IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

985 SECOND APPEAL NO. 289 OF 2018

Krishna Ganesh Birare Under Guardian-ganesh And Others
VERSUS
Vachalabai Bhikan Chauthe And Others
...
Mr. Golewar V. P., Advocate for Appellants
Mr.. Abid R Shaikh, Advocate for Respondents Nos.1, 5 And 6
Mr. P. M. Kulkarni, AGP for Respondents/State

WITH

CIVIL APPLICATION NO. 5492 OF 2018 IN SA/289/2018
....

CORAM : SANJAY A. DESHMUKH, J.

DATE : 07.10.2026

PER COURT :-

1. This appeal is preferred against the judgment and decree passed by the learned District Judge-1, Jalna, in Regular Civil Appeal No. 156 of 2016, dated 07-02-2018, which was preferred against the judgment and decree passed by the learned Civil Judge, Senior Division, Jalna, in Regular Civil Suit No. 258 of 2013, dated 17-08-2016.

2. Heard learned advocates for both the sides.

3. Respondent No. 1/original plaintiff filed Regular Civil Suit No. 258 of 2013 seeking a declaration that she is a legal heir of deceased Pandurang Fakira Wadgaonkar and for cancellation of

the registered adoption deed. The learned Trial Court decreed the suit. Being aggrieved by the said judgment and decree, the original defendants preferred Regular Civil Appeal No. 156 of 2016, which came to be dismissed. Being aggrieved by the judgment and decree passed by the learned District Court, the original defendants have preferred the present Second Appeal.

4. The following substantial question of law was framed by this Court by an order dated 23.04. 2018:

a. Whether the Courts below have considered the effect of the provisions of Sections 15 and 16 of the Hindu Adoptions and Maintenance Act, 1956, and particularly Section 16 of the said Act which sets the presumption as to the registered document relating to the adoption, and as such, whether the judgment and decree passed by the courts below suffers from perversity?

5. Learned advocate for the Appellants pointed out the pleadings, the evidence, the grounds of objections raised in the Appeal, and the reasons and findings in the impugned judgment and the judgment of the learned Trial Court. He submitted that as per the provisions of Section 16 of the Hindu Adoptions and Maintenance

Act, 1956, the presumption as to the validity of deed of adoption had not been invoked by the learned First Appellate Court and therefore the impugned judgment is erroneous and not sustainable. He lastly prayed to allow the appeal and set aside the judgment of the Appellate Court as well as the Trial Court.

6. Learned advocate for Respondent No. 1/original plaintiff submitted that the Appellants had neither produced the original adoption deed nor a certified copy thereof on record and that only a photocopy of the adoption deed had been produced. He further submitted that no application seeking permission to adduce secondary evidence had been filed. The learned Appellate Court by giving convincing reasons, has rightly held that the adoption is not legal and valid. He further submitted that the evidence has been properly appreciated and re-appreciated and that there are concurrent findings against the appellant and in favour of the Respondents. There is no substance in the grounds of objections raised in the appeal. It is lastly prayed to dismiss the appeal.

7. Upon perusal of the judgments of both the courts, it appears that the original adoption deed has not been produced on record. It was duty of Appellant to produce it on record as he was in

possession of it as provided under Order XIII Rule 1 of the Code of Civil Procedure, 1908, the original adoption deed is required to be produced on record.

8. The requisite/foundational evidence of adoption deed for adjudication of the issue of adoption was not filed on record. In the absence of the original adoption deed which is foundational evidence to apply the presumption contemplated under Section 16 of the Hindu Adoptions and Maintenance Act, 1956, cannot be invoked in the present case in favour of the appellant. Both the Courts have correctly recorded findings on facts supported by acceptable reasons. Thus, there is concurrent findings against the appellant. There is no scope for interference in the impugned judgment and judgment of the trial court. Therefore, the substantial question of law is answered in the negative that impugned judgment is not perverse. The appeal deserves to be dismissed. Hence, the following order:

::ORDER::

a. The Appeal is dismissed.

b. Pending civil applications, if any, stand disposed of.

[SANJAY A. DESHMUKH, J.]

HRJadhav