

ORISSA HIGH COURT

Balinki Padhano

Vs

Gopakrishna Padhano

First Appeal No. 13 of 1961

(R.L. Narasimham, C.J. and R.K. Das, J.)

16.09.1963

JUDGMENT

R.L. Narasimham, C.J.

1. This is an appeal by the plaintiffs against the judgment and decree of the Additional Subordinate Judge of Berhampur decreeing a part of their claim to the disputed property to the extent of one-fourth share and disallowing their claim for the remaining three-fourth share.

2. The following geneological tree will show the relationship of the parties :- The property in dispute admittedly belonged to Gopi whose line is now extinct, his widow also having died. It is also admitted that Gopi was the natural born son of Sadhu. According to the defendants he was taken in adoption by his uncle, Ganga sometime in 1905. The plaintiffs however challenged the adoption. If the story of adoption fails, the plaintiffs will be entitled to the entire properties of Gopi to the exclusion of the shares of defendant Nos. 1, 2 and 4 whereas if the adoption is held to have been established plaintiff No. 1, defendant No. 1, defendant No. 2 and defendant No. 4 will equally inherit his properties being in the same degree of relationship. The trial Court held that the adoption was established and on the concession made by the defendants themselves decreed the plaintiffs' suit for one-fourth share of Gopi's property.

3. The main point for controversy in this appeal is the adoption of Gopi by his uncle, Ganga. The adoption was an ancient adoption of 1905. The natural father, the adoptive father, the boy and his brother, Chintamoni are all dead. There is no eyewitness to prove the actual giving and taking. Admittedly, no deed of adoption was executed by Ganga. But it is well settled that in respect of ancient adoptions the actual evidence of giving and taking may not be available and if there is sufficient evidence to show that for a long time the boy was treated as the adopted son at a time when there was no controversy, the burden will shift on the other side to show that the adoption did not take place. *Harihar Rajguru Mohapatra v. Nabakishore Rajguru Mohapatra*¹, Here there are several documents (some of which were executed by the plaintiff's own father) (Exhibits Q, Q-8, L, M and N) commencing from the year 1908 and extending upto 1917 executed in favour of Gopi where he has been described as the son of Ganga. Ext. Q-8 was

actually executed by the plaintiff's own father Chintamoni. He would not have described Pradhan as the son of Gangapani Proadhan if in fact adoption, had not taken place. Exhibit Q though executed by another was attested by Chintamoni. Then again Gopi himself in three documents of 1915 and 1917 (Q-9, Q-10 and Q-11) has described himself as the son of Ganga and his brother not only attested Exts. Q-9, Q. 10 and Q. 11 but identified Gopi as the son of Ganga before the Sub-Registrar. Apart from these admissions there are some other documents (Exts. Q-1, Q-2 and Q-3) executed by Sadhu, Chintamoni and the plaintiff, Balinki in which Gopi was scrupulously excluded. Unless Gopi had gone away in adoption to another family he would have been a joint participant in these documents. For an ancient adoption these admissions of Chintamoni and Gopi and the several transactions of the family in which Gopi's name was omitted are sufficient to prove adoption.

4. It was then contended that Gopi was a married man at the time of the date of adoption and that consequently that adoption was invalid. But the oral evidence on the side of the plaintiff to show that Gopi was married before 1905 is highly discrepant and unsatisfactory.

5. The only important piece of evidence on which some reliance was placed by Mr. Acharya on behalf of the appellants is a will (Ext. G) executed by Ganga on 12-5-1904 by which he bequeathed the bulk of his properties to Gopi while describing him as the son of Sadhu. It was urged that if in 1904 Ganga had given away most of his properties to his brother's son Gopi there was no need for him to adopt Gopi next year and if he decided to adopt him he would have taken care to execute a deed of adoption. This argument is not at all convincing. There is nothing to prevent a person from adopting a boy even though he might have bequeathed most of his properties to him earlier. As regards the absence of the deed of adoption also no adverse inference can be drawn before there is nothing on record to show that in this family deeds of adoption were executed either in 1905 or sometime before.

6. In this state of evidence the lower Court was justified in holding that Gopi was the adopted son. The plaintiff's claim was therefore rightly decreed for only one fourth share of Gopi's property including the amount deposited in the Court of the Sub-Divisional Magistrate, Berhampur.

7. Defendant No. 3 whose claim was completely dismissed by the lower Court has filed a cross appeal. But Mr. D. Mohanty on his behalf stated that as he has already filed an independent suit his cross appeal will not be pressed.

8. In the result, the judgment and decree of the lower Court are confirmed and the appeal and cross appeal are dismissed with costs.

Das, J.

9. I agree.

Appeal dismissed.

Cases Referred.

