

(2006) 01 AHC CK 0110

Allahabad High Court (Lucknow Bench)

Case No: Civil Revision No. 62 of 2004

Hazari Lal

APPELLANT

Vs

Rameshwar Prasad & Ors.

RESPONDENT

Date of Decision: Jan. 31, 2006

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 16

Hon'ble Judges: O.N.Khandelwal, J

Final Decision: Dismissed

Judgement

O.N. Khandelwal, J.

1. One of the defendant has filed this writ petition against the order dated 17012004 passed by J.S.C.C./ADJ Bahraich in SCC No. 03 of 1981 Rameshwar Prasad & Ors. v. Shanti Devi & Ors., whereby he has refused to recognize Des Raj Gandhi as adopted son and legal representative of deceased defendant Mewa Lal.

2. Respondent No. 1 & 2 (landlords) had filed a suit for eviction and recovery of rent and damages against tenants Shanti Devi and Vidya Devi (respondent Nos. 3 and 4) and subtenants Hazari Lal and Mewa Lal.

3. The defendants Nos. 1 and 2 (namely Shanti Devi and Vidya Devi) who are Opposite party No. 3 and 4 in this writ petition, in paragraph 16 of their written statement admitted this fact that the disputed shop was given to defendant Nos. 3 and 4 (Mewa Lal and Hazari Lal) on partnership and in paragraph 18 they had further admitted that they had started taking rent from them on account of adverse finding by the trial Court and Appellate Court in a suit of accounting. Respondent Nos. 1 and 2 had specifically alleged in the plain that Smt. Shanti Devi and Vidya Devi (respondent Nos. 3 and 4) are their tenants who have sublet the premises in suit to Mewa Lal and Hazari Lal.

4. The defendant No. 3 died on 1661988. His widow Smt. Ram Janki has also died on 25101996 but application for substitution C46 was moved on 1252000 stating that the under some wrong impression the plaintiff could not move the substitution application earlier as writ petition filed by Mewa Lal and Hazari Lal was pending in the High Court dismissal of which came into their knowledge in April 2000, besides Mewa Lal has died issueless whose brother Hazari Lal is already on record.

5. An objection 46C was filed whereby it was claimed that Des Raj Gandhi had been adopted by deceased Mewa Lal and, therefore, he is the legal heir and since he has not been brought on record, suit has abated.

6. Affidavits of Des Raj Gandhi, Chottey Lal, Ram Janki and Hazari Lal were filed. Their statement was also recorded. Adoption deed dated 1121988 was produced and some documents wherein Des Raj Gandhi is referred as son of deceased Mewa Lal had also been filed.

7. From the side of the plaintiffs, affidavits and oral statement were given. They too filed some documents to show that parentage of Desh Raj Gandhi has not been mentioned as claimed by the defendant at several places. Learned Trial Judge did not feel convinced with the evidence adduced by the defendants and rejected the application moved by Hazari Lal.

8. I have heard the learned Counsel for the parties.

9. Section 16 of the Hindu Adoption and maintenance Act, which has been amended in Uttar Pradesh w.e.f. 111977 is as follows:

◆(16) Presumption as to registered document relating to adoption Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

(2) In case of an adoption made on or after the first day of January, 1977 no Court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the persons giving and the person taking the child in adoption, and registered under any law for the time being in force◆

10. In the present case, the adoption is said to have taken place on 3011978 (After U.P. the amendment in Section 16 of Hindu Adoption and Maintenance Act), therefore, no Court in U.P. shall accept any evidence in proof of adoption except a document recording an adoption signed by the persons concerned. It has been specifically mentioned that this document should be signed also by the ◆person taking the child in adoption.◆ It is alleged that Smt. Raj Janki as well as her husband Mewa Lal had taken the child in adoption, but this registered document

does not bear the signature of Mewa Lal (obviously because he had died on 156 1988). Besides this document is simply ❖Yaddaast❖ (memorandum) and not adoption deed as envisaged in Section 16 of the Act. It has been rightly argued from the respondents side that according to Section 7 of the Hindu Adoption and Maintenance Act, if the husband is alive, it is the husband who can take a child and, therefore, he has also to sign the registered adoption deed.

11. In *Jai Prakash v. Laxmi Devi*, 1996 ALJ 1985, the adoption was alleged to have been taken place in 1966 but the paper book was written and registered in 1981. It was observed by this Court that the document accepting the adoption was made in 1981 and if the adoption was created by the document, then certainly it was an invalid adoption because by that time the plaintiff (adoptee) was 27 years old and no adoption was permissible where the adoptee is more than 15. If the adoption was of 1966 as alleged, there is no provision why it was not recorded forthwith.

12. Similarly, in the present case also, there is no explanation forthcoming as to why the deed of adoption was not executed immediately after the alleged adoption dated 3011978. This memorandum is said to have been executed after the death of said adoptive father which itself is sufficient to create doubt on the factum of adoption. The learned trial Court has rightly observed that no document or circumstance relating to period 1978 to 1988 has been filed to substantiate the case that Des Raj Gandhi (the nephew) had already been adopted by Mewa Lal and Ram Janki. The extracts of Khasra, copies of Ration Card, Voters' List, Sales Tax Returns etc. have been issued subsequent to the execution of registered document dated 1121988.

13. On behalf of the revisionist, reference of Section 17 (3) of Registration Act was also made during the course of hearing but the said provision is not attracted in the present case because that provision deals with ❖authority to adopt❖, which is not involved here.

14. Learned Counsel for the respondentsplaintiff argued that the said adopted son Des Raj Gandhi who had attained majority in the year 1987 never moved any application claiming his substitution in place of deceased Mewa Lal, through the writ petition (3414 of 1982) filed by Mewa Lal and Hazari Lal was pending in the High Court since 1982. Even his natural father Hazari Lal who was a copetitioner in that writ petition had also not moved any application for substituting Des Raj Gandhi in place of deceased Mewa Lal within the period prescribed. That goes to suggest that actually no adoption had taken place, if any presumption on account of the registered deed dated 1121988 is made than that stands rebutted by the circumstances referred to above:

15. Therefore, the learned Trial Judge is not wrong if he holds that Des Raj is neither the adopted son of Mewa Lal and Ram Janki nor the legal heir of the deceased. The impugned order does not suffer from any illegality. Therefore, this revision is

dismissed with costs.

16. Lower Court Record be sent back at once for further proceedings in the matter.
Parties will appear before the trial Court on 132006.

Revision dismissed.