
(2001) 02 SC CK 0029

Supreme Court of India

Case No: Civil Appeal No. 4739 of 1996

Raushan Devi

APPELLANT

Vs

Ramji Sah and Others

RESPONDENT

Date of Decision: Feb. 20, 2001

Citation: (2002) 141 ELT 309 : (2001) 10 JT 198

Hon'ble Judges: Doraiswamy Raju, J; D. P. Mohapatra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. In this appeal filed by the plaintiff the judgment/order of the first appellate Court as confirmed by the High Court is under challenge. The appellant filed the suit seeking a declaration that the deed of adoption executed by her husband defendant No. 3, on 6th of July, 1982 in favour of defendant No. 2 was void. The gist of her case was that defendant No. 3 was a man of weak intellect. He executed the deed of adoption under pressure from his brother defendant No. 1, who is the natural father of alleged adopted son, defendant No. 2, without understanding the contents of the document and without realising the implications of the same. It was the further case of the plaintiff that she had not given her consent for the alleged adoption and that there was no giving and taking ceremony at the time of the alleged adoption. Indeed the school records continued to carry the name of the natural father of the defendant No. 2. He continued to live in the house of his natural father even after the so called adoption ceremony. She also pleaded that having realised his mistake, defendant No. 3 executed the deed of cancellation dated 13th August, 1982. Defendant No. 3 supported the case of the plaintiff.

2. Defendant No. 1 who contested the suit denied the allegations made by the plaintiff. His case was that there was a valid adoption of his son, the defendant No. 2, by defendant No. 3 with the consent of the plaintiff. In the ceremony held on 5th July, 1982 in presence of the priest giving and taking of the boy by him to the defendant No. 3 took

place. In token of the adoption, the deed was executed on the very next day, 6th July, 1982. According to the defendant No. 1 the deed of cancellation of the adoption alleged to have been executed on 13th August, 1982 does not affect the validity of the adoption and the status of the adopted son.

3. The trial Court, on appraisal of the evidence on record, accepted the case of the plaintiff and held that there was no valid adoption since the consent of the plaintiff had not been taken and the deed of cancellation was executed shortly after the date of the alleged adoption.

4. Feeling aggrieved by the judgment and decree passed by the trial Court, defendant No. 1 filed the appeal which was decided by the 2nd Addl. District Judge, East Champaran, Motihari, by the judgment dated 20th April, 1993. The first appellate Court, on consideration of the case of the parties and on appreciation of the evidence on record, held that the approach of the trial Court to the case was erroneous inasmuch as the Court has rejected the case of the defendant regarding want of consent of the plaintiff merely on ground that he signature of left thumb impression was not taken on the deed of adoption, whereas the evidence on record clearly shows that she was present during the ceremony held on 5th July, 1982 and she had knowledge about the proposal to take the defendant No. 2 in adoption by defendant No. 3 and had given her consent to the said proposal. On the question of the giving and taking ceremony, the first appellate Court held that the trial Court erred in discarding the evidence of the priest merely for the reason that he was not the regular priest of the family of defendant No. 1. Taking a different view on the evidence, the first appellate Court held that there is no improbability in the evidence of the priest. Accepting the evidence of the priest the case of the defendant No. 1 that there was giving and taking of the boy at the time of the adoption is acceptable. On these findings the first appellate Court reversed the judgment and decree passed by the trial Court and dismissed the suit.

5. Second Appeal No. 414 of 1993 filed by the plaintiff was summarily dismissed by the Patna High Court by the order dated 12-4-1994 holding that no substantial question of law was involved in the case. LPA No. 113 of 1994 filed by the plaintiff was dismissed as not maintainable. Hence, this appeal by the plaintiff.

6. The learned counsel appearing for the appellant strenuously urged that the finding of the trial Court on the lack of consent of the plaintiff to the adoption should not have been disturbed by the first appellate Court. We are unable to accept the said contention. The matter is essentially one of fact on which the first appellate Court, which is the final Court of fact, has recorded a specific finding based on the evidence on record that the plaintiff had given her consent to the proposed adoption and that the requirement of giving and taking for a valid adoption having been fulfilled the adoption cannot be said to be invalid on any count. It is not disputed before us that once the adoption is held to be valid, subsequent execution of the deed of cancellation, does not affect the status of the adopted son. In such circumstance no exception can be taken to the High Court

dismissing the second appeal holding that the appellant has not been able formulate any question of law involved in the appeal. Therefore, this appeal being devoid of merit is dismissed. There will be no order for cost.