

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
S. A. No. 500 of 1992 (P)**

1.Khiro Manjhaian

2.Katki Devi

..... Appellant(s)

Versus

1.Bhim Manjhi

2.Shankar Manjhi

3.Rama Devi

4.Dharamshila Manjhian

... Respondent(s)

.....

CORAM :HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

.....
For the Appellant (s) : Mr. Nityanand Pd. Choudhary, Advocate

For the Respondent(s) : Mr. Ashish Jha & Mr. Kr. Nischay, Advocates

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14/ 10.06.2024. Heard, learned counsel for the parties.

1. This Second Appeal is directed against the judgment and decree passed by learned 3rd Addl. District Judge, Santhal Pragana, Dumka in T.A. No.30 of 1988 reversing the judgment and decree passed by learned Subordinate Judge-III, Dumka in T.S. No.36 of 85 / 1 of 87.
2. Appellants are the plaintiffs who filed the suit for declaration that Khirod Manjhi @ Bhim Chandra Manjhi (original defendant no.1) was not the adopted son of Guri Manjhi (Defendant no.1).
3. Parties shall be referred to by their original placement in the suit and shall include their legal representatives substituted at different stages.
4. Case of the plaintiff(s), in brief, is that Khirod Manjhi @ Bhim Chandra Manjhi, S/o Shankar Manjhi was not the adopted son of Guri Manjhi and it was false to say that Shankar Manjhi and his wife had given their son, Khirod Manjhi in adoption to Guri Manjhi. It has been averred that the registered deed of adoption dated 25.09.1985 executed by Guri Majhi, Shankar Manjhi and his wife, Most. Dharmshila Manjhian in respect of adoption of Khirod Manjhi was false and dishonest transaction.
5. The case of the defendant(s) is that there was due adoption of Khirod Manjhi by Guri Manjhi and the ceremonies of adoption was duly followed and the same was registered.
6. On the basis of the pleadings of the parties, the following main issue was framed :-

**Whether Khirod Manjhi, the son of Shankar Manjhi from his wife Mostt.
Dharamshila Manjhian is the adopted son of Guri Manjhi?**

7. Learned Trial Court decreed the suit on the basis of oral evidence as physical giving and taking of said Khirod Manjhi had not taken place in adoption ceremony. The agnates of the defendant(s) were the competent witnesses of

adoption who had not supported the plaintiffs' case. Adoption was thus declared to be null and void.

8. The First Appellate Court reversed the judgment and dismissed the suit of the plaintiff(s) for declaring the adoption to be null and void on the following grounds :-

Firstly, Exhibit A was the registered deed of adoption executed by Guri Manjhi, Shankar Manjhi and his wife, Mostt. Dharmshala Manjhian in respect of adoption of Khirod Manjhi. The plaintiff(s) in their plaint had not denied the execution of deed of adoption.

Secondly, executant of the deeds had stated about the valid adoption which raises the presumption of genuineness under Section 16 of the Hindu Adoption and Maintenance Act, 1956.

Thirdly, P.W.3 had admitted that sharadh of Guri Manjhi was performed by his gotiyas and Shankar Manjhi had given Mukhagni to Guri Manjhi. It had also been admitted by P.W.3 that Khirod Manjhi was living in the same house in which Shankar Manjhi and Guri Manjhi were residing.

Fourthly, P.W.4 also admitted that funeral ceremony was performed by defendant (Shankar Manjhi). He also admitted that shradh ceremony was performed by said Shankar Manjhi. P.W.6 had not denied the factum of adoption in the cross-examination.

Fifthly, D.W.1 has specifically stated about the physical giving and taking of adopted child.

9. The instant Second Appeal was admitted to be heard on the following substantial question of law :-

“Whether the appellate court was right in shifting the burden on the plaintiffs-appellants first to disprove the adoption when the principle is that a person who seeks to displace the natural succession to property by alleging an adoption, must discharge the burden that lies upon him by proving the factum of adoption and its validity when it is well known that ordinarily an only son is neither given nor taken in adoption unless there were compelling and extra-ordinary circumstances?

10. It is argued by learned counsel for the appellants that learned First Appellate Court has committed serious and substantial error of law in appreciation of evidence and shifting the burden of proof on the plaintiff(s) regarding the validity of adoption. The evidence on record do not show that ceremony of adoption was performed as noted by the learned Appellate Court.

11. Learned counsel on behalf of the respondents submits that there is no infirmity in the judgment and decree passed by the learned First Appellate Court as the same has discussed the evidence of both the sides at length.

12. After having considered the submissions advanced on behalf of both the sides and perusing the entire material on record, this Court is of the view that there is

no infirmity in the judgment and decree passed by learned First Appellate Court. Learned counsel on behalf of the appellant has submitted that it is right to assert that the burden of proof is upon the plaintiff(s) to prove its case, which never shifts on the defendant(s). However, the onus of proof and leading evidence to prove facts keeps on shifting during course of trial.

13. The plaintiff(s) assail the registered deed of adoption which has been adduced into evidence and marked as Exhibit-A. In view of presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956, the onus was upon the plaintiff(s) to disprove the validity of adoption of Khirod Manjhi, which it has failed to discharge as noted by the learned First Appellate Court. After the said adoption, the adopted child (Khirod Manjhi) was living in the house of adoptive family as testified by none other than the plaintiffs' witness(es) themselves. The plaintiff's witness no.6 has also partly admitted the factum of adoption by expressing ignorance as to whether Khirod Manjhi was adopted son of Guri Manjhi or not.

14. It has been held in ***Jai Singh v. Shakuntala, (2002) 3 SCC 634*** :-

“2. The section thus envisages a statutory presumption that in the event of there being a registered document pertaining to adoption there would be a presumption that adoption has been made in accordance with law. Mandate of the statute is rather definite since the legislature has used “shall” instead of any other word of lesser significance. Incidentally, however, the inclusion of the words “unless and until it is disproved” appearing at the end of the statutory provision has made the situation not that rigid but flexible enough to depend upon the evidence available on record in support of adoption.”

Under the circumstance this Court does not find any illegality in shifting of the burden of proof by the first appellate court on the plaintiff to rebut the presumption of due execution of the adoption. Substantial question of law is accordingly answered in favour of the Defendant/Respondent. I do not find any infirmity in the Judgment and decree of the first appellate court and accordingly is affirmed.

Second Appeal is dismissed with cost.

(Gautam Kumar Choudhary, J.)

Sandeep/

Uploaded.