

**(2010) 08 DEL CK 0296**

**Delhi High Court**

**Case No:** Regular Second Appeal No. 156 of 2010

Sarla Devi

APPELLANT

Vs

Rajesh Sharma

RESPONDENT

**Date of Decision:** Aug. 19, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

**Citation:** (2010) 172 DLT 714

**Hon'ble Judges:** Indermeet Kaur, J

**Bench:** Single Bench

**Advocate:** M. Tarique Siddiqui, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

**Judgement**

Indermeet Kaur, J.

This second appeal is impugned judgment dated 1.05.2010 which had endorsed the finding of the Civil Judge dated 16.09.2009. Vide judgment and decree dated 16.09.2009, the application filed by the defendant under Order 7 Rule 11 CPC had been accepted; the plaint of the plaintiff had been rejected on the ground of limitation.

2. The plaintiff before the trial court was Smt. Sarla Devi. She had filed a suit for declaration seeking a prayer that the adoption ceremony dated 13.04.1977 and the Adoption Deed dated 12.08.1985 be declared null and void. This was the adoption which had purportedly been made by Smt. Vidya Wati; adopting Sh. Rajesh Sharma as her son.

3. Para 10 and 11 of the plaint are relevant and are reproduced as follows:

10. That the second wife of Shri. Madan Mohan i.e. Smt. Vidya Wati also died issueless on 26.02.1996 leaving behind no legal heir. Therefore, the said 1/8th shares of Smt. Vidya Wati in movable and immovable properties also devolves upon

her legal heirs including the plaintiff.

11. That husband of the plaintiff had filed a Probate petition being PC No. 154/01 (earlier PC No. 43/84) in respect of Will dated 02.04.73 before District Judge, Delhi, wherein except Smt. Vidya Wati, all other co-sharers had given their respective no objection to the grant of probate in favour of the husband of the plaintiff. During the pendency of said probate case, Smt. Vidya Wati also died and after the death of Smt. Vidya Wati in the year 1996, the defendant i.e. Rajesh Sharma came into picture allegedly claiming himself to be the adopted son of Smt. Vidya Wati by way of Adoption Deed dated 12.08.1985. A copy of the said adoption deed dated 12.08.1985 is enclosed herewith.

4. From the averments made in the aforesated paras, it is clear that in the Probate Petition bearing No. 154/01, Sh. Rajesh Sharma had claimed himself to be the adopted son of Smt. Vidya Wati in terms of the Adoption Deed dated 12.08.1985. This was known to the plaintiff in the year 1996.

5. The present suit has been filed in the year 2009 i.e. after the lapse of almost 13 years. The trial judge had held that the suit is barred by limitation; under Order 7 Rule 11 of the CPC, the plaint had been rejected. The averments made in the plaint had alone been taken into consideration.

6. The submission of the Learned Counsel for the appellant before this Court is that limitation is a mixed question of law and fact; in this case, in October 2008, the plaintiff had received a threat from the defendant Sh. Rajesh Sharma who had filed a suit against him; limitation as such in the present suit would arise in October 2008. This argument is totally misconceived; it has been gone into by the trial judge.

7. Learned Counsel for the appellant has not been able to point out any provision of law by which he gets an extended period of limitation of 13 years in filing the present suit seeking declaration that Sh. Rajesh Sharma was not the adopted son of Smt. Vidya Wati and the Adoption Deed dated 12.08.1985 is null and void when admittedly even as per his own case (averments in the plaint), this fact was known to him in 1996 itself. The judgment relied upon by the Learned Counsel for the appellant reported in C. Natrajan Vs. Ashim Bai and Another, is distinct on facts, it is inapplicable, in the instant case, the averments in the plaint has itself established that the suit is barred by limitation.

8. No question of law much less any substantial question of law has arisen, appeal is dismissed in limine.