not only no such documentary evidence is led in the suit, but in fact it is noted that the respondent/plaintiff on the contrary led in evidence and proved the General Power of Attorney and Will executed by Smt. Raghbiro Devi, wife of Sh. Khila Ram, in favour of the respondent/plaintiff, of the property belonging to Smt. Raghbiro Devi, and where the respondent/plaintiff is shown to be the son of Sh. Sauda Ram and not Sh. Khila Ram. The Power of Attorney and the Will proved as Ex.PW1/F had been executed way back on 25.03.1998 i.e. 12 years prior to filing of the subject suit.

10. In view of the aforesaid discussion, I do not find any merit in the appeal for setting aside the impugned judgment which rightly holds that respondent/plaintiff was not adopted by Sh. Khila Ram, and that consequently the respondent/plaintiff along with the three other parties to the suit, being the four legal heirs of Sh. Sauda Ram, each of the said legal heir (including the respondent/plaintiff) would inherit 1/4th share in the suit property. Dismissed.

FEBRUARY 14, 2019

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VALMIKI J. MEHTA, J