



2025:AHC-LKO:79752

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW A.F.R.**

WRIT - C No. - 1001378 of 2000

Ram Kumar

.....Petitioner(s)

Versus

Narain And Others

.....Respondent(s)

Counsel for Petitioner(s)	: R.P.Pandey, G.P.Pandey, Rajeev Kumar Tripathi
Counsel for Respondent(s)	: C.S.C., Dharmendra Singh Gaur, K.N. Shukla, Rahul Mishra, Shiv Kumar Mishra

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Sri Rajeev Kumar Tripathi, learned counsel for the petitioner, Sri Shiv Kumar Mishra and Sri Rahul Mishra, learned counsel for legal heirs of respondent No.1 and Sri Divesh Mishra, learned Standing Counsel for respondent Nos.4, 5 and 6.

2. By means of the present writ petition, the petitioner has prayed as under :-

"(i) to issue writ of certiorari quashing order Annexure No.1 dated 8.12.96 passed by opposite party No. 4 which is perverse order and has been passed having no primary and secondary evidence on record.

(ii) to issue writ of Mandamus directing opposite parties No. 1 to 3 not to interfere in the peaceful possession of the petitioner, the land in dispute.

(iii) to issue writ of certiorari quashing Annexure No.2 passed by opp. party No. 5 which is illegal and to set aside order Annexures No. 1 and 2 and to confirm the order Annexure No. 3 passed by trial Court after examining the primary and secondary evidence on record.

(iv) ..."

3. Factual matrix of the case is that agricultural land of gata No. 3/0.2870 Hectare situate in Village Surjana Khurd, 52/0.4700 Hectare situate in

Village Gharua, 142/1.5500 Hectare, 152/468/0.1090 Hectare, 152/0.2800 Hectare, 156/0.4820 Hectare, 163/0.2100 Hectare situate in Village Sarai Jagna, Tehsil of all villages Kaiserganj, District Bahraich was ancestral land of petitioner. Gayadeen has three sons namely Samay Deen, Narain, Ram Asrey.

4. Since Ram Asray was issueless and as such when the petitioner was minor of 4 years old, he was adopted by Ram Asrey after necessary Hindu rituals and customs from their natural father and mother Sri Samay Deen and Smt. Dhanpata and an adoption deed was duly executed and registered on 8.2.1982.

5. After death of Sri Ram Asrey son of Gaya Deen, petitioner succeeded all the movable and immovable properties including the share of his adoptive father Sri Ram Asrey in the agricultural land as per aforesaid adoption and as such a mutation application on behalf of petitioner through his natural father was filed. An objection against the mutation application was filed by father of opposite party nos. 1/1 and 1/2 on 15.7.1987.

6. The original adoption deed was filed on behalf of petitioner and same got proved alongwith possession of the petitioner upon the land in dispute by examining Smt. Dhanpata, natural mother and marginal witnesses Ganga Ram son of Sanahi alongwith Brijlal son of Madho, Village Pradhan Jagdev Singh son of Raghuraj Singh and Shiv Sahay (the Priest who carried out the rituals of adoption) and thereby case of petitioner for mutation was proved. On behalf of objector opposite party no. 1 (deceased) got himself examined and also examined his witnesses Jogi son of Parmeshwar and Ayodhya Prasad son of Ram Asrey.

7. By finding the adoption deed and possession of the petitioner proved and and by finding that objector could not be able to rebut the evidences adduced on behalf of petitioner and also could not be able to prove his possession upon the share in the land left behind by Ram Asrey son of Gaya Deen, the Naib Tehsildar, Kaiserganj, District Bahraich passed an order of mutation in favour of petitioner in respect of land in dispute as stated aforesaid and situated in 3 different villages on 18.8.1992.

8. The Sub Divisional Officer, Kaiserganj allowed the 3 appeals filed by opposite party No.1 through a common judgment and order by ignoring the findings recorded by the mutation court and the evidence on record that too by giving quite perverse finding and thereby the order of mutation dated 18.08.1992 was set aside and names of Samay Deen and Narain being the brothers of deceased Khatedar Ram Asrey was directed to be recorded in the revenue records vide order dated 17.9.1993.

9. It is submitted by learned counsel for the petitioner that against the order passed in three appeals, three different revisions were filed on behalf of petitioner in the court of Commissioner, Faizabad Division, Faizabad, who, by completely ignoring the presumptions attached with the registered adoption deed in terms of Section 16 of the Hindu Adoption and Maintenance Act and also by ignoring the illegality, irregularity and perversity committed by appellate court, dismissed all three Revisions by passing a common order dated 8.12.1999.

10. Submission of learned counsel for the petitioner is that if there was any grievance against the adoption deed duly registered, the respondents would have filed statutory proceeding, challenging the adoption deed registered and due to non challenging the adoption deed, the finding recorded by the appellate court and revisional court, showing assumption of doubt, is perverse in nature and the orders passed are not sustainable in the eyes of law.

11. Next submission is that no reasons have been recorded in coming to the conclusion that adoption deed is suspicious in nature. He submits that reasons are heartbeat of conclusion and without reasons, the order becomes lifeless, therefore, due to non-recording of reasons in coming to the conclusion that the adoption deed is suspicious in nature, is wholly illegal and devoid of merit.

12. Learned counsel for the petitioner submits that Section 16 of the Hindu Adoption and Maintenance Act clearly provides that 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.

13. In the light of the aforesaid provision, submission of learned counsel for the petitioner is that the adoption deed has never been disproved by any competent court of law, therefore, suspicion on the adoption deed is wholly misconceived and erroneous in nature, therefore, the orders passed are not sustainable in law and are liable to be set aside. In support of his submission, he placed reliance upon the following judgments :-

(i) Laxmibai (Dead) Through LRs & another Vs. Bhagwantbuva (Dead) Through LRs & others [(2013) 4 Supreme Court Cases 97].

Relevant paragraphs 28 to 33 are being quoted below :-

"28. In S.T Krishnappa v. Shivakumar this Court observed that the adoption deed" must be read as a whole and that on reading the same in such a way, the intention of the parties with respect to whether the adoptive father/mother wanted to make an adoption according to law and not merely to appoint an heir, must be clearly established.

29. In L. Debi Prasad v. Tribeni Devi(SCC p. 681, para 8) this Court held that the giving and receiving are absolutely necessary to the validity of an adoption. All that is required is that the natural father be asked by the adoptive parent to give his son in adoption, and that the boy be handed over and taken for this purpose.

30. Furthermore, in Deu v. Laxmi Narayan, the presumption of registered documents under Section 16 of the Act was discussed. It was held that in view of Section 16, wherever any document registered under any law is produced before any court purporting to record an adoption made, and the same is signed by the persons mentioned therein, the court shall presume that the said adoption has been made in compliance with the provisions of the Act, until and unless such presumption is disproved. It was further held, that in view of Section 16 it is open for a party to attempt to disprove the deed of adoption by initiating independent proceedings.

31. Mere technicalities therefore, cannot defeat the purpose of adoption,

particularly when the respondent-defendants have not made any attempt to disprove the said document. No reference was ever made either by them, or by their witnesses, to this document i.e registered adoption deed. Undoubtedly, the natural parents had signed along with 7 witnesses and not at the place where the executants could sign. But it is not a case where there were no witnesses except the executants. Instead of two witnesses, seven attesting witnesses put their signatures.

32. In Atluri Brahmanandam v. Anne Si Bapuji the Court held: (SCC pp.468-70, paras 10 & 13)

"10. The aforesaid deed of adoption was produced in evidence and the same was duly proved in the trial by the evidence led by PW 1, the respondent. We have carefully scrutinised the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the appellant herein either to the legality of the said document or to the validity of the same. Therefore, the said registered adoption deed went un rebutted and unchallenged. We have already referred to the recitals in the said document which is a registered document and according to the recitals therein, the respondent was legally and validly adopted by the adoptive father.

13. ... Since the aforesaid custom and aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption."(emphasis added)

33. The appellate courts could therefore, not have drawn any adverse inference against the appellant-plaintiffs on the basis of a mere technicality, to the effect that the natural parents of the adoptive child had acted as witnesses, and not as executors of the document. Undoubtedly, adoption disturbs the natural line of succession, owing to which, a very heavy burden is placed upon the propounder to prove the adoption. However, this onus shifts to the person who challenges the adoption, once a registered document recording the adoption is brought before the court. This aspect must be considered taking note of various other attending

circumstances i.e evidence regarding the religious ceremony (giving and taking of the child), as the same is a sine qua non for valid adoption."

(ii) Mst. Deu & others Vs. Laxmi Narayan & others [(1998) 9 Supreme Court Cases 701]. Relevant paragraphs 2 and 3 are being quoted below :-

"2. Once the respondent filed an application for substitution and produced a registered deed of adoption, the trial court should have substituted him in place of Smt Phulla on being satisfied that the conditions of Section 16 of the Hindu Adoptions and Maintenance Act, 1956 had been complied with. Section 16 of the Act reads as follows:

"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."

3. In view of Section 16 aforesaid 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 persons mentioned therein, the court shall presume that the adoption has been made in compliance with the provisions of the said Act unless and until it is disproved. According to us, it was not open to the defendants of the said suit for partition to collaterally challenge the said registered deed of partition. In view of Section 16 of the aforesaid Act it was open to them to disprove such deed of adoption but for that they had to take independent proceeding. The High Court was fully justified in directing that the respondent be substituted in place of Smt Phulla on the basis of the registered deed of adoption produced before the court."

14. Per-contra, learned counsel for legal heirs of respondent No.1 raised preliminary objection in regard to maintainability of writ petition and placed reliance upon a judgment rendered in the case of **State of U.P. Vs. Board of Revenue [C.M.W.P. No.30386 of 1991]**. Relevant paragraph 7

is being quoted below :-

"7. A bare perusal of the impugned order indicates that writ petition arises out of the mutation proceedings under Sec. 34 of the Act, and in the said proceedings right of the parties are not decided rather mutation proceedings are fiscal in nature. Consequently, I am of the opinion that the petitioner if so advised may seek his or its remedy before competent court by filing a regular suit or initiating some other proceedings."

15. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as the judgments relied upon by the parties.

16. Against the order passed in three appeals, three different revisions were filed on behalf of petitioner in the court of Commissioner, Faizabad Division, Faizabad, who, by completely ignoring the presumptions attached with the registered adoption deed in terms of Section 16 of the Hindu Adoption and Maintenance Act and also by ignoring the illegality, irregularity and perversity committed by appellate court, dismissed all three Revisions by passing a common order dated 8.12.1999, therefore, the order suffers from apparent illegality and is liable to be set aside.

17. If there was any grievance against the adoption deed duly registered, the respondents would have filed statutory proceeding, challenging the adoption deed registered and due to non challenging the adoption deed, the finding recorded by the appellate court and revisional court, showing assumption of doubt, is perverse in nature and the orders passed are not sustainable in the eyes of law.

18. No reasons have been recorded in coming to the conclusion that adoption deed is suspicious in nature. Reasons are the heartbeat of any conclusion and without reasons, the order becomes lifeless, therefore, due to non-recording of reasons in coming to the conclusion that the adoption deed is suspicious in nature, is wholly illegal and devoid of merit.

19. Section 16 of the Hindu Adoption and Maintenance Act clearly provides that 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.

20. The adoption deed must be read as a whole and that on reading the same in such a way, the intention of the parties with respect to whether the adoptive father/mother wanted to make an adoption according to law and not merely to appoint an heir, must be clearly established. The giving and receiving are absolutely necessary to the validity of an adoption. All that is required is that the natural father be asked by the adoptive parent to give his son in adoption, and that the boy be handed over and taken for this purpose.

21. In view of Section 16, wherever any document registered under any law is produced before any court purporting to record an adoption made, and the same is signed by the persons mentioned therein, the court shall presume that the said adoption has been made in compliance with the provisions of the Act, until and unless such presumption is disproved. In view of Section 16, it is open for a party to attempt to disprove the deed of adoption by initiating independent proceedings. In the case in hand, no independent proceeding took place for challenging the adoption deed and without recording reasons, both the courts below on the basis of assumption, have come to the conclusion that the adoption deed is suspicious in nature. In view the aforesaid, the impugned orders are unjustified and non-sustainable in the eyes of law, thus, the same are liable to be set aside by this Court.

22. The deed of adoption was produced in evidence and the same was duly proved by leading evidence of the witness. I have carefully scrutinised the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the respondents either to the legality of the said document or to the validity of the same, therefore, the said adoption deed went unrebutted and unchallenged.

23. Since the aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in

compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption. The assumption drawn by both the courts below that the adoption deed is suspicious, does not record reasons, therefore, the order is bad in law and liable to be set aside.

24. The appellate court could therefore, not have drawn any adverse inference against the petitioner on the basis of a mere technicality, to the effect that the natural parents of the adoptive child had acted as witnesses, and not as executors of the document. Undoubtedly, adoption disturbs the natural line of succession, owing to which, a very heavy burden is placed upon the propounder to prove the adoption. However, this onus shifts to the person who challenges the adoption, once a registered document recording the adoption is brought before the court. This aspect must be considered taking note of various other attending circumstances i.e evidence regarding the religious ceremony (giving and taking of the child), as the same is a sine qua non for valid adoption.

25. The judgment referred by the respondent No.1 is in regard to the maintainability of the writ petition that the writ petition arises out of a mutation proceeding under Section 34 of the Act and in the said proceeding the rights of parties are not decided rather mutation proceedings are fiscal in nature.

26. The present writ petition has been filed challenging the order passed by the appellate court as well as order passed in the revision, therefore, it cannot be said that the order of mutation passed under Section 34 is under challenge, therefore, the judgment relied upon by learned counsel for respondent No.1 is not applicable to the facts and circumstances of the present case. The impugned orders have been passed in total disregard of the settled proposition of law, therefore, the same are liable to be set aside by this Court. The appellate court as well as revisional court have passed the orders based on assumption, without recording reasons and only on the basis of contradiction in the statement give by the witnesses, it cannot be presumed that the adoption deed is suspicious in nature.

27. Most of the facts narrated by the witnesses are in resemblance and

same cannot be ignored while coming to the conclusion that the adoption deed is suspicious in nature, therefore, the impugned orders are wholly unjustified, unreasoned and are liable to be set aside.

28. In view of the reasons recorded above, the impugned orders dated 8.12.1996 (Annexure-1) and 8.5.2000 (Annexure-2) are hereby quashed. The writ petition succeeds and is **allowed**.

29. No order as to costs.

(Irshad Ali,J.)

December 2, 2025

Gautam