IN THE HIGH COURT OF JHARKHAND, RANCHI

Second Appeal No.165 of 2014

1.Vishundeo Prasad Yadav, son of late Tulsi Prasad Yadav (Natural Father)

2.Usha Devi, wife of Vishundeo Prasad Yadav

3.Chitesh Kumar son of Vishundeo Prasad Yadav (Natural Father), after adoption new name Arun Kumar adopted son of late Keshar Pujhar and Akali Pujharin

All residents of Village+PO- Akbar Nagar, P.S. Sultanganj, District- Bhagalpur (Bihar), presently residing at Village- singhuwa, PO and PS- Deoghar, District –Deoghar

..... Defendants 1st Party/ Respondents/ Appellants

-- Versus --

1.Gultan Pujhar son of late Ganori Pujhar

2.Fuleshwar Pujhar, son of late Ganori Pujhar

3.Fulia Devi daughter of late Ganori Pujhar

4.Anar Devi, daughter of late ganori Pujhar

5.Kari Devi, daughter of late Ganori Pujhar

All are at present resident of village Singhuwa, PO and PS Deoghar, District Deoghar, At present respondent no.3 is residing at Village Dulampur, PO and PS Chakai, District Jamui (Bihar), respondent no.5 is residing at Village Jamabelha, PO and PS Chandramandih, District Jamui, Bihar

.....Plaintiffs/ Appellants/ Respondents (TA No.2/2007)

6.Bengni Pujharin, wife of Meghu Pujhar

7.Bhothwa Pujharin, wife of Balo Pujhar

8.Nepali Pujhar, son of late Bhado Pujhar

9.Bouri Pujharin, wife of Sohan Pujhar

Respondent no.6 resident of village Narhi Damgi, PO Basakola, PS Jasidih, District Deoghar

Respondent No.7 resident of Village Ukhariya, PO Basakola, Ps Jasidih, District Deoghar

Respondent No.8 resident of village Khonadabar, PO Mohanpur, PS Simultala, District Jamui, Bihar

Respondent No.9 resident of Village Banka, PO Banka, PS

Jasidih, District Deoghar

.....Defendant 2nd Party/ Appellants/ Respondent 2nd Party (TA No.2/2007)

CORAM: HON'BLE MR. JUSTICE S ANJAY KUMAR DWIVEDI

For the Appellants(s) :- Mr. Arvind Kumar Choudhary, Advocate

For Resp.Nos.1,3,4&5 :- Mr. Niranjan Kumar, Advocate

11/***29.042026*** Heard Mr. Arvind Kumar Choudhary, the learned counsel appearing on behalf of the appellants as well as Mr. Niranjan Kumar, the learned counsel appearing on behalf of the respondent nos.1,3,4 and 5. Pursuant to the notice issued, Mr. Niranjan Kumar, the learned counsel has appeared on behalf of the said respondents.

2. It transpires from the order dated 03.11.2021 passed in the present Second Appeal, that the respondent no.2 has already died and the learned counsel for the appellants was directed to take necessary steps in that regard, however, no such step has been taken with regard to respondent no.2, and as such, this Second Appeal has already abated so far as respondent no.2 is concerned who happened to be brother of respondent nos.1,3,4 & 5.

3. This Second Appeal has been preferred against the judgment dated 26.06.2014 and the decree dated 11.07.2014 passed by learned Principal District and Sessions Judge, Deoghar in title appeal No.02 of 2007 as well as Title Appeal No.05 of 2007 reversing the judgment dated 21.12.2006 and the decree dated 11.01.2007 passed by learned Sub-ordinate Judge-V, Deoghar in

Title Suit No.101 of 1999.

4. Mr. Arvind Kumar Choudhary, the learned counsel appearing on behalf of the appellants submits that the learned appellate court has wrongly reversed the findings of the learned trial court on the ground that adopted son was not of the same Village and of the same caste. He submits that it is the law point to decide the present Second Appeal and in view of that the instant Second Appeal may kindly be admitted on the said law point.

5. It transpires from the judgments of the learned trial court as well as the learned appellate court that the case of the plaintiff/respondent is that Malti Devi @ Budhani Devi is daughter of Late Keshar Pujhar and grand daughter of Late Tilak Pujhar. That Jamabandi No. 22 of Mouza Singhwa, P.S. Deoghar stands recorded in the name of Tilak Pujhar in the parcha of last survey settlement. That the plaintiffs are scheduled tribes guided by Santhal usage and custom but on account of living in dense populated Hindu area they worship Hindu God and Godess. That the defendants (first party) are Hindus resident of Akbarnagar, Sultanganj and defendant no. 1 is a veteran criminal, who is in Giridih jail in a murder case. That the recorded tenant Tilak Pujhar died leaving behind one son Keshar Pujhar who also died leaving behind his wife Akli Pujharin and two daughters Malti Devi (plaintiff) and Sukari Devi who began to live at her matrimonial home at Lahaban (Simultalla), District Jamui. That Sukari Devi relinquished her share to the plaintiff Malti Devi and the

plaintiff since her birth and also after marriage has been living on her paternal property in village Singhwa and is in peaceful possession and the plaintiff's house is situated over plot No. 646. That the plaintiff has performed 'Shradh' ceremony of Keshar Pujhar and Akli Pujharin who remained with the plaintiff till her death. That Akli Pujharin had never adopted defendant no. 3. That the defendants no. 1 and 2 have wrongly and illegally got a forged deed of adoption with collusion of henchmen on 25.06.1990 from the registry office, Deoghar only with a purpose to capture and grab the land of plaintiff. That there has not been any giving and taking ceremony. That Chintesh Kumar (defendant no. 3) never lived with the plaintiff and he all along lived with the defendant nos. 1 and 2 at Akbarnagar, Sultanganj. That the plaintiff came to know regarding the forged deed of adoption after receiving notice u/s 144 Cr.P.C. which was filed by defendant nos. 2 and 3 on 04.06.1999. Defendant no. 3 also filed a petition for mutation in which the plaintiff has filed objection. The Proceeding u/s 144 Cr.P.C. was dropped after perusing the show-cause of this plaintiff on 23.09.1999 by the S.D.M., Deoghar.

6. The defendants have appeared and the case of the defendant nos.1 and 2 as per their written statement and in view of the judgments of the learned courts, was that the plaintiff has filed this false case as the defendants no. 1 and 2 have appeared and filed joint written statement on 22.07.2000 stating therein that the

plaintiff has filed this false case at the behest of Bhumi Pandit to grab the lands of Keshar Pujhar and Akli Pujharin and the plaintiff is not the daughter of Keshar Pujhar rather, she is daughter of Dukhi Pujhar of Teliamani, P.S. Chakai, District-Jamui and the plaintiff has got no *locus-standi* to challenge the adoption of defendant no. 3 and it was further pleaded there on behalf of defendant nos. 1 and 2 that the plaintiffs are not scheduled tribe but scheduled caste and governed by Mitashara school of Hindu law and the defendants were originally resident of Akbarnagar, Sultanganj but now they have settled at Singhwa, P.S. Deoghar. The defendant no. I was in police service and was convicted in a case for murder against which he has filed an appeal before the Hon'ble High Court. The genealogical table given by the plaintiff is not correct as the plaintiff as well as Sukari Devi are not the daughters of Keshar Pujhar. That one Gultan Pujhar of Singhwa is a 'mamera' brother of Bhagirath Pujhar and Ganouri is the mama of said Bhagirath Pujhar That Sukari is of Lahaban, Simultalla, District Jamui and has got no concern with the family of Keshar Pujhar and Akli Pujharin and the defendant no. 3 has performed 'sharadh' ceremony of Akli Devi. The defendants have asserted that the adoption is valid and the defendant no. 3 has got all rights to inherit the properties of Akli Pujharin. The defendants have denied the averments made by the plaintiffs and have submitted that the plaintiffs are not entitled to any relief.

7. A separate written statement was filed on behalf of the

defendant no.3 in the said case through one Kaushal Kishore Roy, guardian-*ad litem*. In this written statement para-wise response to the pleadings made in the plaint are not given but a general objections has been made that all the allegations made in the plaint, except what is admitted, are denied. That the defendant is also one of the heirs of the recorded tenant Tilak Pujhar as he has been validly adopted by Akli Devi. The defendant has challenged the suit on the ground of non-joinder, misjoinder of parties and being barred by estopple, waiver and acquiescence. Another set of defendant had intervened on 21.06.2005 and filed a petition under Order 1, Rule 10 C.P.C. which was rejected for non-prosecution but subsequently on 06.07.2005 they again filed a petition under the same provision which was allowed on 01.10.2005. The intervenor/defendant filed their W.S. on 14.12.2005. They have asserted that plaintiffs are no way related with the recorded tenant Tilak Pujhar. These defendants have given their own genealogical table mentioning that Akli Pujharın had one son namely Bhumi Pujhar who died issueless and one daughter Sukari Pojharin who died in the year 1999 and she is survived by these intervening defendants as their heirs. That the plaintiffs have been projected with a view to grab the property of Keshar Pujhar. That Malti Pujharin is in fact daughter of one Thakur Pujhar of Khoripanan and Gultan Pujhar and Fuleshwar Pujhar substituted plaintiffs are not the sons of Malti Pujharin but they are sons of Ganouri Pujhar of Bhalsuma, Jamui. That it is Sukari

Pujharin alone, succeeded the entire interest of father and mother and was in possession of the same and after the death of Sukari her son Nepali Pujhar and her daughters are heirs and successors of the entire land recorded in the name of Tilak Pujhar. These defendants have further stated that the prayer of the plaintiffs are correct but these intervenor defendants are entitled to all the reliefs and the plaintiff is not entitled to any relief and have further stated that the suit may be decreed in favour of these Intervenor defendants.

8. Leaned trial court has framed nine issued to decide the said suit and the learned trial court has been pleased to decide the said title suit being Title Suit No.101 of 1999 against the plaintiff/ respondents. The plaintiff/respondents have preferred the Title Appeal No.2 of 2007 which was allowed by the judgment dated 26.06.2014. In paragraph no.6 of the said judgment, the learned appellate court has framed the point to decide the said appeal which was with regard as to the adoption deed was valid or not? In paragraph nos.7 and 8 of the judgment, the learned appellate court has been pleased to discuss the evidences made on behalf of the plaintiffs as well as the defendants and in paragraph no.9, the intervenor /defendants' witnesses have been discussed. The learned appellate court has found that Exhibit-A only states that adoptor mother had no son and it was silent on the point of daughters of the adoptor mother and the plaintiffs/ appellants/ respondents have stated that the adoptor mother, Akli Pujharin has two living

daughters on the date of alleged adoption and on that point, the learned court has found that the oral testimony of the plaintiffs' witnesses was consistent on that point. The plaintiffs have filed rent receipt, Exhibit nos.1/1, 1/2, 1/3 and 1/4 as well as certified copy of Purcha of Jamabandi no.22 marked as Exhibit Nos. 2 and 2/1 to show that they are paying the revenue rent of Jamabandi No.22 and are in possession. Exhibit No.3 and 3/1 are the orders dated 28.07.1999 and 30.12.1999 passed in two separate proceedings under section 144 Cr.PC wherefrom it has been found by the learned appellate court that the defendant nos. 2 and 3 have grievance with regard to possession of the land of Jamabandi no. 22 standing in the name of RT Tilak Pujhar. Defendant No. 3 has claimed the lands on the basis of the Exhibit-A. The learned appellate court on perusal of Ext.5 has found that the defendant no.3 along with her natural mother defendant no. 2, is on one side and the plaintiff party along with others are on the other side. The defendant nos. 1 and 2 have filed their written statement wherein they have stated that one Kaushal Kishroe Roy is said to be guardian *ad litem* of the defendant no. 3 i.e. the adopted son and in para 4 of the written statement, it is also stated that defendant no.3 is also one of the heirs of the recorded tenant Tilak Puhar and he has made no specific denial or any adverse remarks made in the plaint which amounts to admitting that there are other heirs of the recorded tenant Tilak Pujhar. In the written statement the deponent has not disclosed his identity and

has not given his parentage, address and also not identified by any Advocate or person. He has also not stated anywhere that the defendant no. 3 was the minor as well as has also not stated as to how and by whom he has been appointed guardian *ad litem*. The learned first appellate has found that the filing of the separate written statement, was the purpose of showing separate identity of defendant no. 3 from that of defendant nos.1 and 2. But no attempt was taken any further as at the evidence stage, the plaintiff witnesses were cross-examined on behalf of all the three defendants and defendant no. 3 was himself examined as D.W. 10 along with common witnesses of the three defendants. On examining Exhibits 3 and 4 learned appellate court found that the defendant no.3 is contesting his claim along with his natural mother defendant no. 2. The D.W 10 has stated that he is in possession of the land of Akli Pujharin and in paragraph no.12 he has stated that he was enrolled in Kharia School by his father and Akli Pujharin and other witnesses have also stated that he was admitted in the School by his natural father. After adoption, the adopted child get disassociated with the family of his birth and is implanted in the family of his adoption. But the learned first appellate court has found that the witness, who is adopted son, has addressed his natural father as his father only whereas he has addressed his adoptive mother by her name. In paragraph 14 he has also stated that he knows Gultan and Phuleshwar, the sons of Malti and the defendant witness has stated

that Gultan and Phuleshwar are not the sons of Malti but this witness is a relevant witness who has admitted the substituted plaintiff Gultan and Phuleshwar as sons of Maliti Devi and again in paragraph no. 15 he has also stated that he along with his mother has filed case u/s 144 against Gultan Pujhar and Phuleshwar. He has addressed the defendant no. 2 (Usha Devi) as his mother. He along with his natural mother has filed a case u/s 144 Cr.P.C. regarding which Ext. 3 has been filed by the plaintiff.

9. The learned court has further found that the defendants have stated about property of Akli Pujharin whereas the recital of Exhibit-A states about the adoption for taking care and oblation. Akli Pujharin was a lady of advance age and has died sometimes in the year 1997, about 7 years after the alleged adoption. The learned court has further found that the photographs and the deed are said to be of 25.06.1990 and has further found that there was only one document i.e. Ext. D which is said to be after the said adoption. D.W. 13 who is an Advocate clerk has not seen the document being signed and executed in his presence. Ext. D was a transfer certificate which is dated 23.12.1993. In that T.C. it was mentioned that Arun Kumar S/o Late Keshar Pujhar is studying in class Vth and the reason for leaving the school was mentioned as because this is a primary school. The learned court has got no confidence on the said Certificate in view of the fact that the reason for leaving the said school is that it was a Primary school and at that time he was

studying in class Vth and had not passed out. He has taken admission on 05.01.1991and in view of that the learned court has found that at that time it was presumed that he was studying in Class-II or above in the Academic Session 1990-91 and at that time the natural parents were also living then by a simple logic it can be presumed that he was studying in class II or above in the academic session 1990-91. At that time the natural parents were also living at Singhwa then from where this child was shifted to Primary school and where he was pursuing his previous studies was not clear and what was the requirement of shifting the said school in midst of the Session. The learned court has further considered the evidence of the D.W. 10 who has stated that he has taken admission in class VI at Kharia, Bhagalpur in the year 1994. No register or credible oral or documentary evidence has been adduced in that behalf. The learned court has further found that the subsequent conduct and association with defendant nos.1 and 2 of the adopted son shows that he is in hand in glove with them and a sham document has been prepared with a view to grab the properties of Akli Pujharin. The learned court has further found that the defendant no.3 has persuaded his secondary education at Kharia Bhagalpur and he has taken admission in 1994 in class VI but at the time of deposition on 05.07.2002 he was still a student of class X and further the learned court has inferred that it has to be believed that the deponent must have failed or dropped at least on three occasions. Whereas on the

other hand he has got admission in class VI without passing class V. The learned court has found in view of that, the material facts with regard to education has been concealed from the Court. Further in paragraph nos.14 and 15, the learned court has held about the documents and the witnesses' statement and further no evidence has been adduced with regard to the giving and taking.

10. In the Book of Golapchandra Sarkar Sastri, on Hindu Law, 8th Edition, succinctly describes the Ceremony of "Giving and Taking", as under:

> *"The ceremonies of giving and taking are absolutely necessary in all cases. These ceremonies must be accompanied by the actual delivery of the child; symbolical or constructive delivery by the mere parol expression of intention on the part of the giver and the taker without the presence of the boy is not sufficient. Nor are deeds, of gift and acceptance executed and registered in anticipation of the intended adoption, nor acknowledgment, sufficient by themselves to constitute legal adoption, in the absence of actual gift and acceptance accompanied by actual delivery; a formal ceremony being essential for that purpose."*

In the Mayne's Hindu Law, 11th Edition, at page no.237, it has been observed as under:

> *"The giving and receiving are absolutely necessary to the validity of an adoption. They are the operative part of the ceremony, being that part of it which transfers the boy from one family into another. But, the Hindu Law does not require that there shall be any particular form so far as giving and acceptance are concerned. For a valid adoption, all that the law requires, is that the natural father shall be asked by the adoptive parents, to give his son in adoption, and that the boy shall be handed over and taken for this purpose."*

11. In view of the above discussion, based on the materials, by the learned first appellate court, the court finds that there is no

perversity in the said judgment. The learned court has given the cogent reasons and has been pleased to set aside the judgment of the learned trial court and has allowed the appeal, the law point raised by Mr. Choudhary, the learned counsel appearing on behalf of the appellants has been carefully taken care of by the learned first appellate court and no case of any perversity has been shown, and further, in course of the argument in the present Second Appeal, the High Court sitting under Section 100 C.P.C is not required to deal with the evidences and only on the question of law, the Second Appeal can be admitted.

12. The Court finds that there is no perversity in the impugned order and no any substantial question of law is made out to admit the present Second Appeal, and as such, the instant Second Appeal being Second Appeal No.165 of 2014, is, hereby, dismissed.

(Sanjay Kumar Dwivedi, J.)

SI/ A.F.R
Dated : *29.04.2026'*
Uploaded/,