

**(2014) 08 DEL CK 0174**

**Delhi High Court**

**Case No:** Regular First Appeal 173/2005

Ram Lalit Rai

APPELLANT

Vs

Kamla Rani

RESPONDENT

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**Date of Decision:** Aug. 11, 2014

**Acts Referred:**

- Hindu Adoptions and Maintenance Act, 1956 - Section 11(vi)

**Hon'ble Judges:** A.K. Pathak, J

**Bench:** Single Bench

**Advocate:** Saurabh Shrama, Advocate for the Appellant

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### **Judgement**

A.K. Pathak, J.

Respondent filed a suit for partition and permanent injunction against the appellants. Vide judgment and decree dated 11.02.2005, which is impugned in this appeal, trial court has passed a decree of declaration to the effect that respondent is daughter of Late Sh. Sadhu Ram and was entitled to her share in the suit property, that is, house bearing No. 175, West Azad Nagar, Gali No. 17, Krishna Nagar Shahdara, (S) Zone Estate, Delhi 110093 (hereinafter referred to as the "suit property"). A preliminary decree of partition has also been passed. Appellants have also been restrained from alienating or creating third party interest in the suit property till the final decree of partition is passed.

2. Respondent alleged in the plaint that she was adopted by Late Sh. Sadhu Ram and his wife Late Smt. Shankari Devi, who were not having any offspring of their own. She was adopted in the year 1957 in a simple religious ceremony. After adoption, she was brought to Delhi and was admitted in a Government school in the year 1958. In the year 1976, she completed her education. Prior to her adoption, Late Sh. Sadhu Ram and his wife Smt. Shankari Devi had already adopted Lalit Rai @ Lala Rai (appellant no. 1). Late Shri Sadhu Ram was owner of the suit property. Sh. Sadhu Ram died in the year 1974. However, before his death he had fixed the marriage of respondent with one Mr. Tilak Raj. Late Smt. Shankari Devi performed the marriage

of respondent on 15.05.1977 from the suit property. Kanyadan was performed by appellant no. 1. Smt. Shankari Devi died in the year 1999. After her death, respondent asked the appellant no. 1 to partition the suit property but he declined, inasmuch as, fought with her. Hence, the suit.

3. In the written statement, appellants denied that Late Sh. Sadhu Ram had adopted respondent in the year 1957 or thereafter. It was alleged that suit property was Hindu Undivided Family property. Appellant no. 1 being the son and member of Hindu Undivided Family was entitled to inherit the suit property. Respondent had no share in the suit property.

4. On the pleadings of the parties, following issues were framed:-

1. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD.

2. Whether the plaintiff is entitled to the partition? OPP.

3. Whether the plaintiff is entitled to the relief of injunction? OPP.

4. Relief.

5. Respondent examined four witnesses. She stepped in the witness box as PW1. She corroborated the averments made in the plaint. She proved site plan as Ex.-PW1/A. Pass book of the saving account opened by Late Shri Sadhu Ram, in her name was proved as Ex. PW1/H. One Sh. Vijay Kapoor was produced as PW2. He deposed that he was friend of respondent's husband and had attended the marriage which was settled by Late Sh. Sadhu Ram. He further deposed that marriage ceremony took place in the suit premises and Kanyadan was done by the appellant no. 1. He further deposed that he along with Harbans Lal accompanied the respondent to demand the partition of the suit property after the death of Smt. Shankari Devi on 10.11.1999. However, appellant no. 1 quarreled with them and a police complaint Ex. PW1/K was filed on 07.08.2000. The respondent also examined her uncle Sh. Harbans Lal as PW3, who deposed that his brother Chunni Lal was the natural father of respondent. He had given respondent to Late Sh. Sadhu Ram and Smt. Shankari Devi in adoption in the year 1957. He deposed that the religious ceremonies took place in their village in Ludhiana. He further deposed that he was tenant of Late Sh. Sadhu Ram from the year 1953 to 1969. He further deposed that marriage of respondent was settled by Late Sh. Sadhu Ram during his lifetime. The marriage was solemnized by Late Smt. Shankari Devi after the death of Sh. Sadhu Ram. Head Clerk at Government Sarvodya Kanya Vidhlaya, Drishna Nagar, Delhi was produced as PW4. He has proved the photocopy of admission register as Ex. PW4/1. He also proved transfer certificate dated 04.09.1972 as Ex. PW1/2. As against this, appellant no. 1 examined himself as DW1. He corroborated the averments made in the written statement. He also produced his neighbours Smt. Kala Wati and Smt. Amarjeet Kaur as DW2 and DW3 respectively.

6. The trial court has scrutinized the evidence adduced by the parties and has held that respondent had succeeded in proving that she was adopted by Late Sh. Sadhu Ram in the year 1957. Trial court has relied on the statement of PW3 as also the school records Ex. PW4/1 and Ex. PW4/2, wherein name of father of respondent has been recorded as Sh. Sadhu Ram. Reliance was also placed on the passbook issued by the Post Office regarding saving account opened in the name of respondent wherein her father's name has been recorded as Sh. Sadhu Ram. Primarily, on the basis of above evidence trial court has concluded that respondent was adopted daughter of Late Shri Sadhu Ram and was entitled to the partition of the suit property.

7. I have heard learned counsel for the parties and perused the trial court record carefully and am of the opinion that view taken by the trial court is erroneous and contrary to the evidence adduced on record as also the settled legal position governing the adoption.

8. Section 11(vi) of The Hindu Adoptions and Maintenance Act, 1956 provides that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up, to the family of its adoption. Proviso further envisages that performance of data homam shall not be essential to the validity of adoption. In [Nemichand Shantilal Patni Vs. Basantabai](#), it has been held that in absence of the evidence that the plaintiff was actually given and taken in adoption by the parents or guardians of the plaintiff as required under Section 11(vi), adoption cannot be held to have validly taken place. Thus, it is clear that to prove a valid adoption, it would be necessary to bring on record that there had been an actual giving and taking ceremony.

9. In this case, respondent has miserably failed to lead any evidence to show that any such ceremony of actual giving and taking took place. PW3 Harbans Lal is uncle of respondent. He deposed that adoption ceremony took place in the village. However, in his cross-examination he has admitted that he was not present when such ceremony took place. If that is so, then his testimony is not sufficient to prove the actual giving and taking as envisaged under Section 11(vi) of The Hindu Adoptions and Maintenance Act, 1956. PW3 has further deposed that Muni Ram, Paras Ram and Ram Ditta were present in the ceremony. However, none of them have been produced in the witness box. Accordingly, respondent has failed to prove that the ceremony as envisaged under Section 11(vi) ever took place. It is an admitted fact that no adoption deed was drawn or registered. Accordingly, there is no documentary evidence to prove the adoption.

10. Heavy reliance has been placed on the school records and the passbook, which in my view are not sufficient to prove a valid and legal adoption. In [Rahasa Pandiani \(dead\) by Lrs. and Others Vs. Gokulananda Panda and Others](#), the Supreme Court

has held, thus: "if there are any suspicious circumstances, just as the propounder of the Will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is claimed on the basis of oral evidence and is not supported by a registered document or any other evidence of a clinching nature, if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the Court by the party contending that there was such an adoption". In [Kishori Lal Vs. Mst. Chaltibai](#), the Supreme Court has held thus: "as an adoption results in changing the course of succession, depriving wives and daughters of their rights and transferring properties to comparative strangers or more remote relations it is necessary that the evidence to support it should be such that it is free from all suspicion of fraud and so consistent and probable as to leave no occasion for doubting its truth". The school record relied upon by the plaintiff in the said case was not found sufficient as a proof of adoption. In para 36 of the judgment, it has been held thus: "PW3 has deposed to the effect that Ex. X3 is the photocopy of the admission application pertaining to Krishna Bhagavan. Sriramamurthy himself signed in the place meant for Father or guardian. Hence, it cannot be contended that this a proof of adoption. It was a printed column for father or guardian. He could have meant to be a guardian as he did for all his elder brother's children. Further DW1 Krishna Bhagavan is shown as guardian for his natural sisters and brothers. PW4 has stated that in EX. X12 admissions pertaining to Krishna Bhagwan where Sriramamurthy was shown as father or guardian of D2. This is also a printed format".

11. In this case PW4 has simply produced photocopies of the school register and a transfer certificate. He was not having any personal knowledge as to on what basis name of Late Sh. Sadhu Ram was recorded as father of respondent. He has not deposed that Late Sadhu Ram filled up the application form and signed the same inasmuch as no such application form was produced by him. Accordingly, entries in the school records are not sufficient to prove a valid and legal adoption. Respondent has deposed as PW1 that her marriage was performed in the suit premises, inasmuch as Kanyadaan was performed by appellant no. 1. She has further deposed that she attended the funeral of Late Sh. Sadhu Ram and Smt. Shankari Devi. However, these two events are not sufficient proof for adoption. In *Kishori Lal* (supra), it is held that mere fact of performance of the funeral rites does not necessarily support an adoption. The performance of funeral rites frequently varies according to the circumstances of each case and the view and usage of different families. In the said report it has been further held in para 20 that the performance of the marriage itself does not prove adoption.

12. From the evidence adduced by the respondent, I am of the view that a legal and valid adoption of respondent by Late Sh. Sadhu Ram and Smt. Shankari Devi has remained unproved. Accordingly, the impugned judgment and decree is set aside.

13. The appeal is disposed of.