



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**APPEAL FROM ORDER NO. 16 OF 2024
WITH
CIVIL APPLICATION NO. 4688 OF 2024**

1. Shri. Amit Ashokkumar Bajaj,
Age : 43 Years, Occ. Business,
2. Smt. Manasi Amit Bajaj,
Age : 36 Years, Occ. Household

Both resident of Khamgaon,
Taluka Khamgaon, District Buldhana .. Appellants
(Orig. Defendants/
Respondents)

VERSUS

1. Shri. Sunil Lakhmichand Talreja,
Age : 44 Years, Occ. Business,
Residnet of Ner Datta Temple,
Ward No.1, Shrirampur, Taluka Shrirampur,
District Ahmednagar

2. Ridhima Sunil Talreja,
Age : 14 Years, Occ. Education,
Resident of C/o Shri A;mit Ashokkumar Bajaj
Khamgaon, Taluka Khamgaon
District Buldhana. ..Respondents
(Org. Plaintiffs/
Appellants)

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Mr. Mukul S. Kulkarni, Advocate for the Appellants.
Mr. K. B. Borde, Advocate for the Respondent No.1.

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CORAM : SANDIPKUMAR C. MORE, J.

**RESERVED ON : AUGUST, 08, 2024
PRONOUNCED ON : OCTOBER, 15, 2024.**

JUDGMENT:-

1. The appellants, who are the original defendants in

Regular Civil Suit No. 81 of 2014, have preferred this appeal for challenging the judgment and order of remand dated 17.02.2024 passed by the learned District Judge-1, Shrirampur i.e. the learned First Appellate Court in Regular Civil Appeal No. 29 of 2017. By remanding back the matter to the learned trial Court, the learned First Appellate Court has set aside the judgment and decree passed by the learned 3rd Joint Civil Judge, Junior Division, Shrirampur i.e. the learned trial Court dated 28.04.2017 in the aforesaid suit and by framing additional issue, directed the learned trial Court to decide the matter afresh along with the additional issue.

2. Brief facts leading to the present appeal are as under :-

The present respondent No.1 i.e. the original plaintiff No.1 had executed an Adoption Deed for giving his daughter Ridhima i.e. present respondent No.2 in adoption to the present appellants who are her maternal uncle and aunt. After two years of said adoption, respondent No.1 filed suit bearing RCS No. 81 of 2014 seeking cancellation of the aforesaid adoption deed dated 06.09.2012 alleging that it was got executed from him under pressure and threats.

3. The appellants/defendants resisted the said suit on the

ground that the said Adoption Deed was willingly executed by respondent No.1/plaintiff by performing all the necessary ceremonies and in compliance with section 11 of The Hindu Adoptions and Maintenance Act, 1956.

4. The learned trial Court on 28.04.2017, dismissed the suit. However, the learned First Appellate Court set-aside the said dismissal and remanded the matter back to the learned trial Court by framing additional issue with direction to the learned trial Court to decide the matter afresh on all the issues including the additional issue. Hence, this Appeal from Order.

5. The learned counsel for the appellants/defendants vehemently argued that there is absolutely no necessity of remanding the matter at the hands of learned First Appellate Court as the learned trial Court has already considered all the issues about the adoption and that too by considering Section 11 of the Hindu Adoption and Maintenance Act. He pointed out that the parties have led sufficient evidence on all the issues, and therefore, the learned First Appellate Court should not have framed an additional issue which was already considered by the learned trial Court on the basis of evidence.

According to him, the learned First Appellate Court has observed that the burden of proving the execution of Adoption Deed in question under threat and on applying pressure was on respondent No.1/plaintiff, but contrary to that it held that the present appellants/defendants were under obligation to establish the execution of Adoption Deed. He further submitted that the learned First Appellate Court could have decided the matter on the basis of evidence which is sufficient to adjudicate the dispute between the parties. Thus, he prayed for setting aside the impugned judgment and order of remand.

6. On the contrary, the learned counsel for the respondents supported the judgment of learned First Appellate Court and pointed out that the Adoption Deed in question was executed only after three days of the death of natural mother of adoptive daughter Ridhima and therefore, obviously the said Adoption Deed must have executed by respondent No.1/plaintiff under the threat of facing criminal complaint in respect of his wife Kashish at the hands of present appellants and their relatives. Thus, he prayed for dismissal of the appeal.

7. Heard rival submissions and also perused the impugned

judgments and orders passed by both the learned Courts below.

8. The relationship between the parties is not in dispute. Further, it is not disputed that respondent No.1/plaintiff was admitted in the hospital during the period from 31.08.2012 to 03.09.2012 and his wife Kashish died on 03.09.2012. Further it is fairly admitted that prior to the Adoption Deed dated 06.09.2012, the rival parties had mutual talks and discussion in presence of respectable persons from their community about the same. After the execution of the said adoption, plaintiff No.2 i.e. adoptive daughter Ridhima was residing with the present appellants/defendants at Khamgaon till filing of the suit.

9. It is to be noted from the pleadings of respondent No.1/plaintiff that he has admitted the execution of Adoption Deed in question, but he is claiming that the same was got executed by the appellants/defendants from him by threatening and pressurizing him. According to respondent No.1/plaintiff, he was under tremendous mental pressure at the time of execution of said deed and his physical condition was also not proper. The plaintiff has specifically claimed that

the said Adoption Deed was got executed by him from the side of the appellants/defendants by putting him under pressure of facing the criminal complaint on the count of suicide of Kashish. He claimed that no religious ceremony was performed which was necessary for the adoption.

10. It is significant to note that the learned First Appellate Court by relying upon the judgment of the Hon'ble Apex Court in the case of **Motu Nailini Kanth Vs. Gainedi Kaliprasad (dead, through Lrs.) in Civil Appeal No. 2435 of 2010 decided on 20th November, 2023** has observed that since the present appellants/defendants are attempting to displace the natural succession by alleging that Ridhima is given in adoption to them by respondent No.1 Sunil by following all the necessary formalities of Section 11 of the Hindu Adoptions and Maintenance Act, heavy burden is cast upon them to establish the said adoption. The Hon'ble Apex Court in the aforesaid judgment has also observed that there cannot be a valid adoption, unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking.

10. Respondent No.1/plaintiff is claiming that no such ceremony was performed. However, on going through the

judgment of learned trial Court it is clearly evident that respondent No.1/plaintiff had in fact given admission that such ceremony was performed. Further, it is extremely important to note that the learned First Appellate Court clearly observed in its judgment that burden of proving Adoption Deed dated 06.09.2012 executed by Sunil i.e. respondent No.1 with free consent was lying on him, but the necessary issue in that regard was not framed by the learned trial Court. However, on going through the judgment of the learned trial Court, the very first issue is framed as follows :-

“Does the plaintiff prove that the Adoption Deed dated 06.09.2012 was executed under pressure and threat ?”

and the answer to this issue is in the negative.

Thus, the observations of the learned First Appellate Court that no such issue was framed by the learned trial Court is absolutely perverse.

11. Further, the learned First Appellate Court has directed the learned trial Court to frame additional issue below Exh. 18 as follows :-

“Do the defendants prove that adoption of child Ridhima has been taken place in compliance of Section 11 of

the Hindu Adoptions and Maintenance and Act ?

12. In this regard this Court would like to reproduce paragraph No. 33 and 34 of the judgment of learned trial Court which are as follows :-

“ 33 As the plaintiff has raised the question regarding the authenticity of alleged Adoption Deed, it is also necessary to look in to the relevant provisions of the Hindu Adoptions and Maintenance Act.

a) According to Section 11 of the Hindu Adoptions and Maintenance Act, an adoption to be a valid adoption, in case of an adoption of a daughter, the adoptive father and mother, by whom the adoption is made must not have a Hindu daughter living at the time of adoption.

b) Moreover, if the adoption is by a male and the person to be adopted is a female, the adoptive father shall be at least 21 years older than the person to be adopted.

c) The child to be adopted must be actually given and taken in adoption by the parents with intent to transfer the child from the family of its birth to the family of its adoption.

d) Most essential part is that the performance of

Dattahomam shall not be essential to the validity of an adoption. ”

“34. So far as the case in hand is concerned, admittedly defendant No.1 was not having any

daughter living at the time of adoption of plaintiff No.2. As in the present case the adoption is of a daughter, the age of defendant No.1 was 28 years old, and of plaintiff No.2 was 2 years old, as such defendant No.1, i.e. the adoptive father was 26 years older than plaintiff No.2, i.e. the adopted daughter. Further plaintiff No.2 was actually given and taken in adoption by the plaintiff with intent to transfer plaintiff No.2 from his family to the family of the defendants. To conclude the adoption in the present case fulfills the criteria of a valid adoption as envisaged in section 11 of the Hindu Adoptions and Maintenance Act. ”

Not only this, but the learned trial Court has also referred Section 15 of the Hindu Adoptions and Maintenance Act and observed as follows

“35 According to section 15 of the Hindu Adoptions and Maintenance Act, no adoption which has been validly made, can be canceled by the adoptive father and mother, nor any other person, nor can adopted child, renounce his or her status as such and return to the family of his or her birth.

36. So far as the effect of adoption is concerned, the Hon’ble Supreme Court vide authority viz, **Smt. Sita Bai Vs. Ramchandr, reported in AIR 1970 SC 343**, observed as under :

“ It is clear on a reading of a main part of section 12, along with (6) of Section 11 of the Act, that the effect of

adoption under the act is that it bring about severance of all tie of the child given in adoption in the family of his or her birth. Correspondingly, these very ties are automatically replaced by those created by the adoption in the adopted family. The legal effect of the adoption is to transfer the child from the family of its birth to the family its adoption.”

13. On going through the aforesaid observations of the learned trial Court, it is clearly evident that the appellants/defendants have satisfied all the criteria of valid adoption under Section 11 of the Hindu Adoptions & Maintenance Act. Further, the aforesaid observation of the learned trial Court is based on evidence on record and therefore, what was an auspicious occasion for the learned First Appellate Court to frame such additional issue, is still a question. The learned trial Court has already discussed the evidence of respondent No.1/plaintiff and his witnesses and the same is sufficient to decide the matter on merit by the learned First Appellate Court. Thus, by considering all these aspects, it is clearly evident that there was sufficient evidence led by the parties to decide the controversy between the parties properly and for that purpose no remand was necessary. Therefore, the order of learned First Appellate

Court of remanding the matter by allowing the parties to amend the respective pleadings and thereby unnecessarily enlarging the scope of litigation, is definitely perverse and not at all desirable. It will only protract the litigation for no reason. Therefore, the judgment and order dated 17.02.2024 passed by the learned First Appellate Court definitely needs interference. As such, the judgment and order dated 17.02.2024 in RCA No. 29 of 2017 passed by the learned First Appellate Court i.e. District Judge-1, Shrirampur, District Ahmednagar is hereby quashed and set aside and the learned First Appellate Court is directed to decide the appeal on the basis of evidence which is already on record expeditiously and as far as possible, within six months from the date of communication of this order.

16. The appeal is accordingly disposed of along with the pending Civil Application No. 4688 of 2024.

(SANDIPKUMAR C. MORE, J.)

Y.S.Kulkarni P.A.