

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.164 of 2018**

Shivratan Sah Son of Late Madan Gopal Saw, Resident of Mohalla-
Keshopur, Mohanpur, P.O. and P.S.- Jamalpur, District- Munger.

... .. Petitioner/s

Versus

Sanjay Kumar Sah Son of Late Dr. Murlidhar Saw, Resident of Mohalla-
Keshopur, Mohanpur, P.O. and P.S. Jamalpur, District- Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ajit Kumar Singh
For the Respondent/s	:	Mr. J.S. Arora, Sr. Adv. Mr.Ravi Bhatia

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER**

10 07-11-2022 Heard the parties.

The petitioner is aggrieved by the order dated 14.09.2017 passed by learned Sub-Judge 1st, Civil Court, Munger in Title Suit No. 28 of 2015 by which the amendment in the plaint sought by the petitioner-plaintiff has been rejected.

The petitioner filed a suit for partition of the suit property.

An amendment petition in the suit after framing of the issues has been filed by the petitioner for adding other co-sharers as defendant as well as the fact that “that the plaintiff is the adopted son of Late Madan Gopal Sah and Sumitra Devi. Madan Gopal Sah and his wife adopted the petitioner- Shivratan Sah in the year 1979 and at the time of adoption Shivratan Sah was aged about four months. Data Hawan ceremony was



also performed. The adoption deed was prepared and registered on 16-09-2004 before the Sub Registrar, Sheikhpura with the consent of natural father of the petitioner namely, Nand Kishore Sah and mother- Mina Devi.

The amendment sought by the petitioner has been rejected by the learned trial court on the ground that from perusal of the registered adoption deed dated 16-09-2004 it transpires that the petitioner was more than fifteen years old on the date of registration of the deed and as such as per the provisions of Section 10 of the Hindu Adoption & Maintenance Act, 1956 (hereinafter referred to as “the Act”) a person, who is more than fifteen years of age is not capable of being taken in adoption.

Learned counsel for the petitioner submits that petitioner was adopted in 1979 while he was four months old. He was being treated as adopted son of Late Madan Gopal Sah from the very beginning which would be evident from the document brought on record by the petitioner i.e. pension paper of Madan Gopal Sah filled up in 1988 in which he has disclosed the name of the petitioner as his son, the age of the petitioner was also mentioned as four months as on 13-12-1979. The educational certificate has been enclosed by the petitioner by way of supplementary affidavit. Relying upon Annexures P-9, P8 &



P7 to the supplementary affidavit, learned counsel submits that all these documents will go to show that the petitioner was adopted son of Madan Gopal Sah. To substantiate his arguments, he relied upon a judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 9153 of 2017 Mrs. Kamla Rani versus Ram Lalit Rai @ Lalak Rai and submits that 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 of adoption. He also relies upon the judgment reported in (1970) 1 SCC 677. He submits that amendment is by way of clarification and explanation inasmuch as though the petitioner in the plaint has mentioned that he is the son of late Madan Gopal Saw but only clarification is needed that he is the adopted son.

On the other hand, learned senior counsel for the respondent opposes the prayer of the petitioner and submits that the learned trial court has rightly rejected the amendment petition of the petitioner inasmuch as from perusal of the registered adoption deed dated 16.09.2004 it is clear that petitioner was about twenty four years of age as on 16-09-2004 inasmuch as the petitioner has disclosed his age in the plaint filed in the year 2015 as 35 years. He further submits that no ceremony was ever



performed for adoption which is an essential requirement for a valid adoption. He also submits that Section 10 of the Act bars a person of more than fifteen years of age as being taken in adoption. In support of his argument he relies upon a judgment of this court reported in (2002) 1 PLJR 384 Kanhai Ram *versus* State of Bihar & Ors. He also relied upon a judgment reported in 1983 BBCJ (SC) 33 Madhusudan Das Vrs. Smt. Narayani Bai and Ors. and referring to paragraph -19 of that judgment submits that a person who seeks to displace the natural succession to property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and its validity. The evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and probable as to give no occasion for doubting its truth. He further submits that in the said adoption deed it has not been mentioned that at the age of four months the petitioner was adopted by performing Data Hawan / ceremony for the purpose of adoption.

In reply, learned counsel for the petitioner submits that registration of adoption discloses that petitioner was adopted in the childhood.

I have heard learned counsel for the parties. It is apparent from the plaint that the petitioner is claiming himself as



the son of Madan Gopal Sah and has filed the suit for partition claiming half share (1/2) in the suit property. By way of amendment the petitioner only wants to add other co-sharers as defendants and the fact that he is not the biological son of Madan Gopal Sah but the adopted son. It goes without saying that petitioner has to prove the factum of his adoption during the course of trial. The merit of the amendment is not to be seen at the stage it is being allowed.

Taking into consideration the rival submissions made by the parties and without giving any finding upon the merit of the adoption, in my opinion, in the interest of justice, amendment sought for should be allowed giving a fair chance to the petitioner to prove his case.

In the result, the impugned order dated 14/09/2017 passed in Title Suit No. 28 of 2015 is set aside. The amendment sought by the petitioner is allowed.

It goes without saying that the respondent will have a chance of rebuttal.

The petition stands allowed.

praful/-

(Anil Kumar Sinha, J)

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