

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM No. 71 OF 2011

Sri Rabi Sahoo @ Rabi Jena ***Petitioner***

Mr. Amitav Tripathy, Advocate

-versus-

Mantri Sahoo and others ***Opp. Parties***

Mr. P.K. Sahoo, Advocate
(for Opp. Party Nos.1 and 2)
Mr. Himanshu Bhusan Dash,
Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.03.2022

Order No.

19. 1. This matter is taken up through hybrid mode.
2. Order dated 22nd March, 2011 passed in Criminal Proceeding No.43 of 2011 filed by the Opposite Party Nos. 1 and 2 under Section 125 Cr.P.C. is under challenge in this RPFAM, wherein learned Judge, Family Court, Bhubaneswar directed each of the Petitioner as well as Opposite Party Nos. 3 and 4 to pay a sum of Rs. 2,000/- per month to the Opposite Party Nos. 1 and 2 towards maintenance from the date of the application i.e. 8th February, 2010.
3. Mr. Tripathy, learned counsel for the Petitioner submits that the Petitioner is the natural born son of the Opposite Party Nos. 1 and 2 but has been given in adoption to Ananta Jena, who is his maternal grandfather by executing registered deed of adoption dated 29th January, 1990. Thus, he cannot be treated to be a family member of the Opposite Party Nos. 1 and 2 and should not have been directed to pay maintenance to them,

when Opposite Party Nos.3 and 4, who are sons of said Opposite Party Nos. 1 and 2, are available.

4. It is his submission that after being given in adoption, he has no connection with his natural parents. He has the responsibility to maintain his adoptive parents and he is doing so. The matter was earlier pending before learned S.D.J.M, Bhubaneswar and was subsequently transferred to the Family Court, Bhubaneswar. The Petitioner could not get proper information on the same and thus, he could not contest the matter. As such he prays for setting aside the impugned order so far as it relates to the Petitioner directing him to pay a sum of Rs.2,000/- per month towards maintenance and to give him an opportunity of hearing in the matter.

5. Mr. Sahoo, learned counsel for Opposite Party Nos. 1 and 2 submits that the Petitioner is the natural born son of Opposite Party Nos. 1 and 2 and he being adopted by the father of the Opposite Party No.2 is also liable to pay maintenance to them. He also disputes the genuineness of the registered deed of adoption. Hence, he submits that the impugned order needs no interference.

6. Taking into consideration the submission made by learned counsel for the parties, this Court finds that the Petitioner was arrayed as Opposite Party No.3 in the petition under Section 125 Cr.P.C. where he has been described as adopted son of Ananta Jena by the Opposite Party Nos. 1 and 2.

7. The copy of the registered deed of adoption annexed to this petition as Annexure-1 also discloses that he has been adopted by Ananta Jena. The registered deed of adoption

attaches with a presumption of validity unless and until it is dislodged in accordance with law.

8. Prima facie it appears that the Petitioner is the natural born son of the Opposite Party Nos. 1 and 2 since he is adopted by Ananta Jena, the Petitioner becomes a member of that family and not the family of Opposite Party No. 1 and 2. As such, it appears that he may not be liable to pay maintenance to Opposite Party Nos. 1 and 2.

9. It is contended by Mr. Tripathy, learned counsel for the Petitioner that the Petitioner was not given opportunity of hearing to place his case before the learned Judge, Family Court, Bhubaneswar. In that view of the matter, the matter requires reconsideration by learned Judge, Family Court, Bhubaneswar.

10. Accordingly, the impugned order, so far as it relates to payment of maintenance by the Petitioner is set aside. The matter is remitted back to learned Judge, Family Court, Bhubaneswar to adjudicate the matter afresh with regard to liability of the Petitioner to pay maintenance to Opposite Party Nos. 1 and 2.

11. In order to avoid further delay in the matter, parties are directed to appear before learned Judge, Family Court, Bhubaneswar on 18th April, 2022 to receive further instruction in the matter.

12. With the aforesaid observation and direction, this petition is disposed of.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

Page 3 of 3