

# **Biraji @ Brijraji vs Surya Pratap And Ors on 3 November, 2020**

**Equivalent citations: AIRONLINE 2020 SC 806**

**Author: R.Subhash Reddy**

**Bench: M.R.Shah, R.Subhash Reddy, Ashok Bhushan**

C.A.Nos.4883-4884 of 2017

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4883-4884 OF 2017

Biraji @ Brijraji & Anr.

...Appellant(s)

VS

Surya Pratap & Ors.

...Respondent(s)

## **J U D G M E N T**

**R.SUBHASH REDDY,J.**

1. These civil appeals are filed, by the plaintiffs in the Original Suit No. 107/2010, pending on the file of Civil Judge (J.D.) Saidpur, Gazipur, aggrieved by the order dated 12.07.2013, passed in Writ Petition (Civil) Nos. 37415/2013 and 37416 of 2013.

2. The writ petition in W.P.(C) No. 37415/2013, filed before High Court of Judicature at Allahabad, Date: 2020.11.03 16:46:57 IST Reason:

was directed against the order dated 22.02.2013, C.A.Nos.4883-4884 of 2017 passed by the Trial Court on an Application No. 97-C in O.S. No. 107/2010 and the order of the Revisional Court dated 02.07.2013, passed in Revision No. 85/2013, passed by the District Judge, Gazipur. W.P. (C) No. 37416/2013 was filed against the order

dated 10.05.2013, in the same suit, passed on Application No. 109-C, as confirmed by the Revisional Court in Civil Revision No.82/2013 vide order dated 02.07.2013.

3. The appellants herein are plaintiffs in the suit in O.S. No. 107/2010, filed on the file of Civil Judge (J.D.) Saidpur. In the said suit, the appellants have questioned the adoption deed, executed by late Sudama Singh, who was father of the first plaintiff executed in favor of defendant no.1 registered before Sub-Registrar, Jakhaniya, District Gazipur. Further, consequential injunction orders are sought to restrain the defendant herein from interfering in the peaceful possession of the appellants-plaintiffs with the property as mentioned in the plaint. It is an undisputed fact that the evidence is closed and the matter was coming up for arguments in the above said suit and when the matter C.A.Nos.4883-4884 of 2017 was listed for final arguments, at that stage, the appellants have filed an Application No. 97-C, to summon the record, regarding the leaves of Ramesh Chander Singh from Rajput Regiment Centre Fatehgarh.

The said Ramesh Chander Singh is the father of first respondent, who is arrayed as second defendant in the suit. Third defendant is the mother of first defendant, who claims he is the adopted son of late Sudama Singh. It is the case of the plaintiff that there was no adoption by following the necessary formalities and the claim of adoption is false and incorrect. In the suit filed, they have questioned the registered adoption deed, registered before the Sub-Registrar. On the ground that the second respondent- Ramesh Chander Singh was not present during the adoption ceremony and he was on duty on the date of alleged adoption ceremony, the aforesaid application was filed in Application No.97-C for summoning the 2001 leave records of defendant No.2 Ramesh Chander Singh from Rajput Regiment Centre Fatehgarh. The said application was opposed by filing objections by the respondents. The Trial Court, mainly on the ground that there was no such pleading C.A.Nos.4883-4884 of 2017 in the plaint and also on the ground that such application was filed at the belated stage, dismissed the said application by order dated 22.02.2013.

4. Almost with similar prayer, as sought in Application No. 97-C, another application was filed in Application No.109-C and the said application is also dismissed by the Trial Court vide order dated 10.05.2013.

5. Questioning the aforesaid two orders that is the order dated 22.02.2013, passed in Application No. 97-C and a subsequent order dated 10.05.2013, passed in Application No. 109-C, the plaintiffs have carried the matter by way of revision petitions before the District Court, which are ended in dismissal and aggrieved by the same, the petitioners have filed writ petitions before the High Court in W.P.(C) Nos. 37415/2013 and 37416/2013, which are dismissed by separate orders, vide orders dated 12.07.2013.

6. We have heard Sri S.D. Singh, learned counsel appearing for the appellants and Sri Santosh Kumar Tripathi, learned counsel appearing for the respondents.

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7. Having heard the learned counsels on both sides, we have perused the impugned orders and other material placed on record. The suit in Original Suit No. 107/2010 is filed for cancellation of registered adoption deed and for consequential injunction orders. In the adoption deed itself, the ceremony which had taken place on 14.11.2001 was mentioned, hence it was within the knowledge of the appellants- plaintiffs even on the date of filing of the suit. In the absence of any pleading in the suit filed by the appellants, at belated stage, after evidence is closed, the appellants have filed the application to summon the record relating to leave/service of Ramesh Chander Singh on 14.11.2001 from the Rajput Regiment Centre Fatehgarh. It is fairly well settled that in absence of pleading, any amount of evidence will not help the party. When the adoption ceremony, which had taken place on 14.11.2001, is mentioned in the registered adoption deed, which was questioned in the suit, there is absolutely no reason for not raising specific plea in the suit and to file application at belated stage to summon the record to prove that the second respondent- Ramesh Chander Singh was on duty C.A.Nos.4883-4884 of 2017 as on 14.11.2001. There was an order from the High Court for expeditious disposal of the suit and the application which was filed belatedly is rightly dismissed by the Trial Court and confirmed by the Revisional Court and High Court. It is also pertinent to mention, subsequent to dismissal of the application in Application No. 97-C, for summoning the leave/service record of defendant No.2, from his place of working that is Rajput Regiment Centre Fatehgarh, by the Trial Court on the ground that there was no such pleading in the suit, the appellants herein have filed application for amendment of the plaint in an Application No. 103-A, which was dismissed by the Trial Court and said order was confirmed by the District Judge, Gazipur in Civil Revision No. 58 of 2013 by order dated 03.05.2013. The said order has become final.

8. Though the first application for summoning the record in Application No.97-C was dismissed by the Trial Court, the appellants have filed similar application again in Application No. 109-C for the very same relief, which is also rightly rejected by the Trial Court.

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9. In our view the reasons recorded in the orders passed by the Trial Court, as confirmed by the Revisional Court and High Court are valid and are in accordance with the settled principles of law. It is clear from the conduct of the appellants, that in spite of directions from the High Court, for expeditious disposal of the suit, appellants- plaintiffs were trying to protract the litigation.

10. For the aforesaid reasons, we do not find any merit in these appeals and the same are, accordingly, dismissed, with no order as to costs.

... .. J (ASHOK BHUSHAN)  
... .. J (R.SUBHASH REDDY)  
.....J (M.R.SHAH) NEW DELHI;

NOVEMBER 03, 2020