

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.187 of 2011

In the matter of an Appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 10.12.2010 and 24.12.2010 respectively passed by the learned District Judge, Mayurbhanj, Baripada in R.F.A. No.18 of 2009 confirming the judgment dated 20.01.2009 passed by the learned Civil Judge, Senior Division, Baripada, District-Mayurbhanj in Civil Suit No.14 of 2004.

Suklal Naik

....

Appellant

-versus-

Laxmi Naik

....

Respondent

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

For Appellant

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Mr.B. Das
(Advocate)

For Respondent

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CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 12.12.2022 : Date of Judgment:23.12.2022

D.Dash,J. The Appellant, in filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), has assailed the judgment and decree dated 10.12.2010 and 24.12.2010 respectively passed by the learned District Judge, Mayurbhanj, Baripada in R.F.A. No.18 of 2009.

By the same, the First Appellate Court has confirmed the judgment and decree passed by the learned Civil Judge, Senior Division, Baripada, District-Mayurbhanj in Civil Suit No.14 of 2004

dismissing the suit filed by the present Appellant as the Plaintiff as against the Respondent being arraigned as the Defendant therein.

The Appellant, as the Plaintiff, had filed the suit praying for declaration of his right, title and interest over the property in question with the other prayer of permanent injunction as against the Respondent (Defendant). The suit, having been dismissed, this Appellant (Plaintiff) had filed the Appeal under section 96 of the Code, which too has been dismissed.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. **Plaintiff's Case:-**

One Sada Naik had a son, namely, Radha. He too had a daughter named Manika. Radha's wife is Gurubari. The Plaintiff claims to be the adopted son of Radha and Gurubari. The Defendant is the daughter of Manika. As per the case of the Plaintiff, in the year 1949, he was adopted by Radha and Gurubari and subsequently, a deed of acknowledgement of adoption had been executed on 01.09.1970 wherein his natural parents and adoptive parents were the parties. However, the suit land having been recorded in the name of Gurubari, the widow of Radha, she had executed a Will in favour of the Plaintiff on 05.05.1970 bequeathing the property standing recorded in her name. It is stated that the Plaintiff looked after Radha and Gurubari till their death and possessed their land. He also got the said land mutated in his favour vide order dated 28.8.1972 passed in Mutation Case No.174 of 1972. Based on that deed of adoption, however, in the hal settlement operation, the suit land was not recorded in his name. The Defendant

then filed a mutation case for recording of the land in her name for which the Plaintiff was compelled to file the suit.

4. The Defendant, in her written statement, has denied the factum of adoption of the Plaintiff by Radha and Gurubari. She states that Plaintiff has never possessed the suit property and was not looking after Radha and Gurubari till their death. According to her, she and her husband performed the Sudhi Ceremony of Gurubari and they have been in possession of the landed properties of Gurubari after her death. It is stated that the Plaintiff is the only son of one Arjuna and identifying himself as the son of said Arjuna, he has sold landed properties of Arjuna to many persons. It is stated that the Plaintiff was never known as the son of Radha and Gurubari. The Will is said to had never been so executed by Gurubari and it is fictitious.

5. The Trial Court, on the above rival pleadings, has framed five issues. Taking up, Issue Nos.3 & 4, which are crucial for disposal of the suit; upon examination of the evidence and their evaluation, the answer has been rendered that the Plaintiff is not the adopted son of Radha and Gurubari and as such, has no right, title, interest and possession over the suit land. In that view of the matter, the suit stood dismissed.

6. The Plaintiff, being aggrieved by the dismissal of the suit, having carried the First Appeal, has also failed in obtaining a finding in his favour that he is the adopted son of Radha and Gurubari and as such, his entitlement to the suit property by way of succession.

7. Leaned counsel for the Appellant submitted that the Courts below, have not properly appreciated the evidence on record, in

returning a finding that the Plaintiff is not the adopted son of Radha and Gurubari. He further submitted that the adoption as claimed by the Plaintiff to be of the year 1949 and the Plaintiff, having let in evidence on that aspect of his adoption, the Courts below ought to have accepted the same and accordingly, the suit filed by the Plaintiff ought to have been decreed with a finding that it is the Plaintiff, who is to succeed to the properties of Radha and Gurubari and the suit, at his instance, is thus maintainable for the reliefs claimed. He therefore, urged for admission of this Appeal to answer the above as the substantial questions of law.

8. Keeping in view the submissions made, I have carefully read the judgments and decrees passed by the Courts below.

9. Admittedly, the parties are Bathudi by caste and as such, members of Scheduled Tribe Community. They are governed by Mitakshara School of Hindu Law for the purpose of inheritance and succession and the provisions of Hindu Succession Act, 1956 do not govern them.

10. The property, in the suit, stood recorded in the name of Gurubari. As per the case of the Plaintiff, Sada naik had a son and a daughter, namely, Radha and Manika respectively. The Defendant is the daughter of Manika, i.e., Sada's daughter's daughter. The Plaintiff claims that he had been adopted by Radha and Gurubari in the year 1949 and since then lived with them as their adopted sons. But, interestingly, when he has pleaded in no uncertain terms that a registered deed of adoption dated 01.09.1970 had come into being where his natural parents and adoptive parents were the parties, that very document which could have given rise to an initial presumption,

has not been proved from the side of the Plaintiff nor it has even been filed either before the Trial Court or the First Appellate Court. That being the position, it is also the further case of the Plaintiff that Gurubari had executed a Will bequeathing the suit land in his favour on 05.05.1970. But that Will has also not been proved from the side of the Plaintiff nor it has ever been filed in any of the Courts below.

When the Plaintiff claims the adoption to have taken place in the year 1949 i.e about 55 years prior to the institution of the suit; he having led the direct evidence by examining the witness, the Courts below have rightly held that by simply leading some evidence as to his long acceptance in the society as the son of Radha and Gurubari, the Plaintiff cannot take advantage in saying that it being an ancient adoption, he is not under the legal obligation to prove the factum of adoption by way of performance of giving and taking ceremony as he is also not saying that those persons, who had attended the ceremony of giving and taking, are dead.

11. The Plaintiff, in his evidence, has also admitted to have sold some lands to one Arjun Behera and Susanta Ghosh by executing registered sale deeds. The certified copies of the registered sale deeds (Exts.B,C & D) reveal that the Plaintiff has identified himself as the son of Arjuna Naik. It is also seen that in the record of right (Ext.A/1 and A/2) of the year 1985, the Plaintiff is described as the son of Arjuna Naik. The school admission register reflects the father's name of the Plaintiff to be Arjun and this is also the position in the voter identity card. The document such as the deed of adoption and the Will having been specifically pleaded in the plaint when have not been proved the Courts below are right in drawing adverse inference to the

claim of the Plaintiff that he is the adopted son of Radha and Gurubari.

12. The Courts below, then have also extensively discussed the oral evidence let in by the Plaintiff in support of his claim of adoption. The concurrent finding, having been rendered by the Courts below as against the case/claim of the Plaintiff in holding that he is not the adopted son of Radha and Gurubari, this Court does not notice any such perversity therein to say that the Courts below have ignored/bypassed some material facts on record which have emerged in evidence and those of would have been considered in their proper perspective, the finding would have been otherwise.

For all the aforesaid, the submission of the learned counsel for the Appellant that there arises substantial questions of law for being answered, meriting its admission fails.

13. In the result, The Appeals stand dismissed. There shall, however, be no order as to cost.

**(D. Dash),
Judge.**

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