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Neutral Citation No:- 2024:AHC:190780

Court No. 50

Reserved on: 6.11.2024

Delivered on: 5.12.2024

WRIT – B No. 9423 of 1984

Petitioner :- Jagdish

Respondent :- Sahayak Sanchalak, Chakbandi
Adhikari and Others

Counsel for Petitioner:- Mr. C.B. Singhal

Counsel for Respondent :- Mr. Sharad Chandra Singh, Addl.
C.S.C., Mr. Anil Kumar Mishra

Hon'ble Chandra Kumar Rai,J.

1. Heard Mr. C.B. Singhal, learned counsel for the petitioner, Mr. Anil Kumar Mishra, learned counsel for respondent nos. 3 & 4 and Mr. Sharad Chandra Singh, learned Addl. C.S.C. for the state-respondents.

2. Brief facts of the case are that village Kapoorpur, Pargana + Tehsil- Hapur, District Ghaziabad came under the operation of Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as U.P. C.H. Act"). In the basic year of consolidation operation, Richpal Singh was recorded over chak no.10. Richpal Singh expired on 21.1.1975. Respondent nos. 3 & 4 filed an application under Section 12 of the U.P. C.H. Act, stating that they are the sisters of deceased Richpal Singh, as such, they are entitled to be recorded in place of Richpal Singh. Petitioner also filed an application under the guardianship of his

natural mother Smt. Shanti Devi under Section 12 of the U.P. C.H. Act, stating that petitioner was adopted by Richpal Singh on 25.10.1974 on the basis of adoption deed executed on 25.10.1974, accordingly, petitioner is entitled to be recorded in place of Richpal Singh. The aforementioned applications under Section 12 of the U.P. C.H. Act were registered as Case No.4/753-75/2012, Mst. Imriti vs. Richpal Singh. Both the parties adduced oral and documentary evidence in support of their cases. Two issues were framed before the Consolidation Officer. The 1st issue was as to whether Smt. Imriti and Smt. Gomti are entitled to be recorded in place of Richpal Singh as sisters of deceased Richpal Singh and 2nd issue framed was whether petitioner Jagdish is entitled to be recorded in place of Richpal Singh, on the basis of adoption deed alleged to be executed in his favour by Richpal Singh. The Consolidation Officer, considering the evidence adduced by both the parties, has held that petitioner is entitled to be recorded on the basis of adoption deed and claim set up by respondent nos. 3 & 4 Mst. Imriti Devi and Mst. Gomti Devi was rejected vide order dated 4.6.1982. Against the order of the Consolidation Officer dated 4.6.1982, an appeal under Section 11(1) of the U.P. C.H. Act was filed before the Settlement Officer of Consolidation by respondent no. 3 which was registered as Appeal No.197 (Mst. Imriti Devi vs. Jagdish and Others). The Settlement Officer of Consolidation heard the aforementioned appeal and vide order dated 16.9.1983, allowed the appeal filed by respondent no.3 and directed to record the name of respondent nos. 3 & 4 / Mst. Imriti Devi and Mst. Gomti Devi in place of deceased Richpal Singh. Against the appellate order dated 16.9.1983, a revision under Section 48 of the U.P. C.H. Act was filed by petitioner

Jagdish which was registered as Revision No.1480. The Deputy Director of Consolidation under the impugned order dated 19.6.1984 dismissed the revision filed by the petitioner. Hence, this writ petition for the following relief:-

“Issue a writ, order or direction in the nature of certiorari, calling upon the opposite parties nos. 1 & 2 to submit their record to the Hon’ble High Court for ascertaining the illegality, if any, and for quashing the order dated 16.9.1983 “Anneuxre No.3” and order dated 19.6.1984 “Annexure No.4”.”

3. This Court entertained the matter on 13.7.1984 and stayed the dispossession of the petitioner from the land in dispute. In pursuance of the order dated 13.7.1984, parties have exchanged their affidavits.

4. Learned counsel for the petitioner submitted that adoption deed in question dated 25.10.1974 does not require registration, as such, the impugned appellate order as well as revisional order passed by the appellate court / revisional court, cannot be sustained in the eye of law. He further submitted that Richpal Singh in the adoption deed has mentioned that there was no issue from the wedlock of Richpal Singh and his wife and Richpal Singh was deserted by his wife. He also submitted that there is no evidence on record that wife of Richpal Singh was alive at the time of execution of adoption deed, as such, the finding recorded by respondent nos. 1 & 2 that consent of natural mother was necessary, is erroneous. He further submitted the evidence on record fully demonstrates that adoption took place and adoption deed was properly executed. He further submitted that respondent nos. 1 & 2 have not

considered the evidence filed at the instance of the petitioner in the form of irrigation receipt, revenue receipts, certificate from the headmaster of the school, kutumb register, etc. He further placed the provisions contained under Section 58 of the Evidence Act in order to demonstrate that the impugned orders have been passed by the respondent nos. 1 & 2 in arbitrary manner. He further submitted that there is no pleadings before the consolidation authorities that the wife of Richpal Singh was alive at the time of execution of adoption deed. He submitted that the impugned orders passed by respondent nos. 1 & 2 be set aside and the order passed by the Consolidation Officer be maintained. He also placed reliance on the decisions of the Hon'ble Apex Court, of this Court and that of the Delhi High Court in support of his arguments:-

“1. AIR 1995 Supreme Court 995, N. Jayalakshmi Ammal and Another vs. R. Gopala Pathar and Another;

2. 1993 0 Supreme (SC) 180, Ram Bilas and Another vs. Jagat Narain Shrivastava (dead) by Lrs.;

3. AIR 1967 Supreme Court 1134, Ramrati Kuer vs. Dwarika Prasad Singh and Others;

4. AIR 1973 Allahabad 507, Bihari vs. The State of U.P.;

5. AIR 1982 Delhi 520, Nanak Chand and Others vs. Chander Kishore and Ohters;

6. AIR 1983 Supreme Court 114, Madhusudan Das vs. Smt. Narayani Bai and Others; &

7. AIR 1961 Supreme Court 1378, Lakshman Singh Kothari vs. Smt. Rup Kanwar.”

5. On the other hand, Sri Anil Kumar Mishra, learned counsel for respondent nos. 3 & 4 submitted that no interference is required against the impugned order passed by respondent nos. 1 & 2. He further submitted that the adoption deed was never executed by Richpal Singh. He submitted that the alleged adoption deed is not registered, as such, no reliance can be placed upon the same. He also submitted that Richpal Singh was married with Smt. Musti who was alive at the time of alleged execution of adoption deed but no consent of Smt. Musti was taken, as such, the adoption deed cannot be relied upon. He further submitted that in view of the provisions contained under Section 7 of the Hindu Adoption & Maintenance Act, 1956, there is no illegality in the impugned order passed by respondent nos. 1 and 2. He also submitted that respondent nos. 1 and 2 have recorded concurrent finding of fact, that adoption deed was not executed in accordance with the provision of the Act, as such, the same cannot be relied upon. He submitted that Richpal Singh died within 25 days from the alleged adoption ceremony, as such, the adoption deed is surrounded by suspicious circumstances. He submitted that unregistered adoption deed dated 25.10.1974 is forged and fictitious document, hence, no title will accrue in favour petitioner on the basis of the alleged adoption deed dated 25.10.1974. He submitted that no interference is required in the matter and the writ petition is liable to be dismissed. He placed reliance upon the following judgments of the Hon'ble Apex Court and that of this Court in order to demonstrate that the adoption deed alleged to be executed by Richpal Singh in favour of respondent nos. 3 and 4, cannot be relied upon:-

1. AIR 2008 SC 1056, Brajendra Singh vs. State of M.P., &

2. AIR 2021 Allahabad 19, Bhanu Pratap Singh vs. State of U.P. and Others.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that the claim under Section 12 of the U.P. C.H. Act set up by the petitioner as well as respondent nos. 3 & 4 was decided by the Consolidation Officer for recording the name of the petitioner on the basis of adoption deed dated 25.10.1974 and rejecting the claim of respondent nos. 3 and 4. There is also no dispute about the fact that in appeal filed by respondent nos. 3 & 4, the order of the Consolidation Officer, has been set aside and respondent nos. 3 & 4 were ordered to be recorded as legal heirs of Richpal Singh. There is also no dispute about the fact that the revision filed by the petitioner against the appellate order, has been dismissed under the impugned revisional order dated 19.6.1984.

8. In order to appreciate the controversy involved in the matter, perusal of Sections 6 and 16 of the Hindu Adoptions and Maintenance Act, 1956 will be relevant which are as under:-

6. Requisites of a valid adoption.—No adoption shall be valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

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.

STATE AMENDMENT

Uttar Pradesh.- Renumber Section 16 as sub-section (1) thereof, and after sub-section (1) as so re-numbered, insert the following sub-section (2), namely:-

“(2) In case of an adoption made on or after the first day of January, 1977 on Court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force;

Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872 (1 of 1872).” [Vide Uttar Pradesh Act 57 of 1976, s. 35]”

9. In the instant matter, the title objection was filed on behalf of the petitioner on the basis of adoption deed dated

25.10.1974. The original copy of the adoption deed was filed before the Consolidation Officer. The issue relating to adoption deed was framed by the Consolidation Officer and both the parties adduced oral and documentary evidence in support of their cases. The Consolidation Officer, considering the evidence adduced by the parties, recorded finding of fact that adoption deed has been rightly executed and there is no necessity for the registration of the adoption deed. The Consolidation Officer, accordingly, ordered to record the name of the petitioner in place of Richpal Singh, on the basis of adoption deed dated 25.10.1974.

10. The appellate court has set aside the order of the Consolidation Officer on misconceived grounds that adoption deed has not been executed in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1956, as such, the same cannot be relied upon. The finding recorded by the appellate court/Settlement Officer of Consolidation cannot be sustained in the eye of law as the adoption has been found to be proved before the Consolidation Officer, considering the oral and documentary evidence adduced by the parties.

11. It is also material to mention that in the adoption deed dated 25.10.1974 it was clearly mentioned by Rich Pal Singh that his wife has left his house as well as marital relationship about 18-20 year before & there are no male or female child from their wedlock, as such, he is adopting Jagdish son of Omvir & Smt. Shanti Devi who have given Jagdish in adoption to me. The aforementioned adoption deed dated 25.10.1974 has been proved by the witnessess in proper manner.

12. So far as presence of wife of Richpal Singh at the time of execution of adoption deed is concern, the clearcut averment has been made by Richpal Singh in the adoption deed dated 25.10.1974 that his wife has left his house about 18-20 year before. There is no evidence on record that wife of Richpal Singh was residing alongwith Richpal at the time of execution of adoption deed or even after execution of adoption deed as such the order passed by Settlement Officer Consolidation for rejecting the claim of petitioner on the basis of adoption deed is wholly illegal.

13. It is also material to mention that in the adoption deed it was mentioned that Jagdish has become owner of entire movable & immovable property belonging to Richpal Singh, as such there is no illegality in the execution of adoption deed dated 25.10.1974.

14. It is also material that the U.P. Amendment in Section 16 has taken place in the year 1976 which was made operative w.e.f. 1.1.1977, as such, according to the provisions contained under Section 16 of the Hindu Adoptions and Maintenance Act, 1956, there shall be presumption that adoption has been made in compliance of the provisions of the Act unless and until it is disproved. In the instant matter, the adoption deed was executed on 25.10.1974, as such, non registration of the adoption deed in question will not make any difference.

15. In view of the finding of fact recorded by the Consolidation Officer, there was no scope for interference by the appellate court to ignore the adoption deed executed on 25.10.1974.

16. The Deputy Director of Consolidation has not decided the revision in proper manner and maintained the appellate order for recording the name of contesting respondent in place of Richpal Singh.

17. This Court in the case reported in **(2024) 164 RD 226, Munder vs. Deputy Director of Consolidation and Others** has considered the provisions of Section 16 of the Hindu Adoptions and Maintenance Act, 1956 as well as Sections-17 of the Registration Act and has held that registration was not required prior to 1.1.1977 with respect to execution of adoption deed.

18. Considering the entire facts and circumstances of the case, as mentioned above, the impugned appellate order dated 16.9.1983 and the revisional order dated 19.6.1984 are liable to be set aside and the same are hereby set aside.

19. **The writ petition stands allowed.** The order passed by the Consolidation Officer dated 4.6.1982 is hereby affirmed.

20. No order as to costs.

Order Date :- 5.12.2024

C.Prakash

(Chandra Kumar Rai, J.)