

HIGH COURT OF CHHATTISGARH, BILASPUR• **SA No. 18 of 2006**

1. Teeka Ram aged 40 years S/o Shri Nanhi Ram Kurmi R/o Village Garhwat, Tahsil and District- Bilaspur, C.G.
2. Ishwar Prasad aged 30 years, S/o Shri Nanhi Ram Kurmi R/o Village Akaltari, Post Garhwat, Tahsil and District- Bilaspur, C.G.

---- Appellants**Versus**

1. Sanjay Kumar aged 21 years S/o Jagdish Prasad Kurmi.
2. Jagdish aged 52 years S/o Chandulal Kumri.
Both R/o Village Garhwat, Tahsil and District- Bilaspur.
3. State of C.G. Through Collector Bilaspur, C.G.

---- Respondents

For Appellants/plaintiffs	: Mr. Ratnesh Kumar Agrawal, Advocate.
For Respondents/defendants	: Mr. B.L. Dembra, Advocate.
For State	: Mr. Ravish Verma, G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****10/06/2020**

Heard.

1. This Second Appeal is directed against judgment and decree dated 30.11.2005 passed by District Judge, Bilaspur, C.G. in Civil Appeal F.A. No.04-A/2005 arising out of judgment and decree dated 03.05.2005 passed by Civil Judge Class-I Bilaspur in Civil Suit No.63-A/1999. This is plaintiffs' appeal as judgment and decree passed in favour of plaintiffs/appellants by the trial Court has been reversed dismissing their suit and allowing counter claim of the defendants/respondents.
2. Appellants/plaintiffs filed a suit for declaration and permanent injunction on the pleadings that property in dispute originally belonged to Kaushal Prasad whose wife was Bhagwantin Bai. Kaushal Prasad and Bhagwantin Bai were issueless, Kaushal Prasad died in the year 1992. Bhagwantin Bai was the aunt of (father's sister) of the plaintiffs. After death of Kaushal Prasad in the year 1992, his entire property devolved upon Bhagwantin Bai and her name was duly mutated in revenue records. Bhagwantin Bai had grown old

and keeping ill and she was looked after by Nahi Ram (father of plaintiffs) and plaintiffs. Bhagwantin Bai being in need of money, sold her land admeasuring 7.04 acres situated in village Garhwat for a consideration of Rs.1,90,000/- by registered sale deed dated 23.09.1995 (Ex.P-1) and possession was also handed over. Later on, in respect of remaining agricultural land admeasuring 1.91 acres and one house also, Bhagwantin Bai executed Will deed (Ex.P-2) in favour of plaintiff-Teekaram on 15.05.1998. In course of time, the defendants started interfering with the possession claiming that the property in dispute devolved upon Sanjay, who was adopted by Kaushal Prasad and Bhagwantin Bai vide adoption deed dated 20.01.1990 (Ex.D-6), which is a fabricated document as Bhagwantin Bai never adopted defendant Sanjay Kumar. On such pleadings, plaintiffs sought declaration of title and permanent injunction against defendants.

Defendants Sanjay and Jagdish Prasad filed their written statement disputing the claim made by the plaintiffs and denying all factual claims made with regard to purchase vide sale deed and also devolution of the property of Bhagwantin Bai under Will deed. Defendants came out with the case that the property originally belonged to Kaushal Prasad whose cousin was Chandulal, defendant-Jagdish is son of Chandu and defendant-Sanjay is the son of Jagdish. Kaushal Prasad and Bhagwantin Bai had no issue so, under a due ceremony of adoption, they have taken defendant Sanjay in adoption duly documented on 20.01.1990. After death of Bhagwantin Bai, Sanjay being the adopted son, inherited the entire property in dispute. According to defendant, Bhagwantin Bai was old lady and keeping ill and taking further advantage of the fact that Bhagwantin Bai was illiterate, her thumb impression may have been obtained towards fabrication of Will, whereas, Bhagwantin Bai never sold her property nor bequeathed by Will.

A counter claim was also made by defendant based on adoption deed.

3. In view of the pleadings and issue raised pleadings of the parties, learned trial Court framed as many as six issues which included issue as to whether Kaushal Prasad had taken defendant Sanjay in adoption or whether the adoption deed is fabricated. The learned trial Court recorded finding that defendant failed to prove adoption deed and relying upon the evidence with regard to proof of sale deed dated 23.09.1995 (Ex.P-1) and sale deed dated 15.05.1998 (Ex.P-2) decreed the suit of the plaintiff.

4. Aggrieved by the said judgment and decree, defendants preferred First

Appeal. The learned lower Appellate Court vide judgment and decree dated 30.11.2005, reversed judgment and decree of the trial Court, dismissed plaintiffs suit and allowed counter claim.

5. This appeal was admitted on following substantial questions of law :

(i) “Whether the finding of the first Appellate Court that respondent No.1 is the adopted son of the deceased Koushal Prasad Kurmi and Bhagwanti Bai is illegal as the same is based on adoption deed of Ex.D-6 which is an unregistered document and as such inadmissible in evidence?”

(ii) “Whether the first Appellate Court was justified in reversing the well reasoned judgment of the trial Court by which the suit of the plaintiff was decreed and counter claim filed by the defendant was rejected?”

6. Learned counsel for the appellants, before opening his argument on the two substantial questions of law, prayed for framing additional substantial questions of law.

Firstly, it has been argued that the learned lower Appellate Court committed patent illegality and perversity in holding adoption deed as proved even though, there is no evidence of consent of Bhagwanti Bai for adoption of Sanjay by her husband Kaushal Prasad which is mandatory requirement of valid adoption as mandated under Section 7 of the Hindu Adoption and Maintenance Act, 1956. Defendant did not lead any evidence of giving and taking ceremony of adoption. Even Sanjay did not enter the witness box. Reliance has been placed on the decisions of the Supreme Court in the cases of **Ghisalal Vs. Dhapubai (dead) by Lrs. And Others**, (2011) 2 SCC 298 and **M. Gurudas and Others Vs. Rasarajan and Others**, (2006) 8 SCC 367 and also judgment of this Court reported in the case of **Vishambher Vs. Kaththuram**, (2009) SCC Online CG 147.

7. Secondly, learned counsel for the appellants further argued that the finding of the learned lower Appellate Court disbelieving sale deed is based on wholly irrelevant consideration that the plaintiff failed to prove as to whether the sale consideration were utilized by late Bhagwanti Bai. Defendant contended that once the essential ingredients of sale are proved, it is not necessary for the plaintiffs to prove as to whether and in what manner, the sale proceeds were utilized by the vendor. It is also argued that the finding disbelieving Will is also based on patently illegal reasons that the witnesses of

the Will are interested, therefore, the Will is doubtful. Contentions of the learned counsel for the appellants are that there is no law that Will deed has to be disbelieved only because the witnesses appear to be interested in favour of the beneficiary of the Will. If the Will is found proved in the manner prescribed under Section 63-c of the Indian Succession Act read with Section 68 of the Evidence Act, it has to be given full effect.

8. Lastly, it has been argued that the counter claim could not have been allowed because no specific relief was sought by the defendant seeking declaration against the sale deed dated 23.09.1995 and Will deed dated 15.05.1998.
9. On the first substantial question of law, learned counsel for the appellant relying upon the Supreme Court decision in the case of **Lakshman Singh Kothari Vs. Smt. Rup Kanwar, AIR (1961) SC 1378** would argue that a deed of adoption is required to be duly registered under the Registration Act. He would submit that the deed of adoption was a forged document and that was wholly inadmissible, therefore, the finding of the learned lower Appellate Court is liable to be set aside only on this ground.
10. On the second substantial question of law it is argued that the finding of the learned lower Appellate Court reversing the judgment and decree of the trial Court is based on complete misconstruction, perversity and patent illegality in appreciating the pleadings of the parties as well as oral and documentary evidence led by the plaintiffs.
11. Per contra, learned counsel for the respondents would argue that at this stage of final argument in the present appeal which is pending since last 14 years, the appellant is seeking to raise new issues. He would submit that otherwise also, the question of law proposed have no merits because there is enough evidence of consent of Bhagwantin Bai to fulfill requirement of Section 7 of the Hindu Adoptions and Maintenance Act, 1956. It is also argued that finding to disbelieve Will deed and sale deed are not based on any solitary ground but open assessment of oral and documentary evidence led by the parties, therefore, on this ground, no question of law arises for consideration. Learned counsel for the respondent further argued that the appellant having failed to raise any specific ground to maintainability of counter claim either at the trial or nor having prayed for any issue at the first appellate stage, may not be permitted to raise such technical plea.

12. On the first substantial question of law, a very pointed reply has been submitted by learned counsel for the respondent, placing reliance upon Supreme Court decision in the case of **Param Lal Singh through father Vs National Insurance Company and another (2013) 3 SCC 409**, wherein, after considering its earlier decision in the case of **Lakshman Singh Kothari (supra)** it has been settled that adoption deed does not require registration to become an admissible in evidence. On the second substantial question of law, learned counsel for the respondent would submit that the second question of law, on close perusal does not contain any specific question of law and is of a very general nature and the appellant cannot be permitted to assail the findings of the learned lower Appellate Court as if this Court were court of facts again reassessing and appreciating the oral and documentary evidence.
13. I have heard learned counsel for the parties and perused the records.
14. As far as prayer for framing additional substantial question of law is concerned, all the questions of law proposed by the appellant do not merit consideration. At the time when appeal was admitted, no such substantial question of law was proposed. Even then it is permissible under the law to frame an additional substantial question of law at the time of hearing. But then, the first proposed additional substantial question of law is liable to be rejected because present is not a case of there being no evidence at all regarding consent to adoption by Bhagwantin Bai. Section 7 of the Hindu Adoptions and Maintenance Act, 1956 definitely requires that if a male hindu desirous of taking a son in adoption, has a wife living, he shall not adopt except with the consent of his wife unless, the wife has completely and finally renounced the world or has ceased to be hindu or has been declared by a Court of competent to be an unsound mind. In the present case, as the finding of the learned Court below reflects and the evidence of Jagdish defendant No.2 himself reveals, there is ample evidence on record that Koushal Prasad Kurmi and Bhagwantin Bai had taken Sanjay in adoption in presence of others. Not only this, there is ample evidence of ceremony of taking a child in the adoption. Therefore, it cannot be said that it is a case of no evidence. The learned lower Appellate Court has believed the evidence led by the defendant for proving of the factum of consent of Bhagwantin Bai and also giving and taking ceremony. The two decisions cited in the cases of **Ghisalal (supra)** and **M. Gurudas (supra)** are therefore distinguishable on facts. Thus, the first proposed additional substantial question of law does not arise for consideration.

15. The submission made with reference to findings of the learned lower Appellate Court in para-11 of its judgment that finding with regard to sale deed and will deed are based on extraneous is also not correct. It is not that in order to disbelieve, learned lower Appellate Court has only taken into consideration as to how Bhagwantin Bai utilized the sale consideration. Learned lower Appellate Court has primarily taken into consideration that Bhagwantin Bai was very old and sick lady, she was illiterate lady. It has also taken into consideration that plaintiff has failed to prove wherefrom he arranged the funds to make payment of sale consideration to Bhagwantin Bai.

Finding of learned lower Appellate Court regarding Will deed being doubtful is also based on many considerations and it cannot be said that the only consideration to find Will deed suspicious is that the witnesses were interested. The learned lower Appellate Court has taken into consideration all the circumstances, evidence with regard to old age, sickness and illiteracy, relationship of the parties and their conduct to come to the conclusion that the Will deed appears to be suspicious, therefore, on this ground no question of law arises for consideration.

16. As far as plaintiffs' case that defendants' counter claim could not be considered for want of specific relief prayed for by him could not be led at this stage when plaintiff did not raise any such objection nor prayed for any issue in that regard to be framed by the trial Court with regard to declaration against sale deed and Will deed. Moreover, the learned lower Appellate Court has specifically recorded findings against sale deed and Will deed both. Therefore, no further additional substantial question of law is required to be framed and prayer in this regard is rejected.

17. As far as the first question of law is concerned, the issue as to whether an adoption would require registration, is no longer res-integra and concluded by authoritative pronouncement of the Supreme Court in its decision in the case of **Param Pal Singh (supra)** it was held:-

“14. In this context, it will be worthwhile to note the requirement of registration of an adoption deed. Section 17 of the Registration Act specifically refers to the documents of which registration is compulsory. The deed of adoption is not one of the documents mentioned in sub-section (1) of Section 17 which mandatorily requires registration. Sub-section (3) of Section 17 only refers to the mandatory requirement of registration of an authorisation that may be given for adopting a son executed after 1-1-1872 if such

authorisation was not conferred by a will. Dealing with the said provision relating to authorisation, it has been held in the decision in Vishvanath Ramji Karale Vs. Rahibai Ramji Karale that a deed of adoption as distinguished from authority to adopt does not require registration.”

Reliance placed on the judgment of the Supreme Court in **Lakshman Singh Kothari (Supra)** is misplaced. The aforesaid decision was duly considered by the Supreme Court in the case of **Param Pal Singh (supra)**. The aforesaid decision deals with the requirement of valid adoption and there is nothing to show that in the said decision, it has been laid down that a deed of adoption would necessarily require registration in order to become admissible in evidence. In that view of the matter, the first substantial question of law is answered against the appellants and in favour of respondents that the deed of adoption is not required to be compulsorily registered under the Registration Act, 1908 and for that reason, it cannot be held to be inadmissible in evidence.

18. As far as second substantial question of law is concerned, learned counsel for the respondents has rightly submitted that the said question of law does not arise for consideration because the first Appellate Court has minutely considered the evidence, both oral and documentary, on record. During the course of argument, except raising additional substantial question of law, learned counsel for the appellants could not point out any other patent illegality or perversity in the findings of the learned lower Appellate Court so as to warrant interference with the same. Accordingly second substantial question of law is also answered against the appellants and in favour of the respondents that the first Appellate Court justified in reversing the judgment and decree of the trial Court.

19. In the result, appeal fails and is hereby dismissed. Parties to bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge