

Civil Revision
PRESENT: The Hon'ble JUSTICE I.P. MUKERJI
Judgment On : 12th FEBRUARY, 2010.
C.O. NO. 1770 OF 2008
SHAKUNTALA SAMANTA
Versus
ANJAN CHAKRABORTY & ORS.

Point:

ADDITION OF PARTY, FOSTER CHILD: Suit for partition- A foster child whether can be added as a party- Code of Civil Procedure, 1908, O 1 R 10

Fact: The instant application was filed by the petitioner/a foster daughter of a deceased claiming revision of two orders passed by Id. Second Civil Judge, Senior Division, Barasat refusing to add her as a party in a suit for partition wherein the petitioner made an application for addition as a party.

Held: When the above Supreme Court decision recognises substantial rights of a foster child, by saying “He is essentially the child of another person but is nurtured, reared and brought up by another person as his own son the foster son would certainly be member of the family” the question whether a foster daughter has any right of inheritance has to be gone into. Such an applicant cannot be deprived the right of participation in the proceedings. The High Court observed that such a person is an absolutely necessary party in the proceedings.

Paragraph – 8

Cases: K.V. Muthu – v – Angamuthu Ammal, reported in (1997)2 SCC 53, Smt. Vijayalakshmi, - v – B. Himantharaja Chetty and another, reported in 1996 SC 2146

For the petitioner : Mr. Pratap Chatterjee
Mr. Pradip Dutta

For the respondent No.1 : Mr. Jiban Ratan Chatterjee
Mr. Hiranmay Bhattacharya

For the respondent : Mr. Suresh Majumder
Nos. 2-4 Mr. Debangshu Biswas

The Court:

1. The concept of a foster child, that is, a foster son or a foster daughter is a fairly new concept in Indian Jurisprudence. It is known from 1997, if not earlier.

In the case of **K.V. Muthu – v – Angamuthu Ammal, reported in (1997)2 SCC 53**, the Supreme Court has spoken about the rights of a foster child. A foster child according to the Supreme Court decision is one, who has been received by the foster parents at a very early stage of life, nurtured, cared and brought up as their own child.

2. This is an application by a foster daughter of a deceased claiming revision of two orders dated 05.06.2006 and 01.04.2008 passed by the learned Second Civil Judge, Senior Division, Barasat refusing to add her as a party in a suit. The suit is T.S. No. 51 of 2005 pending before the Barasat Court. It is a partition suit amongst the heirs of Gopal Chandra Chakraborty, deceased. The petitioner claiming to be a foster daughter of the deceased made an application for addition as a party. Her claim was resisted by only one son of the said deceased, namely, Anjan Chakraborty, respondent No. 1 herein. The other heirs of the deceased being two sons and one daughter have not opposed her prayer for such addition.

3. It is true that the suit is of 2005. An earlier application was made on 8th August 2005 for the same purpose. When the application was taken up for hearing, nobody appeared for the petitioner. However, the application was disposed of refusing to add her as a party. This order was made on 5th June 2006. After and about 1½ years, the selfsame applicant made a second application. She argues that because of her absence that order had not become res judicata. An order was passed on 1st April 2008 in the second application to the same effect, that is, dismissal of her application for addition of as party.

4. At the hearing of this application, in the course of submissions, the learned counsel for the opposite party, opposing this application very fairly admitted that the petitioner was indeed a foster daughter of the deceased, Gopal Chandra Chakraborty. To be more precise she fulfilled the conditions is mentioned in the above Supreme Court judgment in paragraph 14 and 15, 25 and 26 to be considered as a foster daughter.

5. Paragraph 14 and 15, 25 and 26 of the above Supreme Court judgment are reproduced here in below:

“14. In its ordinary and primary sense, the term “family” signifies the collective body of persons living in one house or under one head or manager or one domestic government. In its restricted sense, “family” would include only parents and their children. It may include even grandchildren and all the persons of the same blood living together. In its broader sense, it may include persons who are not connected by blood depending upon the context in which the word is used.

15. There is a consensus among the High Courts in India that the word “family” is word of great flexibility and is capable of different meanings.

25. These definitions indicate that a “foster child” need not be the real legitimate child of the person who brings him up. He is essentially the child of another person but is nursed, reared and brought up by another person as his own son.

26. If a child comes to a person or is found by that person as forlorn child or the parents of that child, may be, on account of their poverty or their family circumstances, bring that child to the other person and request him to bring up that child which is accepted by that person and such child is brought up from the infancy as the own son by that person who loves that child as his own, nourishes and brings him up, looks after his education in the school, college or university and bears all the expenses, such child has to be treated as the son of that person particularly if that person holds the child out as his own. Care, therefore, in rearing up the child need not always be parental. It can be even that of a “foster son”. In such a situation, the son so brought up would be the “foster son” of that person and since the devotion with which he was brought up, the love and care which he received from that person were like those which that person would have given to his real son, the “foster son” would certainly be a member of the family.”

6. In this connection reference may also be made in **Smt. Vijayalakshmi, - v – B. Himantharaja Chetty and another, reported in 1996 SC 2146**. Both these decisions have been cited by Mr. Pradip Dutta, learned advocate appearing for the petitioner.

7. Further, it has been admitted by the learned counsel for the petitioner before me that in case the petitioner was added in the suit she would not try to dispute the scheduled properties in the suit for partition. Only upon her success she would be entitled to her share in the division of the scheduled properties.

8. In view of the above Supreme Court decision and in view of the above admissions, it is indeed very strange, how this petitioner can be shutout from participation in the suit. There is prima facie, substance, in the argument of Mr. Jiban Ratan Chatterjee, appearing for the opposite party above, that the above Supreme Court decision was made in the context of defining a “family” in a Rent

Act governed tenancy where succession was involved. Further, according to him the laws of adoption have not been changed and a foster daughter does not have any right to inherit property which also has, prima facie, substance. But the fact is that the question has to be tried. When the above Supreme Court decision recognises substantial rights of a foster child, by saying **“He is essentially the child of another person but is nurtured, reared and brought up by another person as his own son.....the foster son would certainly be member of the family”** the question whether a foster daughter has any right of inheritance has to be gone into. Such an applicant cannot be deprived the right of participation in the proceedings. In fact, in my opinion, such a person is an absolutely necessary party in the proceedings.

9. But nevertheless, it has been submitted before me that the evidence in the above suit was completed on 4th December 2009.

10. Therefore, in that view of the matter I would not permit the petitioner to reopen the trial. In my opinion, the question involved is more or less a pure question of law, in view of the admission above. Proof of further facts has become largely unnecessary. But the petitioner may still want to establish one or two other things regarding her status. The procedure for establishing that case should be left entirely to the learned judge and should be as short as possible. 11. The petitioner may be permitted to file a written statement within the shortest period, produce or disclose documents in an equally brief period thereafter. Then the issue may be allowed to be established by evidence in as short a time as possible. Thereafter, since it is primarily an issue of law, legal arguments may be made on this issue. This issue should be decided as a preliminary issue. Therefore, the two orders impugned dated 05.06.2006 and 01.04.2008 in this application are set

aside. The petitioner is hereby added as a party in the suit. Necessary amendment to the Cause Title may be made in the Barasat Court pleadings on the basis of this order. This application is allowed to the above extent.

12. Urgent certified photocopy of this judgment and order, if applied for, to be provided upon complying with all formalities.

(I.P. MUKERJI, J.)