Rahasa Pandiani (Dead) By Lrs. and Others

Vs

Gokulananda Panda and Others

Civil Appeal No. 2058 of 1973

(M. P. Thakkar, B. C. Ray JJ)

19.02.1987

JUDGMENT

M. P. THAKKAR, J. -

1. Whether or not an adoption had taken place way back in 1956 is the controversy at the centre of the stage.

2. One Rahasa Pandiani (original defendant 1), widow of Lakshminarayana Panda had adopted on Gangapani, the son of the sister of her deceased husband in 1942 by a registered document. The said Gangapani died in 1953. Respondent 1 Gokulananda Panda (original plaintiff) instituted the suit giving rise to the present appeal. He was a minor at the material time and the suit was instituted through his natural father and maternal uncle seeking a declaration that he was adopted as a son by defendant 1 Rahasa on March 22, 1956. The suit was instituted because she had alienated some of the properties in favour of appellants 2 to 8 and had made a Will in favour of the deity bequeathing the rest of the properties on the premise that there was no such adoption and she was free to deal with the properties of her deceased husband. Defendant 1 resisted the suit and firmly denied that she had taken Gokulananda Panda in adoption as alleged. The trial court on an appreciation of evidence disbelieved the version of the plaintiff and dismissed the suit on taking the view that the plaintiff had failed to establish that any such adoption had taken place. A learned Single Judge of the High Court reversed the findings recorded by the trial court and decreed the suit holding that the plaintiff had established that such an adoption had indeed taken place. The defendants preferred a Letters Patent appeal to a Division Bench of the High Court, but it was dismissed in limine. Thereupon original defendant 1 Rahasa Pandiani approached this Court by way of the present appeal by special leave. She having died during the pendency of the present appeal, the estate is not represented by her legal heirs whose names have brought on record pursuant to the order of this Court on January 25, 1982.

3. Learned counsel for parties have taken us through the judgments of the trial court and the High Court. We have given our close and anxious consideration to the oral evidence as also the attendant circumstances. On taking an overall view of the matter we are satisfied that the trail court was right in reaching the conclusion that the plaintiff had failed to prove that the alleged adoption had really taken place. In our opinion, the High Court failed to attach due importance to a host of significant circumstances which indicate that the version regarding adoption does not inspire confidence. There is hardly any evidence worth the name on which a finding in favour of the plaintiff that such an adoption had taken place could be rested.

4. Before we advert to the relevant circumstances we consider if appropriate to advert to a note of

caution sounded by this Court as early as in 1958 in Kishori Lal v. Chaltibai (1959 Supp 1 SCR 698 : AIR 1959 SC 504). We can do no better than to quote the relevant passage from the judgment of Kaput, J. :

> As an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth. Failure to produce accounts, in circumstances such as have been proved in the present case, would be a very suspicious circumstance. The importance of accounts was emphasised by the Privy Council in Sootrugun v. Sabitra ((1834) 2 Knapp 287); in Diwakar Rao v. Chandanlal Rao (1916 ILR 44 Cal 201 (PC)); in Kishorilal v. Chunilal ((1908) 36 IA 9); in Lal Kunwar v. Charanji Lal ((1909) 37 IA 1, 7) and in Padamlal v. Fakira Debya (AIR 1931 PC 84 : 35 CWN 465 : 60 MLJ 619 : 131 IC 758).
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> When the plaintiff relies on oral evidence in support of the claim that he was adopted by the adoptive father in accordance with the Hindu rites, and it is not supported by any registered document to establish that such an adoption had really and as a matter of fact taken place, the court has to act with a great deal of caution and circumspection. Be it realized that setting up a spurious adoption is not less frequent than concocting a spurious Will, and equally, if not more difficult to unmask. And the court has to be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the propounder of the will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is not supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a Will, there have been spurious claims about adoption having taken place. And the court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstance which arouse the suspicion of the court and the conscience of the court is not satisfied that the evidence preferred to support such an adoption is beyond reproach.

5. In the present case a very significant circumstance which creates a serious doubt about the genuineness of the claim of adoption has come to light. Syamosundar, the natural father of the plaintiff had given his eldest son Narasinga in adoption to Hira, the widow of Godavari in 1942 by a registered document. So also when defendant Rahasa had adopted her husband's sister's son Gangapani in 1942 it was by a registered document. Admittedly, therefore, Rahasa, the alleged adoptive mother, had resorted to adoption by a registered document as early as in 1942 and she was aware of the importance of the adoption being evidenced by a registered document. So also Syamosundar, the father of plaintiff Gokul was fully aware of the importance of having adoption evidenced by a registered document in order to avoid any future controversy. He had been a party to the adoption of his eldest son Narasinga by a registered document in 1942. And yet there is not registered document to evidence the alleged adoption of Gokul by Rahasa in 1956 (it is alleged that

the adoption took place on March 22, 1956). The evidence of Syamosundar shows that even at the time of the alleged adoption of Gokul he was aware about the importance of having the adoption made by a registered document. His evidence furthermore shows that he had discussed that matter about execution of a registered deed of adoption with Rahasa but according to him Rahasa had put it off. The trial court disbelieved this version. Rahasa herself stated on oath that no such adoption had taken place. It was not even suggested to her in her cross-examination that there was any talk about the adoption being evidenced by a registered document. There was no reason to disbelieve Rahasa. If Rahasa had really adopted Gokul having felt the need for doing so there would have been no occasion on her part to be reluctant to execute a registered document as was done by herself earlier when he adopted Gangapani in 1942. So also Syamosundar who was giving his natural son in adoption would have in the normal course of thing insisted upon the adoption being evidenced by a registered document, he himself having resorted to this mode way back in 1942 when his eldest son Narasinga was given in adoption. According to the plaintiff his age was about 11 years at the time when the adoption took place and he left the school in order to live with and look after adoptive mother after some time. Syamosundar in his evidence has clearly admitted that the name of Gokul's father was not changed after the adoption. He subsequently gave the explanation that the name was not changed because after some time Gokul left the school. Anyway this circumstance also creates a doubt about the genuineness of the adoption as alleged by the plaintiff. Another circumstance which creates a serious doubt in out mind is that no reliable evidence has been adduced to show that Gokul had started living with Rahasa since 1956 till the dispute arose in 1962. If the version of adoption had been true and the evidence of Syamosundar and Gokul that Gokul had started living with his adoptive mother Rahasa was true, Gokul would have lived with his adoptive mother from the age of 11 till the age of 17. At least, one neighbour could have been found to prove that Gokul was living with Rahasa. No such evidence has been adduced. On the other hand, Rahasa says that adoption never took place and Gokul never came to live with her. The whole purpose of the adoption presumably was to have someone to look after her in her old age (she was about 61 at the time when the alleged adoption took place in 1956). Under the circumstances, absence of satisfactory evidence to show that the adoption had been acted upon and the absence of subsequent conduct supporting the version of adoption are circumstances which create serious doubts. Yet another very important circumstance which has not been accorded sufficient importance is that Syamosundar and Ram Krishna Sabat, the maternal uncle of Gokul who acted as next friend when the suit was instituted, had in terms mentioned the names of three respectable persons as having remained present at the adoption ceremony at the time of adoption. None of these three persons was examined. No explanation has been offered as to why there three persons who admittedly were present according to the plaintiff, and whose names were mentioned in the plaint, were not examined. The trial court rightly drew the inference that if they had been examined, they would not have supported the plaintiff. What is more the priest who is supposed to have performed the adoption ceremony has also not been examined. A convenient explanation has been found by naming a person who was dead. This is another suspicious circumstance. So also, none of the near relatives or prominent persons of the village have been examined to show that such an adoption had taken place. It was not even suggested to defendant Rahasa that the giving and taking ceremony had taken place. Nor was it suggested to her that a particular person had acted as priest. In this state of evidence the trial court rightly dismissed the suit. The high Court attached little or no importance to this catena of significant circumstance and reversed the findings recorded by the trial court by the simplistic method of accepting the evidence adduced by plaintiff without analysing or testing it on the touchstone of probabilities. In fact the finding of the high Court can be said to be a finding which is not supported by any evidence worth the name. Too much importance was attached to an alleged inscription made in the Puri temple. There was no reliable evidence to establish that the said

inscription was made at the instance of defendant Rahasa. No temple records were forthcoming. There was nothing to show that it was an authentic inscription made in order to evidence the adoption at the instance of Rahasa. In any case, the dark clouds of suspicious circumstances have not been dispelled by the plaintiff. Taking an overall and cumulative view of all the relevant circumstances we are not at all satisfied that the plaintiff has established that such an adoption had really taken place. Under the circumstance, we allow the appeal, set aside the judgment and decree of the High Court and restore the judgment and decree passed by the trial court. There will be not order as to costs throughout.

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