

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.506 of 2018

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 30.07.2018 and 14.08.1988 respectively passed by the learned District Judge, Bargarh in R.F.A. No.34 of 2017 confirming the judgment and decree dated 20.10.2017 and 30.10.2017 respectively passed by the learned Civil Judge, Bargarh in Civil Suit No.54/126 of 2011.

Saugata Sarangi & Others

....

Appellants

-versus-

***Binodini Kar (Since Dead) by her
LRs and Others***

....

Respondents

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

For Appellants - Mr.Ramesh Ch. Praharaj
(Advocate)

For Respondent - Mr.A.P. Bose
(Advocate)

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 02.09.2022 : Date of Judgment:26.09.2022

D.Dash,J. The Appellants, by filing this Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment and decree dated 30.07.2018 and 14.08.1988 respectively passed by the learned District Judge, Bargarh in R.F.A. No.34 of 2017.

By the same, the Appeal filed by the Respondent No.1, being the aggrieved Defendant No.2 in Civil Suit No.54/126 of 2011 of the Court of the learned Civil Judge, Bargarh, has been disposed of with

modification. The predecessor-in-interest of these Appellants, namely, Artatrana Sarangi, as the Plaintiff, had filed the suit for declaration that he is the adopted son of Bidyadhar Sarangi and Jagyanbati Sarangi and as such, has sought for declaration of his right, title and interest over the possession described in Schedule-B of the plaint.

The Trial Court had decreed the suit by passing the following order:-

“The suit be and the same is decreed on contest against the defendants but in the circumstances without any cost. The original plaintiff Artatrana Sarangi is declared as the adopted son of late Bidyadhar Sarangi and his wife Jagyanbati Sarangi and his right, title and interest over the ‘B’ schedule land is hereby declared.”

The Defendant No.2, being aggrieved by the judgment and decree passed by the Trial Court, has carried the Appeal under section 96 of the Code. The First Appellate Court has passed the order, which runs as under:-

“In the result, the impugned judgment and decree dated 20.10.2017 and 30.10.2017 respectively promulgated in Civil Suit No.54/126 of 2011 by learned Civil Judge, Bargarh is hereby confirmed with respect to adoption of the original plaintiff, namely, Artatrana Sarangi, whereas the declaration of right, title and interest of the plaintiff over schedule ‘B’ land is dismissed on contest. Further, it is hereby ordered that the schedule ‘A’ property i.e., Ext.1 shall be partitioned amongst the original plaintiff (Artatrana), the original defendant no.1, namely, Kumudini and defendant no.2 apportioning one-third each and while effecting partition, preference should be given to the possession of the parties. In the circumstances, there is no order as to costs.”

It may be stated here that during pendency of the suit, original Plaintiff having died, these Appellants, being his legal heirs, have come

on record, had pursued the suit and also contested the First Appeal and they are now before this Court in the present second Appeal.

Similarly, Defendant No.1, having died during pendency of the suit, his legal representatives have come on record on being substituted.

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. The Plaintiff's case is that Bidyadhar Sarangi and Jagyanbati had adopted him as their son from his childhood days. In support of such adoption, a registered deed of acknowledgement of adoption had come into being 27.05.1979. Bidyadhar died on 06.03.1994 and his wife predeceased him. Defendants 1 and 2 are the daughters of Bidyadhar. It is stated that during the life time of said Bidyadhar, he effected an amicable settlement in respect of his landed properties in Village-Khandahata and Bargarh Town and had allotted some landed properties and house site to each of the Defendants, the two daughters. Thereafter, the Defendants 1 and 2 executed a "EKRARNAMA" in favour of the Plaintiff acknowledging their respective shares in stating further that they would have no claim over any portion left with the Plaintiff. During Consolidation Operation, the entire landed properties have been recorded in the name of Bidyadhar under Schedule-A. It is stated that the Plaintiff, by virtue of his adoption and family settlement, became the owner in possession of Schedule-B property. After the death of Bidyadhar, the Plaintiff and Defendants owned and possessed the house and house site and had alienated those properties. The Plaintiff, due to his old age and ill health, had executed a Power of Attorney in favour of his daughter (present Appellant) to lookafter his landed properties and

she is in possession of Schedule-B land. Stating that as on 01.11.2011 as the Tahasildar, Bargarh refused to mutate Schedule-B land in favour of the Plaintiff and advised him to move the Civil Court, he filed the suit.

4. The Defendant No.1 is the natural mother of the original Plaintiff. She supported the case of the Plaintiff in stating that she and her husband had given consent in adoption to Bidyadhar and Jagyanbati and are signatory to the said deed of acknowledgement of adoption.

The Defendant No.2, who happens to be the daughter of Bidyadhar, pleaded that her parents had never adopted the Plaintiff as their son nor had executed had any deed of acknowledgement of adoption. She also denied the factum of partition of the property of his father. It is stated that after her father, both the daughters have succeeded to the properties and at no point of time, any “EKRARNAMA” has been executed in favour of the Plaintiff. All these documents are said to be fabricated and brought into bring at the instance of the Plaintiff to grab the suit land.

5. On the above rival pleadings, the Trial Court, in total, has framed twelve issues. Coming to answer the crucial issues concerning the dispute as to the adoption, family settlement and “EKRARNAMA”, the Trial Court, on examination of evidence and their evaluation, has answered all those in favour of the Plaintiff. Then proceeding to decide the other issue as to the claim of the Plaintiff having the right, title and interest over Schedule-‘B’ properties in view of the finding that there had been already a partition, the said issue was felt not necessary to be answered.

The First Appellate Court has affirmed the finding of the Trial Court in holding that the Plaintiff is the adopted son of Bidyadhar and

Jagyanbati. In saying so, as it appears from the judgment, the First Appellate Court has extensively travelled through the evidence both oral and document. The evidence being analyzed from all possible angles and tested in the touch stone of the settled principles of law holding the field, the contentions raised by the Defendant No.2 to overturn the said finding rendered by the Trial Court has been repelled. Having said so, then coming to the point as to whether there is an amicable partition of the properties during the life time of Bidyadhar in respect of Schedule-A property and allotment of specific share to the Plaintiff and Defendants 1 and 2, which is said to have been later on acknowledged by the Defendants 1 and 2 by “EKRARNAMA” (Ext.3), the First Appellate Court has held that there was no such previous amicable partition and allotment of share to the Plaintiff and Defendants 1 and 2. So, the First Appellate Court has passed an preliminary decree for partition of Schedule-A property under Ext.1 in three equal halves entitling the Plaintiff to 1/3rd and so also Defendants 1 and 2 to 1/3rd each with further observation that possession of the parties in respect of the properties would be given due regard at the time of actual division and allotment of specific properties in conformity with their shares as declared.

6. The present Appeal has been admitted to answer the substantial question of law, which reads as under:

“Whether the First Appellate Court has erred both on fact and law in refusing to declare the right, title and interest of the original Plaintiff over the properties described in schedule ‘B’ which is part of schedule ‘A’ and has gone wrong in directing for partition of the entire schedule ‘A’ properties amongst the parties?”

7. Learned counsel for the Appellants submitted that the First Appellate Court, without any justifiable reason, has overturned the finding of the Trial court on issue nos.8 and 9. He submitted that the document admitted in evidence from the side of the Plaintiff, i.e., “EKRARNAMA” which has been marked Ext.3 through P.Ws.2 and 3 ought not to have been eschewed from consideration. According to him, the recitals contained in Ext.3 that Defendants 1 and 2 have relinquished their share over the property in favour of the Plaintiff as the Plaintiff bequeathed some property described in the schedule thereunder in that Ext.3 in favour of Defendants 1 and 2 by Will ought to have been held to be sufficient to accept the prayer of the Plaintiff as to declaration of his right, title and interest over Schedule-B property. It was submitted that the First Appellate Court has erred in not placing any reliance upon Ext.3 by holding it to be inadmissible. He further submitted that for the purpose, the First Appellate Court has failed to take note of the dealing of the properties by the parties and take that as a strong circumstance in support of the claim laid by the Plaintiff in respect of Schedule-B property. He further submitted that when the suit was for declaration of right, title and interest of the Plaintiff over Schedule-B property, the First Appellate Court, in that suit, ought not to have passed the preliminary decree for partition of Schedule-A property.

8. Learned counsel for the Respondents, on the other hand, inviting the attention of this Court to paragraphs-15 and 16 of the judgment passed by the First Appellate Court, submitted that the conclusion so arrived at has to sustain. He further submitted that the finding of the First Appellate Court, that the document (Ext.3) has no bearing on the issue is wholly in consonance with the settled position of law, which has been discussed in extension.

9. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below. The evidence on record, more particularly Ext.3 has been perused.

It may be stated here that the concurrent finding of the Courts below that the Plaintiff is the adopted son of Bidyadhar and Jagyanbati is not questioned by the Defendant No.2 by filing any Appeal or Cross-Appeal.

10. The Plaintiff, seeking an answer to issue no.8 that there was an amicable partition of the properties during the life time of Bidyadhar as also the other issue concerning the “EKRARNAMA” (Ext.3) whereby the Defendants 1 and 2 are said to have given up their claim over any portion of the land left with the Plaintiff has relied upon Ext.3. The contents of Ext.3, being gone through, it is seen that thereunder, the Defendants 1 and 2 are said to have relinquished their shares over the property in favour of the Plaintiff for the reason that the Plaintiff had bequeathed some properties to them by executing Will. When it is said that the earlier partition having taken place during the life time of Bidyadhar, he had allotted certain properties to the Plaintiff as well as to Defendants 1 and 2, no such indication or hint is provided in the entire document as regards the prior partition. It is also not indicated as to what were the specific properties allotted to the shares in that earlier partition. It is also seen that rightly the First Appellate Court has found the document to be highly suspicious in saying that when Ext.2, the deed of acknowledgement of adoption had been registered on 27.05.1979, this very document although is said to have come into being on that day, it has, however, not been registered. A bare reading of the recitals of Ext.3 goes to show that thereby the Defendants 1 and 2 have relinquished their interest over the property and thus their right over the property stood

extinguished thereby. Such a document is required to be compulsorily registered as provided in section 17(1) of the Indian Registration Act. In that view of the matter, that Ext.3 cannot be pressed into service or given effect to what have been stated therein as to extinguishment of right of parties of parties or conferment of rights upon the parties in respect of immovable property.

In view of the above, the First Appellate Court having found Ext.3 to be of no avail to the case of the Plaintiff when has set aside the finding of the Trial Court as regards the previous partition in saying that the Plaintiff is rightful owner of Schedule-B property, this court finds no such infirmity with the same.

In a suit where all the properties of the parties are there before the Court as stands admitted and the Court finds that the parties have their shares over the property over which the dispute has already arisen between them, in order to put a quietus to the same and in the absence of any other impediment, no such fault can be found when a preliminary decree for partition of the entire property according to the entitlement of the shares of the parties is passed.

The substantial questions of law are accordingly answered, which lead to confirm the judgment and preliminary decree passed by the First Appellate Court.

11. In the result, the Appeal stands dismissed. There shall, however, be no order as to cost.

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

Basu