

Dinaji and Others

Vs

Daddi and Others

Civil Appeal No. 2116 of 1972

(G. L. Oza, Smt. M. S. Fathima Deevi JJ)

10.11.1989

ORDER

1. This appeal arises out of the judgment dated December 13, 1971 of the High Court of Madhya Pradesh in Second Appeal No. 617 of 1989, wherein the learned Judge of the High Court dismissed the second appeal filed by the present appellant.

2. The present appellant filed a suit for injunction and possession on the basis of a registered sale deed dated April 28, 1966 executed by Smt. Yashoda Bai in his favour with respect to immovable property including agricultural lands and houses.

3. The property originally belonged to her husband and after his death she got it as a limited owner and by influx of time and by coming into force of the Hindu Succession Act, she acquired the rights of an absolute owner. On April 28, 1963, she adopted respondent Nain Singh as her son and executed a document said to be the Deed of Adoption. This document is not a registered and the trial court admitted it in evidence in proof of adoption. This document, in addition to recital of the factum of adoption in presence of panchayat in accordance with the custom of the community also contained a covenant wherein she had stated that after this deed of adoption her adopted son will be entitled (hakdar) to the whole property including movable and immovable and she will have no right to alienate any part of the property after this deed of adoption.

4. The trial court decreed the suit. The first appellate court dismissed the suit setting aside the decree passed by the trial court. The learned Judge of the High Court considering the impact of Section 12 of the Hindu Adoptions and Maintenance Act rightly held that the adopted son, in view of the proviso (c) to Section 12, will only be entitled to property after the death of the adoptive mother but the learned Judge felt that the further covenant in the adoption deed deprived her of that right and conferred that right on the adopted son, on this basis the learned Judge of the High Court came to the conclusion that the widow after executing this deed of adoption had no right left in the property and therefore transfer executed by her will not confer any title on the plaintiff. It is on this basis that the High Court maintained the judgment of the lower appellate court dismissing the suit of the plaintiff-appellant. Against this by special leave, this appeal has come to this Court.

5. Learned counsel for the appellant contended that the document which is described as a deed of adoption, in substance, is in two parts. One recites the factum of adoption and the second contains the covenant wherein she has relinquished her rights in the property and conferred rights on adopted son. According to the learned counsel, so far as it refers to adoption, the courts below were right in admitting the document as an evidence of adoption but so far as it refers to a deed of relinquishment or conferment of right on the adopted son, it will be hit by Section 17(1)(b) read with Section 49 of

the Indian Registration Act and, therefore, the High Court was not right in relying on this clause to come to the conclusion that the widow Smt. Yashoda Bai had no right to transfer the property in favour of plaintiff-appellant.

6. Section 12 of the Hindu Adoptions and Maintenance Act reads as follows :

"12. Effects of adoption. - An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family :

Provided that :

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

7. Proviso (c) of this section departs from the Hindu general law and makes it clear that the adopted child shall not divest any person of any estate which has vested in him or her before the adoption. It is clear that in the present case, Smt. Yashoda Bai who was the limited owner of the property after the death of her husband and after Hindu Succession Act, came into force, has become an absolute owner and therefore the property of her husband vested in her and therefore merely by adopting a child she could not be deprived of any of her rights in the property. The adoption would come into play and the adopted child could get the rights for which he is entitled after her death as is clear from the scheme of Section 12 proviso (c).

8. Section 13 of the Hindu Adoptions and Maintenance Act reads :

"13. Right of adoptive parents to dispose of their properties. - Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will."

9. This section enacts that when the parties intend to limit the operation of the proviso (c) to Section 12, it is open to them by an agreement and it appears that what she included in the present deed of adoption was an agreement to the contrary as contemplated in Section 13 of the Hindu Adoptions and Maintenance Act.

10. Section 17(1)(b) of the Registration Act clearly provides that such a document where any right in movable property is either assigned or extinguished will require registration. It could not be disputed that this part of the deed which refers to creation of an immediate right in the adopted son and the divesting of the right of the adoptive mother in the property will squarely fall within the ambit of Section 17(1)(b) and therefore under Section 49 of the Registration Act, this could not be

admitted if it is not a registered document. Unfortunately, the Hon'ble Judge of the High Court did not notice this aspect of the matter and filed that what could not be done because of the proviso (c) to Section 12 has been specifically provided in the document itself but this part of the document could not be read in evidence as it could not be admitted. In view of this, the appeal is allowed. The judgments of the High Court and that of the lower appellate court are set aside and that of the trial court is restored. In view of these special circumstances, there is no order as to costs.

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