

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4824 OF 2022

Niyaz Ahmad & another

-- Petitioner

Vs.

Kisanlal s/o Sadiram Agrawal & others

-- Respondent

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Masood Shareef, Advocate for Petitioners

Mrs. Radhika D. Raskar, Advocate for Respondent No.1

CORAM : MANISH PITALE, J.

DATE : 29th SEPTEMBER, 2022

Heard learned counsel for the parties.

2. By this petition, the petitioners i.e. the original defendant Nos.1 and 2 are before this Court, challenging an order dated 03/03/2022, passed by the Court of Joint Civil Judge, Senior Division, Nagpur, whereby an application at Exh.41, seeking to bring on record legal representative of the original plaintiff has been allowed.

3. The original plaintiff had filed a suit for declaration and cancellation of partition deed, sale deed and power of attorney and for permanent injunction against the petitioners and original defendant No.3. This Court is not referring to the contentions

raised on behalf of the original plaintiff in the pending suit as they are not relevant for the limited issue that arises in the present writ petition.

4. It is an admitted position that during the pendency of the suit on 17/07/2021, the original plaintiff died. In this situation, the aforesaid application at Exh.41 was filed by the applicant herein, claiming to be the legal representative of the deceased original plaintiff, on the strength of a registered adoption deed dated 28/12/1985. The petitioners being the original defendant Nos.1 and 2 filed reply to the said application opposing prayers made in the application at Exh.41, *inter-alia*, contending that the applicant could not have been adopted by the original plaintiff for the reason that the applicant was major at the time of execution of the adoption deed. It was also contended in the reply that the applicant had failed to give details regarding other legal heirs of the original plaintiff.

5. As noted above, on 03/03/2022, the Court below passed the impugned order allowing the application, as a result of which the applicant in the application at Exh.41 was brought on record as the legal heir of the original plaintiff.

6. Aggrieved by the said order, the petitioner filed the present writ petition, wherein on 17/08/2022, this Court issued notice and granted interim stay of further proceedings in the suit.

7. On notice being served, the contesting respondent No.1 appeared through counsel.

8. Mr. Shareef, learned counsel appearing for the petitioner submitted that the impugned order is cryptic and without any reasons. The order is simply based on the registered adoption deed and there is no reference to the specific objections raised on behalf of the petitioners. It is submitted that, according to the petitioners, a bare reading of the registered adoption deed would show that it is not in accordance with the provisions on the Hindu Adoption and Maintenance Act, 1956. It was submitted that in such a situation, an inquiry as contemplated under Order 22 Rule 5 of the Code of Civil Procedure (CPC) was warranted, which the Court below failed to conduct and by way of a cryptic order, erroneously allowed the application.

9. On the other hand, Ms. Radhika Raskar, learned counsel appearing on behalf of the contesting respondent No.1 submitted that since the adoption deed is admittedly a registered document a presumption under Section 16 of the Act of 1956 arises and for the limited purpose of permitting prosecution the suit the applicant in application at Exh.41 was correctly permitted to be brought on record as the legal heir. It was submitted that by operation of the presumption in favour of the applicant, no further inquiry was necessary and the impugned order could not be said to be erroneous.

10. The learned counsel appearing for the rival parties relied upon judgments of the Hon'ble Supreme Court in support of their respective contentions. But, this Court is of the opinion that the present writ petition can be decided on the short ground that

the impugned order does not show any discussion of the rival contentions and in a cryptic manner, the Court below proceeded to allow the application at Exh.41.

11. This Court is of the opinion that the rival contentions raised on behalf of the contesting parties at least merited discussion on the objections raised by the petitioners, including the question, as to whether the nature of objections raised on behalf of the petitioners warranted an enquiry as contemplated under Order 22 Rule 5 of CPC. A perusal of the impugned order shows that the Court below made no effort to even refer to and discuss the aforesaid aspects that arose in the matter, including the implication of the presumption that arises under Section 16 of the Act of 1956 and whether the petitioners can be granted an opportunity to rebut the presumption. On this short ground the impugned order deserved to be set aside.

12. In view of the above, the writ petition is partly allowed. The impugned order is quashed and set aside. The Court below shall now take up the application at Exh.41 for consideration afresh, to examine as to whether the rival contentions raised by the contesting parties merit an inquiry as contemplated under Order 22 Rule 5 of the CPC and if so, in what manner the specific objections raised on behalf of the petitioners are to be dealt with, in the light of the position of law clarified in this regard by the Hon'ble Supreme Court. It is specifically directed that the effect of the registered adoption deed, the presumption under Section 16 of the Act of 1956 and the objection raised on

behalf of the petitioners that the presumption would not operate as the adoption was not made in compliance with the provisions of the Act of 1956, will have to be taken into account while considering the application at Exh.41.

13. It is made clear that this Court has not expressed any opinion either way on the contentions raised by the rival parties and it would be in the interest of justice that the application at Exh.41 is decided at the earliest by the Court below.

14. The writ petition is disposed of in above terms.

15. The Court below is directed to decide the application at Exh.41 expeditiously and in any case within six weeks from today.

JUDGE