

CIVIL APPEAL

Present: The Hon'ble Mr. Justice Tarun Kumar Gupta

Judgment on 03.09.2010

S.A. No.293 of 2005

Ram Kripal Shaw

Versus

Rajendra Prasad Shaw and Ors.

Points:

Adoption -Document has been executed for giving and taking adoption whether it should bear the endorsement of the natural father of the boy - Attestation whether by itself creates estoppel or implies consent. - The subsequent acts in dealing with the properties left by his natural father claiming himself as the son of natural father whether gave a death blow to the case of adoption. – Hindu Adoption and Maintenance Act, 1956 S.12 and 16- Evidence Act 1872 S.68

Facts:

Plaintiff claims that he being adopted by Jawaharlal Shaw became absolute owner of the suit property after the death of Jawaharlal Shaw. Defendant Nos. 1 to 3 contested the suit contending inter alia that Jawaharlal Shaw never adopted plaintiff as his son. Those properties were purchased in the name of Jawaharlal Shaw with the joint money of Jawaharlal Shaw and his brothers namely Motilal Shaw and Hiralal Shaw who were fathers of the defendant Nos. 1 to 3. The plaintiff was a relation of the present defendants and was permitted to stay in one room in the first floor of the suit premises as a licensee by Hiralal Shaw, the father of defendant No.1 and later on after death of Hiralal Shaw the defendants renewed the said license. Trial court dismissed the suit and appellate court dismissed the appeal.

Held:

For giving or taking adoption no formal document is required. No particular form is prescribed for the ceremony of adoption, but the law requires that the natural parent should hand over the adoptive boy and the adoptive parent should receive him. The nature of the ceremony may vary depending upon the circumstances of the cases. However, the ceremony of giving and taking should necessarily be there. But when a document has been executed for giving and taking adoption then it should bear the endorsement / signature / L.T.I. of the natural father of the boy to signify his consent in giving his son in adoption. Unfortunately, the 'Godnama' is lacking such endorsement / signature/ L.T.I. of Sri Ram Prakash Shaw, the natural father of the appellant / plaintiff.

Para 16 and 17.

Attestation by itself neither creates estoppel nor implies consent. It proves no more than the signature of an executing party has been attached to a document in the presence of a witness.

Para 19

The subsequent acts of the appellant/plaintiff in dealing with the properties left by his natural father claiming himself as the son of natural father also gave a death blow to the appellant plaintiff's case of being adopted by Jawaharlal Shaw, or of inheriting the properties left out by Jawaharlal Shaw as his adopted son.

Para 26

Cases cited:

AIR 1993 Supreme Court (Sri Bhagwan Sharma v. Bani Ghosh), (1996) 7 Supreme Court Cases 389 (Kochukakkada Aboobacker v. Attah Kasim and others) ; 1993 (1) CLJ 193; 21 C. W. N. 225 (Banga Chandra Dhur Biswas and another v. Jagat Kishore Acharjya Chowdhuri and Ors.); AIR 1992 Bombay 189 (Devgonda Raygonda Patil v. Shamgonda Raygonda Patil)

For the appellant: Mr. Dhruva Bhattacharya

Mr. Uttiya Roay

For the Respondents: Mr. Jiban Ratan Chatterjee

Mr. Tarak Nath Halder

Mr. Supratim Dhar

Mr. Debabrata Mondal

Tarun Kumar Gupta, J.:-

This appeal is directed against judgment and decree dated 27th April, 2004 passed by learned Fast Track Court, Sealdah, in Title Appeal No.01 of 2001 affirming the judgment and decree dated 19.09.2000 passed by learned Civil Judge (Junior Division) at Sealdah in Title Suit No. 128 of 1986.

2. Being aggrieved and dissatisfied with said judgment of confirmation the plaintiff/appellant has preferred this Second Appeal. The Case of the appellant/plaintiff, in short, is that he was adopted by Jawaharlal Shaw as his son in or about 1940 and that Jawaharlal Shaw died intestate in 1960. After the death of Jawaharlal Shaw the appellant/plaintiff became absolute owner of the properties including the suit properties left behind by Jawaharlal Shaw and the defendants being nephew of Jawaharlal Shaw had no right, title or interest over the properties of Jawaharlal Shaw. The defendants tried to dispossess the plaintiff from the suit property and that on that score appellant/plaintiff filed the said Title Suit being No.128 of 1986.

3. Defendant No.4 Manoj Kumar Barman filed written statement admitting the claim of the plaintiff but he did not take part in any way in the further proceedings of the suit.

4. Remaining Defendant Nos. 1 to 3 contested the suit by filing written statement denying material allegations of the plaint and contending inter alia

that Jawaharlal Shaw never adopted plaintiff as his son and that plaintiff had no right, title or interest in the properties left behind by Jawaharlal Shaw and that in reality those properties were purchased in the name of Jawaharlal Shaw with the joint money of Jawaharlal Shaw and his brothers namely Motilal Shaw and Hiralal Shaw who were fathers of the defendant Nos. 1 to 3. The plaintiff was a relation of the present defendants and was permitted to stay in one room in the first floor of the suit premises as a licensee by Hiralal Shaw, the father of defendant No.1 and later on after death of Hiralal Shaw the defendants renewed the said license. It was further case of the contesting defendants that plaintiff was a son of Ram Prasad Shaw and that there was never any valid adoption in 1940 or at any point of time by Jawaharlal Shaw as alleged and that the suit was liable to be dismissed.

5. On the basis of the pleadings of the parties learned Trial Court framed several issues including an issue as to whether the plaintiff was the adopted son of Jawaharlal Shaw. Learned Trial Court dismissed the suit as appellant plaintiff failed to establish that he was the adopted son of Jawaharlal Shaw. When appellant /plaintiff preferred the first appeal being Title Appeal No.01 of 2001, it was also dismissed on contest with the same observations.

6. The substantial question of law in this appeal may be framed as follows:

(i) Whether learned 1st Appellate Court came to a perverse finding that appellant / plaintiff was not the adopted son of Jawaharlal Shaw by not appreciating the evidence on record in their proper perspective.

7. Learned Advocated Mr. Dhruba Bhattacharya for the appellant / plaintiff has submitted that in order to establish the claim of the appellant /plaintiff that he was the adopted son of Jawaharlal Shaw, he filed various documents including 'Godnama' dated 5th October, 1951 which was nothing but an acknowledgement of adoption of appellant / plaintiff by Jawaharlal Shaw,

but both the learned Lower Courts failed to appreciate the said document and other evidence on record in their proper perspective and came to a wrong finding that the appellant / plaintiff could not establish that he was adopted son of Jawaharlal Shaw.

8. In this connection he has referred case laws reported in AIR 1993 Supreme Court page (Sri Bhagwan Sharma v. Bani Ghosh), (1996) 7 Supreme Court Cases 389 (Kochukakkada Aboobacker v. Attah Kasim and others) and 1993 (1) CLJ page 193 (Full Bench) to impress upon this Court that if Trial Court and First Appellate Court could not consider relevant documents in proper perspective then High Court is entitled to reconsider the evidence in Second Appeal by drawing inference from the admitted documents.

9. In this connection, he has further submitted that though the actual adoption as per law was taken in or about 1940 but the 'Godnama' was executed in 1951 just as an acknowledgment of said adoption already taken and that both the Lower Courts failed to appreciate the same.

10. Learned Advocate Mr. Jiban Ratan Chatterjee for the respondent on the other hand has submitted that in the alleged 'Godnama' of 1951 it was nowhere stated that adoption was already taken by Jawaharlal Shaw in or about 1940 or that said 'Godnama' of 1951 was executed just as a acknowledgment of adoption already taken in 1940. In this connection, learned Advocate for the contested respondents has further submitted that the alleged 'Godnama' dated 5th October, 1951 was also fictitious document. As per 'Godnama' it was executed on 5th October, 1951 being the auspicious day of 'Dushera' though actually 10th October was the date of 'Dushera' in 1951. He has further submitted that in 'Godnama' the address of one witness was shown as of district Bhojpur and another witness

was of district Sahabad and that only in 1972 the district of Sahabad was divided into Bhojpur and Rohotas. In this connection, he has further submitted that the stamp paper of the document 'Godnama' (Ext.6) was purchased in the name of one Swarup Jamadar of Salkia at Howrah and there is no explanation as to how said document can be used by a person at Ara, Bihar.

11. Learned Advocate for the appellant / plaintiff has submitted that there was no submission before learned Lower Courts on the points of difference in the date of 'Dushera' or of division of district Sahabad into two districts namely Bhojpur and Rohotas only in 1971 and that the matter may be remanded back to learned Trial Court for taking these factors into consideration and for writing a fresh judgment after giving opportunity to the parties for making arguments covering all these points.

12. Learned Advocate for the respondent defendants on the other hand has submitted that this is no ground for remand particularly when there are sufficient materials on record to show that the claim of appellant / plaintiff of taking him adoption by Jawaharlal Shaw in 1940 was hollow one.

13. There are catena of decisions wherein it was observed that in order to end the litigation in between the parties finally it is always desirable that the Appellate Court should decide the dispute finally in between the parties, if sufficient materials are available in the record. As appellant/plaintiff has already adduced evidence of three witnesses including himself to prove his adoption and also filed various documents, and contested respondent defendants also adduced oral and documentary evidence to controvert the said claim, there is no need for referring the case to Lower Court on remand.

14. Admittedly, the entire case hinges on one point, namely, whether the appellant / plaintiff was adopted son of Jawaharlal Shaw as claimed by the appellant / plaintiff or not as claimed by contesting respondent defendants.

15. In support of his claim of adoption appellant / plaintiff adduced oral evidence of three witnesses including himself and also produced 'Godnama' dated 5th October, 1951. In this connection, it is pertinent to note that though as per plaint the said adoption was taken in or about 1940 but at the time of giving evidence appellant / plaintiff (P.W.1) deposed that adoption took place in 1951 and in support of the same he produced said 'Godnama' which was marked as an exhibit being 30 years old document coming from proper custody. On careful scrutiny of said 'Godnama' of 1951 it appears that there was no averment or even any indication whatsoever to show that appellant / plaintiff was adopted by Jawaharlal Shaw as his son in 1940. As such if said 'Godnama' of 1951 is taken into consideration then it gives a fatal blow to the Plaint Case of taking appellant / plaintiff adoption by Jawaharlal Shaw in 1940. Though the 'Godnama' (Ext.6) seems to be executed at Ara after performing of ceremony but P.W. 2 did not say in which place said adoption ceremony was held. P.W.3 gave a contradictory version about the place of said alleged ceremony of adoption. According to P.W.3 the ceremony was held at Chandnipur.

16. For giving or taking adoption no formal document is required.

17. No particular form is prescribed for the ceremony of adoption, but the law requires that the natural parent should hand over the adoptive boy and the adoptive parent should receive him. The nature of the ceremony may vary depending upon the circumstances of the cases. However, the ceremony of giving and taking should necessarily be there. But when a document has been executed for giving and taking adoption then it should bear the

endorsement / signature / L.T.I. of the natural father of the boy to signify his consent in giving his son in adoption. Unfortunately, the 'Godnama' is lacking such endorsement / signature/ L.T.I. of Sri Ram Prakash Shaw, the natural father of the appellant / plaintiff.

18. Learned Advocate for the appellant / plaintiff has stated that Hiralal Shaw, the father of respondent/defendant No.1, was one of the attesting witness of the deed of adoption and hence defendants are estopped from challenging said deed of adoption.

19. It appears that contesting defendants denied and disputed the signature appearing in deed as 'Hiralal Shaw' as the signature of the father of defendant No.1. Apart from that attestation by itself neither creates estoppel nor implies consent. It proves no more than the signature of an executing party has been attached to a document in the presence of a witness. [Vol. XXI page 225 (Banga Chandra Dhur Biswas and another v. Jagat Kishore Acharjya Chowdhuri and Ors.)].

20. As such, the 'Godnama' of 1951 seems to be a suspicious document and I find no infirmity in the findings of learned Lower Courts by not giving much reliance to said document.

21. In the case in hand contesting respondent/defendants filed some certified copies of the deeds to show that the appellant/plaintiff along with his brother Ram Ekbal Shaw being other son of his natural father Ram Prakash Shaw sold out some properties on 18.12.1969 and also entered with an agreement for sale on 15.09.1969 claiming to be successor of his biological father through inheritance after his death. It also appears that appellant/ plaintiff appeared before the Court of Consolidation (Chakbandi) Officer, P.S.Koilwar, District. Bhojpur in case No.01 of 1984-85 and contested claiming himself as son of his natural father, Ram Prakash Shaw.

22. Admittedly, once there is a valid adoption the son becomes the son of adoptive father and loses all his rights in respect of the properties of his natural father.

23. In this connection, learned advocate for the appellant / plaintiff has referred a case law reported in AIR 1992 Bombay page 189 (Devgonda Raygonda Patil v. Shamgonda Raygonda Patil) and has argued that the property already vested as Coparcener cannot be divested and accordingly the appellant / plaintiff had right over the property left away by his biological father and that those transactions did not offend the appellant's case of adoption by Jawaharlal Shaw.

24. In such referred case law it was specifically stated that it is only those properties which are already vested to the adoptive prior to adoption by inheritance or by partition in the natural family or as sole surviving Coparcener can only be said to be vested in him and can pass on to him after adoption, and that the properties which had already become vested in him before adoption as an absolute owner are not forfeited by the adoption and adoptee continues to hold them in the new family, but in the case of Coparcenary property it cannot be said that a Coparcener was having right to a particular part of it so as to get it vested.

25. In the present case there is no document to show that those properties dealt with by the plaintiff through those documents (Ext. B, C. and D) vested to the plaintiff prior to adoption. Rather appellant / plaintiff asserted in his crossexamination that he had right, title and interest over the properties which were left by his original father. It is pertinent to note that in all those documents the appellant / plaintiff described himself as son of Ram Prakash Shaw (the natural father) and not as son of Jawaharlal Shaw, adoptive father. Had there been real adoption then appellant / plaintiff would have described

himself as son of adoptive father i.e., Jawaharlal Shaw in all the documents admittedly executed after said adoption and there was no scope of describing himself as son of his original father i.e., Ram Prakash Shaw.

26. It is true that appellant / plaintiff filed some other documents wherein he described himself as son of adoptive father i.e, Jawaharlal Shaw. But that by itself does not prove valid adoption of appellant / plaintiff by Jawaharlal Shaw in 1940 as claimed by the appellant in his plaint or on any subsequent date. These things clearly establish that even if there was any adoption at all, as claimed by the appellant / plaintiff, that was never acted upon. I have already stated that as per plaint case the said adoption was held in 1940 though there was no evidence whatsoever to show the same and rather one document of 1951 was filed to establish adoption in 1951 and that document too was not beyond suspicion. The subsequent acts of the appellant / plaintiff in dealing with the properties left by his natural father claiming himself as the son of natural father also gave a death blow to the appellant plaintiff's case of being adopted by Jawaharlal Shaw, or of inheriting the properties left out by Jawaharlal Shaw as his adopted son.

27. Considering all facts and circumstances and submissions of learned advocates of both sides I am of the opinion that judgment of First Appellate Court confirming the judgment of learned Trial Court did not suffer from any perversity in the matter of appreciation of evidence on record and does not call for any interference by this Court of Second Appeal. As a result, this appeal is hereby rejected on contest but without costs.

28. Judgment and decree dated 27th July, 2004 passed by learned Fast Track 2nd Court, Sealdah affirming the judgment and decree dated 19.09.2000 passed by learned Civil Judge (Junior Division) at Sealdah in Title Suit No.128 of 1986 stand confirmed.

29. Let a copy of the judgment along with L.C.R. be returned to the Court below at once for information and necessary action.

30. Urgent xerox certified copy of this judgment be supplied to the learned Counsels of the party / parties, if applied for.

(Tarun Kumar Gupta, J.)