

IN THE HIGH COURT OF ORISSA, CUTTACK

R.S.A. NO. 90 OF 2011

In the matter of an appeal under section 100 of the Code of Civil Procedure assailing the judgment and decree passed by the learned District Judge, Khurda at Bhubaneswar in RFA No.55 of 2008 confirming the judgment and decree passed by the learned Civil Judge (Junior Division), Bhubaneswar in Title Suit No. 220 of 1998.

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Saroj Kumar Khuntia :::: ***Appellant***

-:: VERSUS ::-

Premananda Biswal :::: ***Respondent***

Appeared in this case by Virtual Arrangement

For Appellant :::: M/s. Devasis Panigrahi,
Smt. Alakananda Panigrahi,
S. Acharya & S.L. Swain, Advocates.

For Respondent :::: M/s. U.C. Mishra, A. Mishra,
A. Bal, A. B. Chand, & R.R. Mohanty,
Advocates

CORAM:
MR. JUSTICE D.DASH

Date of hearing : 12.01.2022 :: Date of Judgment: 21.01.2022

The Appellant by filing this Appeal under Section-100 of the Code of Civil Procedure (hereinafter called as 'the Code') has assailed the judgment and decree passed by the learned District Judge, Khurda at Bhubaneswar in RFA No.55 of 2008.

By the said judgment and decree, the Appeal filed by the present Appellant (Plaintiff) under section 96 of the Code has been dismissed and the judgment and decree passed by the learned Civil Judge (Junior Division), Bhubaneswar in Title Suit No.220 of 1998 have been confirmed. The suit filed by the present Appellant as the Plaintiff has thus been dismissed and accordingly, he has been non-suited.

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 assigned with the position in the Trial Court.

3. **Case of the Plaintiff:-**

The Plaintiff is the nephew of one Digambar Khunita. The Defendant was a stranger to his family being a villager of Mendhasala far away from the Plaintiff's village. One Kanchan is the wife of Digambar. They died issueless. Kanchan was suffering from leprosy and as the couple had none to look after them, they were depending upon the Plaintiff for two decades. The Plaintiff treated them as his parents and in turn received love and affection from them. Digambar died on 21.09.1995 and subsequent thereto, Kanchan died on 12.01.1998. So, the Plaintiff being the legal heir succeeded to their properties.

It is alleged that on 21.01.1998 the Defendant, projecting a document of the year 1995 wherein he was acknowledged as adopted son of Digambar claimed to be the adopted son of Digambar and Kanchan. The Plaintiff on enquiry could know that the Defendant was the son of one Ragunath Biswal of village-Mendhasala and he has created this document, which according to him is a forged one. The document finds

no mention of any giving and taking ceremony. It is stated that the Defendant never resided in the house of Digambar nor he resided in village Binjhagiri. Digambar was literate and able to read and write and the document, in question, reveals the suspicious feature that his LTI has been taken. It is further stated that Digambar's wife being alive on the date of that document is not a party to the same and no co-villager has witnessed, when Digambar died only 16 days after that document. So, it is said that the document in question is a fraudulent one and be declared void and thus liable to be cancelled.

4. The Defendant contested the suit by filing written statement. It is his case that the deed, in question, is a deed of acknowledgement of adoption executed by his adoptive father Digambar. It is pleaded that after his birth on 17.01.1975, his natural parents being requested by Digambar and his wife Kanchan and they having realized their need that someone should be there to directly succeed to their family and carry forward; finally agreed to give him on adoption to them. It is stated that on 12.01.1976 the giving and taking ceremony was performed in presence of relatives and other well-wishers and since then the adoptive parents looked after him and he continued to reside in his house till their death. It has been explained that though Digambar was knowing to sign as he had a paralytic attack before hand, his LTI has been taken on that deed of acknowledgment of adoption. It is also stated that the adoptive mother being then ill could not come to be a party to the deed in question and present for registration. However, she had given her consent for the adoption as also the deed. In the school register, the father's name of the

Defendant has been shown as Digambar and the Defendant has performed all the rituals upon the death of his adoptive parents

5. On the face of the rival pleadings, the Trial Court had framed in all five (5) issues.

The Trial Court upon examination of evidence and their assessment has answered Issue Nos.III and IV. It has been held that the Plaintiff has failed to impeach the credibility of oral evidence of the Defendant witnesses and he (Defendant) has duly proved that he is the adopted son of Digambar and Kanchan by leading, clear, cogent and acceptable evidence of required standard and degree. This has ultimately led for dismissal of the suit filed by the Plaintiff seeking the relief of declaration of his title.

6. The unsuccessful Plaintiff having carried the First Appeal, has failed.

7. The Appeal has been admitted on the following substantial question of law:-

“Whether the learned courts below are correct in accepting a certified copy of the registered sale deed No.278 dated 4.9.1995 which is impugned in the suit, when the original deed itself is available on record and then in making it as foundation of their findings as to the adoption in question?”

8. Mr. D. Panigrahi, learned counsel for the Appellant submitted that the findings of the courts below that the Defendant is the adopted son of Digambar and Kanchan is wholly against the weight of evidence on record. He further submitted that the courts below have not duly scrutinized the evidence on record applying that standard as is required in law for recording a finding on adoption which is under challenge and the

suspicious circumstances standing against the adoption as claimed by the Defendant have been totally ignored as also the settled position of law as to the proof required for establishment of a claim of adoption has not been applied while appreciating the evidence on record. He submitted that even for the purpose the certified copy a document has been accepted and relied upon when the original of the same being available has not been proved under law. He finally submitted that the concurrent findings of the courts below that the Defendant is the adopted son of Digambar and Kanchan suffers from the vice of perversity and are liable to be set at naught.

9. Mr. A. Mishra, learned counsel for the Respondent, on the other hand, supported the concurrent findings recorded by the courts below holding that the Defendant is the son of Digambar and Kanchan. According to him, the evidence on record being strenuously scrutinized from all possible angles in the backdrop of settled position of law holding the field for appreciation of evidence on such factum of adoption, the courts below assigning very good reasons as also providing all the justification have held that the Defendant is the adopted son of Digambar and Kanchan.

10 Keeping in view the submissions made, I have carefully gone through the judgments passed by the courts below.

11. It is the settled position of law that an adoption results in changing the course of succession depriving the natural heirs of the deceased in acquiring their rights over the properties of the deceased. Therefore, it has been said in plethora of decisions of Apex Court as well as this Court

that the evidence in support of adoption are always be free from all suspicion. It is also the settled law that for a valid adoption, it has to be proved that the child adopted was actually given and taken with the intention to transfer the child from the family of his birth to the family of its adoption and thereby snapping the ties with his natural parents as before and creating the said ties with the adoptive parents and their family.

Section-16 of the Hindu Adoption and Maintenance Act, 1956 (for short as the “HAMA”) says that only when a registered document purporting to record an adoption made and is signed by the persons giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved. The Lower Appellate Court on going through the said registered deed dated 04.09.1995, which describes of the previous adoption performed on 12.01.1976 (Ext.A) as also the parties to the said document, has rightly held that deed to be not the one as satisfying the provisions contained in section 16 of the HAMA from which presumption as provided therein would be available. Having said so, the Lower Appellate Court has taken the view that it being taken as a document acknowledging the adoption executed by Digambar only upon consideration of the other oral and documentary evidence adduced to prove adoption when would be so found sufficient, the document would lend as to said fact. The view being correct receives the concurrence of this Court. Having said all these, keeping in view that the burden of proof to establish the said factum of adoption lies on the Defendant, the Lower Appellate Court to have rightly proceeded to examine the oral and

documentary evidence let in by the Defendant in establishing the factum of his adoption by Digambar and Kanchan.

12. The Defendant's case is that he is not a complete stranger and thus unknown to Digambar and Kanchan. He is the natural son of the sister of Kanchan. In order to prove the factum of adoption besides examining himself as D.W.1, he has examined two co-villagers (D.W.2 and 3), his natural father (D.W.4) and the priest (D.W.6). The Lower Appellate Court, in course of discussion, has rightly referred to three documents, i.e., Ext.E.F. and G, as those are relevant for the purpose. These documents have been proved by the Defendants. Ext.E is the Voter Identity Card, which describes Digambar Khuntia as the father of the Defendant. The Defendant having been described as son of Ragunath Biswal, the same has been corrected by affidavit indicating his father's name as Digambar Khunita. Voter list of the year 2005 also reflects the same position. D.W.2, a co-villager of Digambar has stated that Digambar and Kanchan adopted the Defendant, who is the natural son of Raghunath Biswal, the brother-in-law of Digambar and that was on an approach being made by Digambar and Kanchan after the birth of Defendant in the year 1975. It is also stated by him that on 12.01.1976, a Satyanarayan Puja, Homa, Ahuti were performed in the house of Raghunath Biswal in presence of his wife Sasi as also in presence of Digambar and Kanchan when other villagers and relatives were also present. He has specifically stated that the natural parents handed over Digambar, who was then called Pakua to the adoptive parents and the ceremony had been performed by the Priest with the assistance of Barber wherein the name of the child given and taken of adoption was newly given by the adoptive parents. It is also his evidence that Prasad was distributed at the end of the

function. He has also deposed that since the said adoption the Defendant resided in the house of Digambar and he was looking after by Digambar and Kanchan all along. D.W.4 the natural father of the Defendant has stated in the same vein. The Priest examined as D.W.5 has given a vivid description as to the holding and performance of ceremony which has also been corroborated by the Barber (D.W.6). These evidence appear to have not been shaken despite scathing cross-examination nor any such suspicious circumstance has been brought out to create doubt on said evidence of the witnesses as to the factum of giving and taking and adoption. With such oral and documentary evidence on record, the burden of proof lying upon the Defendant to establish the factum of his adoption by Digambar and Kanchan in my considered view has rightly been held to have been discharged and this Court finds no such infirmity with the conclusion so arrived at. The evidence of the Plaintiff being then gone through as no such feature raising suspicion on the factum of adoption has surfaced, the evidence being taken together is seen to be not sufficient to say that the shifted onus of proof falling upon the Plaintiff has been duly elbowed.

13. Here, it is seen that the Courts below while rightly not relying upon that document Ext.A as to have established the factum of adoption, are correct in saying the same to be lending further assurance to the evidence on adoption. In the entire discussion while recording the finding as to the adoption by Digambar and Kanchan, only passing reference has been made to the document Ext.A by holding that as the deed of acknowledgement of adoption in coming to lend some assurance. The Defendant here has proved the certified copy of the said document when its existence has not been denied. Thus the finding of the courts below

based upon the just and proper appreciation of evidence that the Defendant has established the factum of his adoption by Digambar and Kanchan in the evening of 12.01.1976 is not found to be suffering from the vice of perversity.

In the wake of aforesaid, the substantial question of law as formulated does not survive for being answered.

14. Resultantly, the Appeal stands dismissed. There shall however be no order as to cost.

15. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No. 4587 dated 25th March, 2020 as modified by Court's Notice No. 4798 dated 15th April, 2021 and Court's Office order circulated vide Memo No.514 and 515 dated 7th January, 2022.

D. Dash,
(Judge).