IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.444 of 2018

Lilawati Devi @ Lilwatia Devi, aged about 54 years, wife of Sri Nuneshwar Mahto, Daughter of Late Gulo Mahto, Resident of Village – Khoripanan, P.O. –Banka, P.S. –Jasidih, District –Deoghar.

.... …. Plaintiff/Appellant/Appellant

Versus

1. Kamdeo Yadav, Son of Late Laxmi Yadav
2. Smt. Rushwa Devi, wife of Sri Kamdeo Yadav
3. Nuneshwr Yadav (Minor), Son of Sri Kamdeo Yadav.
   Respondent No.3 is minor, dependant and represented through his father and natural guardian, respondent no.1 and all are Resident of Village –Khoripanan, P.O. –Banka, P.S. –Jasidih, District -Deoghar

…. .... …. Defendants/Respondents/Respondents

For the Appellant : Mr. Ranjan Kumar Singh, Advocate
: Mr. Someshwar Roy, Advocate
For the Respondents : Mr. Kundan Kumar Ambastha, Advocate
: Mr. Sudhansu Kumar Deo, Advocate

PRESENT
HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This second appeal under Section 100 of Code of Civil Procedure has been preferred against the judgment and decree of affirmance dated 28.07.2018 passed by the learned District Judge-IV, Deoghar in Title Appeal No.13 of 2015 whereby and where under, the learned first appellate court dismissed the appeal on contest.

3. The brief fact of the case is that the appellant-plaintiff filed Title Suit No. 67 of 2000 in the court of learned Sub Judge -IV, Deoghar with a prayer for a decree declaring that the original defendant no.1 –Chandwa Mahtawain has not adopted the defendant no.4 –Nuneshwar Yadav and for declaring the said adoption to be illegal as also for cancellation of the said adoption

deed and other reliefs.

4. The case of the plaintiff in brief is that the parties to the suit are Hindus and are governed by Mitakshara School of Hindu Law. The plaintiff and the defendant no.3 are the co-sharers of the property of Late Guloo Mahto. The defendant no.2 who is a land grabber of the locality got the defendant no.4 adopted by the defendant no.1 and got a deed of adoption registered in the office of the Registry Office of Deoghar. The plaintiff asserted that the said deed of adoption is illegal, void and non-operative. The plaintiff next pleaded that the defendant no.1 -Chandwa Mahtawain never took the defendant no.4 in adoption nor any ceremony of giving and taking ever took place. The defendant no.4 –Nuneshwar Yadav was taken in adoption when he was one month old child. The plaintiff pleaded that on 20.06.2000, the plaintiff came to know about the alleged adoption deed.

5. All the defendants filed their respective written statement separately. In their written statement, the defendants challenged the maintainability of the suit on various technical grounds. The defendants pleaded that as defendant no.1 did not have any male issue, so she adopted the defendant no.4 with the consent of defendant nos. 2 & 3 being the biological parents of the defendant no.4. The defendant no.2 is the son of the daughter of defendant no.1. The giving and taking ceremony of adoption of defendant no.4 was observed on 10.02.2000, on the day of Basant Panchami, in the house of the original defendant no.1 –Chandwa Mahtowain in observance of all the rituals including giving of the child by the

defendant nos. 2 & 3 and taking of the child by the original defendant no.1 and thereafter the deed of adoption was executed in the office of Sub-Registrar, Deoghar.

6. On the basis of rival pleadings of the parties, the learned trial court settled the following seven issues: -

(I) Whether the suit as framed is maintainable?
(II) Whether the plaintiff got any cause of action for the present suit?
(III) Whether defendant No. 1 Chandwa Mahatwain took the adoption of defendant no.4 Nuneshwar Yadav on 10.02.2000 on the day of Basant Panchami after performing giving and taking ceremony?
(IV) Whether defendant No.4 Nuneshwar Yadav was not born on 10.02.2000?
(V) Whether registered deed of adoption No. 1655 dated 15.05.2000 is null and void document?
(VI) Whether any other relief or reliefs as claimed by plaintiff entitled too?

7. In support of her case, the plaintiff examined altogether eight witnesses but did not adduce any documentary evidence. On the other hand from the side of the defendants also, the defendants examined altogether eight witnesses but the defendants besides the oral testimony, also proved the documents which have been marked Ext. A to B/7.

8. The learned trial court first took up issue nos. III, IV & V together and after considering the evidence in the record came to the conclusion that the defendant no.1 took in adoption the biological son of the defendant nos. 2 & 3- being the defendant no.4 on the day of Basant Panchami i.e. 10.02.2000 in presence of close relatives, after performing the rituals including puja. Therefore, the defendant no.4 is the adopted son of the defendant no.1 and the deed of adoption no. 1655 dated 15.05.2000 executed in this respect is a valid document and answered the issue nos. III,

IV and V in favour of the defendants and against the plaintiffs. The learned trial court next took up issue nos. I, II & VI together and went on to hold that the plaintiff is not entitled to any relief. The plaintiff has no cause of action for the suit. The suit as filed is not maintainable and decided the issue nos. I, II & VI against the plaintiff and dismissed the suit.

9. Being aggrieved by the judgment and decree passed by the learned trial court, the plaintiff filed Title Appeal No.13 of 2015 in the court of Principal District Judge, Deoghar which was ultimately heard and disposed of by the learned first appellate court by the impugned judgment and decree.

10. The learned first appellate court on the basis of the materials in the record and submissions made before it, made independent appreciation of the evidence in record and formulated the following three points for determination :-

> *"1. Whether defendant No.1 Chandwa Mahatwain took the adoption of defendant No.4 Nuneshwar Yadav on 10.02.2000 on the day of Basant Panchami after performing giving and taking ceremony? Whether defendant No.4 Nuneshwar Yadav was not born on 10.02.2000? Whether registered deed of adoption No. 1655 dated 15.05.2000 is null and void document?*
> *2. Whether the impugned judgment and decree dated 17.03.2015 & 24.03.2015 respectively passed by learned court below in Title Suit No. 67 of 2000 suffers from any illegality, infirmity or impropriety which warrants any interference by this appellate court or not?*
> *3. Whether the suit as framed is maintainable? Whether the plaintiff got any cause of action for the present suit? And whether any other relief or reliefs as claimed by plaintiff entitled too?"*

11. The learned first appellate court first took up point for determination no.1 and after making independent appreciation of the evidence in the record came to the conclusion that the finding

of fact arrived at by the learned trial court in respect of issue nos. III, IV & V do not suffer from any infirmity and such finding do not warrant any interference of the appellate court and affirmed the finding of the learned trial court in respect of issue nos. III, IV & V. The learned first appellate court next took up point for determination nos. 2 & 3 together and went on to hold that the plaintiff has no cause of action for the suit and the suit as framed is not maintainable. The learned first appellate court also came to the conclusion that the plaintiffs are not entitled to any relief or reliefs as sought for in the plaint and confirmed the judgment and decree passed by the learned trial court in Title Suit No. 67 of 2000 and dismissed the appeal.

12. It is submitted by the learned counsel for the appellant that both the courts below have erred in holding and deciding the issues in the absence of any material in the record. Both the courts below have failed to give any finding as to whether, on the date of performing ceremony, the defendant no.4 –Nuneshwar Yadav was born or not. Hence, it is submitted that the judgment and decree passed by both the courts below being not sustainable in law be set aside after formulating appropriate substantial question of law and the suit of the plaintiff be decreed.

13. The learned counsel for the respondents on the other hand vehemently opposes the prayer and submits that by cogent evidence, the defendants have proved the factum of adoption of the defendant no.4 by the defendant no.1. Further, the plaintiff has failed to rebut the presumption in respect of the registered deed of

adoption. Hence, on this score also, the plaintiff's suit has to fail; therefore, the same has been rightly dismissed. Hence, this appeal being without any merit and there being no substantial question of law involved in this appeal, the same be dismissed.

14. Having heard the submissions made at the Bar and after carefully going through the materials in the record, it is pertinent to mention here that it is a settled principle of law that Section 16 of the Hindu Adoptions and Maintenance Act, 1956 which reads as under:-

> *"**16. Presumption as to registered documents relating to adoption.—**Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person 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."*

Envisages presumption of adoption having been made in compliance of the provision of the Act, unless and until it is disproved.

15. Now coming to the facts of the case, in this case, the defendants have led evidence regarding adoption of the defendant no.4 by the defendant no.1 in observance of all the pujas, rituals and ceremonies and there has been a registered deed of adoption; which gives rise to a presumption that the adoption has been made in compliance of the provisions of the Hindu Adoptions and Maintenance Act, 1956. Such finding of fact has not been arrived at by ignoring any admissible evidence or considering any inadmissible evidence nor such finding of fact can be termed as defying the logic incurring the blame of being perverse. So in the

considered opinion of this Court, there is no force in the contention of the learned counsel for the appellant that the finding of fact has been arrived at by both the courts below, in the absence of any material or evidence of the giving and taking ceremony. Since the finding of fact has been arrived at by both the courts below that the defendant no.4 was taken in adoption by the defendant no.1, so the question of defendant no.4 being not born on 10.02.2000 does not arise; because once the adoption of defendant no.4 by the defendant no.1 is accepted, the natural corollary is that the defendant no.4 was alive; as an adoption of a person can take place only if that person is alive.

16. Under such circumstances, this Court is of the considered view that there is no substantial question of law involved in this appeal.

17. Accordingly, this second appeal being without any merit is dismissed.

18. Let the copy of the Judgment be sent to the learned court below forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 10th December, 2024
AFR/ Sonu-Gunjan/-