

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 193 OF 2023
WITH
CIVIL APPLICATION NO. 459 OF 2020

Vijay Bansidas Bairagi

...Appellant

V/s.

Shri. Sanjay Vishnudas Bairagi and Ors.

...Respondents

Mr. Rahul D. Motkari, for the Appellant.

Ms. Pramila Pramod Hingmire, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

Dated : 5 January 2024.

P.C. :

1) Heard Mr. Motkari, the learned counsel appearing for the Appellant and Ms. Hingmire, for the Respondents.

2) One of the issues before the Trial Court and the lower Appellate Court was about the validity of adoption of the Appellant on 7 September 1979. The lower Appellate Court has held in its judgment that no witness was examined by the Appellant/Defendant No.1 who was present at the time of adoption ceremony which took place on 7

September 1979. However, para-34 of the judgment of the Trial Court would indicate that Murlidhar-D.W.2 was examined who was apparently present at the time of performance of adoption ceremony on 7 September 1979. He appears to have given deposition about adoption ceremony performed on 9 September 1979. The lower Appellate Court has refused to believe the theory of adoption of 1979 and has gone into the issue of correctness of the adoption deed executed on 3 February 2004. In my view substantial questions of law are involved in the present Appeal. The Appeal is accordingly admitted on the following substantial questions of law.

- (i) Whether the deposition of Murlidhar-D.W.2 proves adoption of Appellant/Defendant No.1 on 7 September 1979 ?
- (ii) If adoption of 7 September 1979 is proved, whether it was necessary for the Appellant/Defendant No.1 to prove the validity of the registered adoption deed dated 3 February 2004 ?
- (iii) Whether there is perversity in the findings of the lower Appellate Court with regard to the validity of adoption of the Appellant/Defendant No.1.

Civil Application No. 459 of 2020 :

3) The Application is filed seeking stay of the order of the lower Appellate Court dated 2 January 2018. The lower Appellate Court has apparently recorded an erroneous finding that no witness was examined by the Appellant/Defendant no.1 who witnessed the adoption ceremony

performed on 7 January 1979. This finding appears to be factually incorrect in view of deposition of Murlidhar-D.W.2.

4) It appears that the Respondents are in possession of the suit properties except house property bearing No.27/1, which is admittedly in possession of the Appellant. In that view of the matter, parties shall maintain *status-quo* in respect of the suit properties during pendency of the present Appeal. Interim Application is accordingly disposed of.

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SANDEEP V. MARNE, J.