IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.566 of 2017

(Against the judgment dated 01.09.2017 passed by the Principal District Judge, Jamtara in Civil Appeal No.23 of 2016)

1. Lakhikanta Gorain S/o Late Pravat Gorain.
2. Rabi Gorain S/o Late Malinda Gorain.
3. Kalosona Gorain S/o Late Pankhi Gorain.
4. Jiyaram Gorain S/o Late Pravat Gorain, all r/o village- Sahardal, P.O. & P.S.- Mihijam, Dist.- Jamtara.

.... …. Plaintiffs/Appellants/Appellants

Versus

1. Paresh Gorain S/o Sri Jiyaram Gorain.
2. Jiyaram Gorain S/o Late Radhanath Gorain, both r/o village- Sahardal, P.O. & P.S.- Mihijam, Dist- Jamtara.

.... …. Defendants/Respondents/Respondents

For the Appellants : Mr. Nityanand Pd. Choudhary, Advocate
For the Respondents : Mr. Kaushik Sarkhel, Advocate
Ms. Rajni Singh, Advocate

P R E S E N T
HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Second Appeal, under Section 100 of Code of Civil Procedure, has been preferred against the judgment of concurrence dated 01.09.2017 passed by the Principal District Judge, Jamtara in Civil Appeal No.23 of 2016 whereby and where under the learned first appellate court found and held that the judgment and decree passed by the learned trial court being the Civil Judge

(Senior Division)-III, Jamtara in Title Suit No.20 of 2008 does not require any interference and confirmed the same and also dismissed the appeal.

3. The brief facts of the case is that the plaintiffs/appellants filed Title Suit No.20 of 2008 in the court of Civil Judge (Senior Division)-III, Jamtara with a prayer for declaration that Magaram Gorain has never adopted Paresh Gorain and for cancellation of adoption deed No.653 of 1996.

4. The case of the plaintiffs in brief is that the parties to the suit are Hindus, governed by Dayabhaga School of Hindu Law. It is the further case of the plaintiff, that Magaram Gorain's wife pre-deceased him leaving behind only daughter Balika Bala Dasi. Balika Bala Dasi was married but she died issueless. Magaram Gorai died in the year 1966 leaving behind his only daughter Balika Mandal. Balika Mandal died just after the death of Magaram Gorain. Magaram Gorain had a sister namely Bhadu Bala who was an issueless widow. The last rights of Magaram Gorai was performed by his daughter namely Balika Mandal. The defendants have no concern to be the family of Magaram Gorain or Bhadu Bala Gorain or Balika Bala and their ancestor Prankisto Gorain. Suddenly in the second week of December, 2007, the defendants raised their claim over the landed property belonging to Magaram Gorain; on the strength of an adoption deed purported to have been executed by Magaram Gorain being Deed No.653 of 1966. The plaintiffs asserted that such Deed has been registered by making false representation and by practicing fraud upon the court as the defendant namely Jiaram Gorain is a Mahajan and land-grabber of the locality and hence the defendants by influence of money managed

everything done by managing all affairs, in lieu of money and got a collusive order on compromise with Bhadu Bala Dasi, who was an issueless widow. The plaintiffs specifically asserted in the plaint that the alleged adoption never took place nor Magaram Gorain ever took Paresh Gorain as his adopted son. Magaram Gorain was suffering from leprosy and was a leaper all throughout, living under care and custody of the father of the plaintiffs. No outsider used to come to Magaram Gorain because of his suffering from leprosy. Paresh Gorain never lived with Magaram nor Magaram Gorain ever recognized Paresh Gorain as his son. Hence, the plaintiffs filed the suit.

5. The contesting defendant No.1- Paresh Gorain in his written statement challenged the maintainability of the suit on various technical grounds and further pleaded that the defendant No.1 is the adopted son of Magaram Gorain; to the knowledge of the plaintiffs but the plaintiffs have filed the suit suppressing the material facts. The defendants admitted that Magaram Gorain was suffering from leprosy but he was capable to engage himself in household affairs including cultivation of landed property by himself, independently. The defendants further pleaded that Magaram Gorain died in or about the year 1996 but his daughter- Balika Mandal pre-deceased him, having died during her childhood. The defendant No.1- Paresh Gorain succeeded Magaram Gorain after his death. The defendants contended that the plaintiffs never succeeded the properties of Magaram Gorain rather claimed that the defendant No.1 has been in possession of the properties of Magaram Gorain. The defendants also pleaded that Magaram Gorain adopted defendant No.1 as his adopted son on

the auspicious of 4th day of Sravan 1373 of B.S. corresponding to 20.07.1966 at Shiv Temple situated contiguous to Jamtara Hatia after performing actual giving and taking; in presence of the priest, Brahmin, barber and other persons of the village and thereafter, executed a deed of adoption in support of the said adoption on the same day and got the same registered as Deed No.653 of 1966.

6. The defendants furthermore pleaded that the father of the plaintiffs contested Criminal Misc. Case No.297 of 1967 in the court of the Sub-Divisional Officer, Jamtara with the natural father of this defendant with regard to claim of adoption of the defendant No.1 by Magaram Gorain and relating to his possession over the suit properties but in the said case, the father of the plaintiffs never challenged the said adoption deed in Civil Court, despite having knowledge of the factum of the said adoption. It is further pleaded that at the instigation of the plaintiffs, their father- Bhadu Bala Ram Krishna Gorai filed civil suit challenging the adoption of the defendants by Magaram Gorain before the Sub-ordinate Judge, Jamtara which was transferred to the court of Sub-Ordinate Judge, Deoghar at camp Jamtara vide Title Suit No.223 of 1968 with a prayer made for cancellation of the adoption deed but the same ended in a compromise and the suit was dismissed as per the terms of the compromise by holding the adoption of the defendant No.1 as valid in law and the decree-sheet was signed on 31.03.1973 treating the compromise as part of the decree. The defendants got mutated in respect of the land vide order dated 29.04.1987 passed in Mutation Case No.295 of 1985-86 of the court of Sub-Divisional Officer, Jamtara. The defendants further pleaded that the defendant

No.1 all throughout, is being recognized in the village as well as in Government register as the son of Magaram Gorain since after the said adoption. The defendant No.1 being minor performed the last rites of Magaram Gorain and everything was managed by his natural father Jiaram Gorain.

7. The defendant No.2 namely Jiaram Gorain also contested the suit by filing the separate written statement and also challenged the maintainability of the suit on various technical grounds. The defendant No.3, who was the wife of the defendant No.2, died in the year 1971 and Bhanu Bala Dasi, who was the sister of Jiaram Gorain, was impleaded in the suit. The defendant No.2 also pleaded that the plaintiffs had knowledge about the adoption of defendant No.1 by Magaram Gorain but suppressing the material fact, the suit has been filed. The defendant no.3 also supported the pleadings of the plaintiffs/defendant No.1. This defendant next pleaded that after the death of Magaram Gorain, defendant No.1 succeeded to his properties being his adopted son.

8. On the basis of the rival pleadings of the parties, the trial court settled the following four issues:-

(i) Whether the suit is maintainable?

(ii) Whether there is valid cause of action for filing this suit?

(iii) Whether Paresh Gorain, natural son of Jiaram Gorain, was validly adopted by Magaram Gorain?

(iv) Whether the plaintiffs are entitled to the relief claimed?

9. In support of their case, the plaintiffs examined four witnesses and proved the documents which have been marked Ext.1 to 1/1 whereas from the side of the defendants, six witnesses were examined and the defendants also proved the documents which have been marked Ext.A to G.

10. Learned trial court first took up issue No.iii and after considering the evidence in the record, came to the conclusion that the defendant No.1 was legally adopted son of Magaram Gorain. The learned trial court in arriving at such conclusion, relied upon Ext.B to F, as also that the defendant No.1 was in possession of the landed property of Magaram Gorain. In the year 1968, the Sub-Divisional Officer, Jamtara recognized the possession of the defendant No.1 over the lands of Magaram Gorain. In the year 1988, mutation of the land was done in favour of the defendant No.1 and Ext.E which is the copy of the decree-sheet in Title Suit No.223 of 1968 also recognizes the defendant- Paresh Gorain as adopted son of Magaram Gorain.

11. The learned trial court thereafter took up issue Nos.i and ii together and after considering the materials available in the record, came to the conclusion that the suit is barred by principle of res judicata; because of the compromise entered into between the parties, in respect of the self-same prayer in Title Suit No.223 of 1968 of the court of Sub-Ordinate Judge, Deoghar.

12. The learned trial court next held that the suit is also barred by limitation. Hence, the suit, being barred by limitation and *res judicata*, is not maintainable. The learned trial court also found that there is no valid cause of action for filing the suit and decided the issue Nos.i and ii in favour of the defendants and

against the plaintiffs. Lastly, the learned trial court took up issue No.iv and held that the plaintiffs are not entitled to the relief prayed for in the suit and dismissed the suit.

13. Being aggrieved by the judgment and decree passed by the trial court, the appellants/plaintiffs filed Civil Appeal No.23 of 2016 in the court of Principal District Judge, Jamtara which was ultimately heard and disposed of by the learned Principal District Judge, Jamtara by the impugned judgment.

14. The learned Principal District Judge, Jamtara considering the materials available in the record and the submissions made before it, formulated the following point for determination:-

> *"Whether Paresh Gorain is the legally adopted son of Magaram Gorain or not?"*

15. The learned first appellate court made independent appreciation of the evidence in the record relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Dilboo** (**Smt.) (Dead) by LRs & Others vs. Dhanraji (Smt.) (Dead) & Others** reported in (**2000) 7 SCC 702** wherein the Hon'ble Supreme Court of India has observed that whenever a document is registered, the date of registration becomes the date of deemed knowledge of the same and in other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff, because a party cannot be allowed to extend period of limitation by merely claiming that he had no knowledge.

16. The learned first appellate court considered the settled principle of law, as has been held by the Hon'ble Supreme Court of India in the case of **Shankar**

Sitaram Sontakke & Another vs. Balkrishna Sitaram Sontakke & Others reported in **AIR 1954 SC 352,** that a consent decree is as binding upon the parties thereto as a decree passed by invitum. The compromise having been found not to be vitiated by fraud, misrepresentation, misunderstanding or mistake, the decree passed therein had the binding force of res judicate and the plaintiff was barred from re-agitating the question of accounts in a fresh suit.

17. The learned appellate court next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Byram Pestonji Gariwala vs. Union Bank of India & Others** reported in **AIR 1991 SC 2234** wherein it has been reiterated by the Hon'ble Suprme Court of India that a compromise decree creates an estoppel by judgment and it is also binding, executable and operates as *res judicata* even if it extends beyond subject matter of the suit.

18. Learned first appellate court next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Laxmibai (Dead) through LRs vs. Bhagwanthbuva (Dead) through LRs & Others** reported in (**2013) 4 SCC 97** to the effect that the registered deed of adoption must, having been signed by the person giving and taking the child in adoption, shall be presumed to have been made in accordance with the provisions of the Act., unless and until it is disproved.

19. The learned first appellate court considering the facts next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Pushpa Devi Bhagat (Dead) through LR vs. Rajinder Singh & Others** reported in (**2006) 5 SCC 566** wherein the Hon'ble Supreme Court of India has summed up the principle as under:-

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96 (3) of CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule I Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppels and is valid and binding unless it is set aside by the court which passed the consent decree by an order on an application under the proviso to Rule 3 of Order 23.

20. The learned first appellate court further considered that the Ext. E, which is the copy of the compromise petition, filed in Title Suit No.223 of 1968 disclosed, the admitted claim of the defendant- minor Paresh Gorain over the entire properties of the suit and the decree dated 31.03.1973 was passed by the court of Sub-Judge, Jamtara in Title Suit No.223 of 1968 and the said decree was never challenged by the appellants/plaintiffs and thus has attained finality and the predecessor-in-interest of the plaintiff of this suit- being Bhadu Bala Dasi was plaintiff in Title Suit No.223 of 1968; the learned first appellate court confirmed the judgment and decree passed by the learned trial court and dismissed the appeal.

21. Learned counsel for the appellants submits that the trial court as well as the learned first appellate court has committed gross error of law by deciding the issue No.iii settled by the trial court. It is next submitted that both the courts below have failed to take into consideration the fact that the defendants could not put forth any credible evidence of Magaram Gorain taking the defendant No.4- Paresh Gorain in adoption and in the absence of the same, both the courts below ought to have held that the defendant No.1 is not the adopted son of Magaram Gorain. It is next submitted that the courts below failed to consider the certified copy of the voter list, which have been marked Ext.1 and 1/1, wherein the father's name of Paresh Gorain has been mentioned as Jiaram Gorain, the natural father of the defendant No.1. The name of the adopted father of Magaram Gorain has not been mentioned therein. Hence, it is submitted that both the judgment and decree passed by both the courts below is not sustainable in law. Therefore, the same be set aside and the suit of the plaintiffs be decreed after formulating appropriate substantial question of law.

22. Having heard the submission made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that if the adoption is an old one of about more than 50 years, direct evidence of giving and taking of adoption, is difficult to find. In this case, the adoption took place in the year 1966 and the suit was filed in the year 2008 only. Further as already indicated above, it is a settled principle of law as has been held by the Hon'ble Supreme Court of

India in the case of **Laxmibai (Dead) through LRs vs. Bhagwanthbuva (Dead) through LRs & Others** reported in **(2013) 4 SCC 97** (Supra), that the registered deed of adoption if signed by the person giving and taking the child in adoption, is the proof of the same having been made in accordance with law unless and until it is disproved.

23. Now the undisputed fact remains is that there is a registered deed of adoption and the undisputed fact also remains that the signature of Magaram Gorain is appearing therein. So, certainly these are sufficient to draw a presumption that the same was made in accordance with the provisions of the Act but the plaintiffs have failed to disprove the said same; though in order to succeed in the suit, it was incumbent upon them to disprove the same.

24. It is a settled principle of law that admission is best form of evidence of facts admitted, requires no further proof; in view of Section 18 of the Indian Evidence Act. The Hon'ble Supreme Court of India in the case of **Thiru John vs. The Returning Officer & others** reported in **AIR 1977 SC 1724** has observed thus in paragraphs-15 and 16 of which reads as under:-

> *"15. It is well settled that a party's admission as defined in Secs 17 to 20 fulfilling the requirement of Section 21, Evidence Act, is substantive evidence proprio vigore. An admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that "what a party himself admits to be true may reasonably be presumed to be so and until the presumption was rebutted the fact admitted must be taken to be established".*
>
> *16. The above principle will apply with greater force in the instant case. Here, there are a number of clear admissions in prior declarations precisely and deliberately made in solemn documents by Shri John. These admissions were made ante litem motam during the decade preceding the election in question. These admissions were entitled to great weight. They had shifted the burden on the appellant*

(Shri John) to show that they were incorrect. The appellant had miserably failed to show that these admissions were incorrect."

25. In this case as already indicated above, there has been an admission by Bhadu Bala Dasi in Title Suit No.223 of 1968 of the court of Sub-Ordinate Judge, Deoghar at Camp, Jamtara and the same remains undisputed. Pitted against this is the entry in the voter list. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Babloo Pasi vs. State of Jharkhand & Another** reported in **(2008) 13 SCC 133** that in absence of evidence to show on what material the entry in the voter list, of the name of the person was made, a mere production of a copy of voter list, though a public document in terms of Section 35 of the Indian Evidence Act, was not sufficient to prove the fact of age involved in that case. Under such circumstances, as there is categorical admission by the predecessor-in-interest of the plaintiff being Bhadu Bala Dasi and the same is also supported by the admitted facts of adoption of a registered deed, the certified copy of which has been proved and marked Ext.A. Moreover, even though the plaintiffs were challenging the said adoption deed, the plaintiffs did not choose to bring the said adoption deed challenged by it on record. Further, there is Ext.G, which is also a certified copy of voter list of Panchayat Electoral Roll, 2010 which was in support of the defendant No.1. Therefore, this court, in view of the materials and evidence in the record, is of the considered view that the concurrent finding of fact arrived at by both the courts below, in holding that the plaintiffs failed to establish that the defendant No.1 is not adopted son of Magaram Gorain, cannot be termed as perverse which is a *sine qua non* for exercising the power under Section 100

of Code of Civil Procedure to interfere with the finding of facts, exercise of the power under section 100 of the Code of Civil Procedure, 1908, as has been held by the Hon'ble Supreme Court of India in the case of **Gurvachan Kaur & Others vs. Salikram (Dead) through Legal Representatives** reported in **(2010) 15 SCC 530,** paragraph-10 of which reads as under:-

> *"10. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and the defendant and default committed by the latter in payment of rent."*

It is needless to mention that a finding of fact to be perverse must be a finding which is based on no evidence or evidence which is inadmissible in record or a finding which has been arrived at by ignoring admissible evidence or such finding which is so outrageously defies the logic as to suffer from the vice of irrationality, incurring the blame of being perverse; as has been held by the Hon'ble Supreme Court of India in the case of **Municipal Committee, Hoshiarpur vs. Punjab State Electricity Board & Others** reported in **(2010) 13 SCC 216,** paragraph-28 of which reads as under:-

> *"28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers*

from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide Bharatha Matha v. R. Vijaya Renganathan [(2010) 11 SCC 483 : AIR 2010 SC 2685] .)"

and the said principle of law has been reiterated by the Hon'ble Supreme Court of India in the case of **Bharatha Matha & Another vs. R. Vijaya Renganathan & Others** reported in **(2010) 11 SCC 483,** as also in the case of **K.N. Nagjarappa & Others vs. S. Narsimha Reddy** reported in **2021 SCC OnLine SC 694.**

26. Now coming to the facts of the case as the finding of facts do not suffer from any perversity, this court is of the considered view that there is no substantial question of law involved in this Second Appeal.

27. Accordingly, this Second Appeal, being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 04th of October, 2024
AFR/ Saroj