

(2013) 05 DEL CK 0436

Delhi High Court

Case No: CM (M) 825 of 2012 and CM No. 12446 of 2012

Khem Chand

APPELLANT

Vs

Prakash Wati and Others

RESPONDENT

Date of Decision: May 16, 2013**Acts Referred:**

- Hindu Adoptions and Maintenance Act, 1956 - Section 11, 15, 16

Hon'ble Judges: Indermeet Kaur, J**Bench:** Single Bench**Advocate:** Satish Sahai, for the Appellant; Siddharth Aggarwal, for R-1 and R-2, for the Respondent

Judgement

Indermeet Kaur, J.

The petitioner is aggrieved by the findings returned in the impugned order dated 07.04.2012 vide which on the preliminary issue which had been cast on 02.04.2012, had been decided. The preliminary issue framed on 17.07.2008 had been modified on 02.04.2012 and reads as under:-

Whether the suit filed by the plaintiff is not maintainable in view of the bar of Sections 11, 15 & 16 of Hindu Adoption and Maintenance Act, 1956 and plaintiff has no locus standi to file the present suit?

2. This preliminary issue had been disposed of vide the impugned order.

3. Record shows that the present suit is a suit for declaration and injunction filed by the plaintiff. There were seven persons arrayed as defendants in the said suit. The plaintiff had prayed for a decree of declaration; prayer being that he be declared as the only validly adopted son of late Salek Gram (hereinafter referred to as the "deceased") and being the sole beneficiary of the last Will and testament of the deceased dated 07.04.1997 is alone entitled to his estate. Decree of injunction had also been prayed for.

4. Respondent No. 7 (Nand Kishore) had set up a counter claim. His contention was that he is the legally adopted son of the deceased and his adoption being prior in time to this adoption (dated 06.01.1974-adoption of the plaintiff is dated 31.03.1997), the suit filed by the plaintiff is not maintainable.

5. Attention has been drawn to the reply filed of the counter claim. It has been denied that the adoption of respondent No. 7 was legal and valid; it was stated that the adoption deed set up by respondent No. 7 is in fact a fabricated document.

6. The impugned order has recorded confused findings.

7. In one part of the impugned order it has been noted as under:-

Therefore, as per the scheme of Act of 1956 and considering the law laid down under the Act, it is pertinent to mention here that plaintiff himself has not disputed, from the document dated 24.02.1997, that an adoption of defendant no. 7 has already been taken place and as per Section 15 of the Act, 1956, such adoption cannot be revoked, therefore, any subsequent adoption has no sanctity in the eyes of law, hence, any such subsequent adoption including the adoption dated 24.02.1997, does not seems to be lawful, as per the scheme of the Act of 1956.

8. In another part of the impugned order, it has been noted as under:-

So far as observation with regard to the adoption of plaintiff is concerned it has already been observed in above mentioned paragraphs and is reflected from the documents filed by the plaintiff himself that there is another adoption deed in favour of defendant no. 7, much prior to the Adoption Deed of the plaintiff. In these circumstances, therefore, this preliminary issue is decided accordingly with an observation that the findings given pertaining to the Adoption Deed of plaintiff as well as in favour of defendant no. 7 shall be considered finally at the stage of final arguments and the issue pertaining the Will in question, which is also relied upon by the plaintiff has to be considered at the stage of trial and both the parties should be given one opportunity to lead their respective findings. In these circumstances, the preliminary issue is decided accordingly.

9. The submission of the learned counsel for the petitioner being that all along his case has been that the adoption deed set up by respondent No. 7 is not a valid and legal document and in terms of Section 16 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the "said Act") even presuming that there is a presumption as regards a registered document of adoption; it is not a conclusive proof and the Section itself shows that such a document can be disproved. Further submission of the learned counsel for the petitioner being that once the preliminary issue has been decided, there was no question of listing the matter for framing of issues; this by itself reflects upon the confused state of mind of the trial Court.

10. Arguments have been refuted on behalf of respondents No. 1 & 2. It is pointed out that the case of the plaintiff is based on two fold documents; it is based upon an

adoption deed which is dated 31.03.1997 as also upon the Will of the deceased which is dated 07.07.2007. The trial Court has recorded a correct finding on the adoption deed as the fact of the earlier adoption deed dated 06.01.1974 found mention by the petitioner in the adoption deed itself; it was well within the knowledge of the petitioner that there was an adoption deed existing prior to his adoption deed and he not having sought a cancellation of that document, the present suit is clearly not maintainable. It is pointed out that an adoption in terms of the said Act once proved cannot be revoked or cancelled and for this proposition he has placed reliance upon [Nayankumar Rajnikaben Trivedi Vs. District Education Officer Anand,](#) and [Veerabhadrayya R. Hiremath \(since died by his LRs. Smt. Ningavva Hiremath and Others\) Vs. Irayya A.F. Basayya Hiremath,](#) the trial Court has committed no folly; the impugned order calls for no interference.

11. None has appeared for respondent No. 7 although he has been served and was represented earlier through a counsel on an earlier date.

12. On the perusal of the record, it is noted that the submission of the petitioner is based on two fold averments. It is a adoption deed dated 31.03.1997 as also a Will dated 07.07.2007. It is clear from the record that the earlier adoption deed (dated 06.01.1974) finds mention in the adoption deed of the petitioner. It is also admitted that this adoption deed had not been challenged till these present proceedings. In his reply to the counter claim, the petitioner has challenged the validity and execution of the aforementioned document. Submission of the petitioner being that this is a fabricated document.

13. Section 16 of the said Act clearly specifies that even if there is a registered document of adoption, the same may be disproved. The case of the petitioner all along being that this is a fabricated document; opportunity should have been granted to the petitioner to lead evidence on this score. The trial Court not adhering to this procedure has committed an illegality. It was not a pure question of law which could have been decided as a preliminary issue as the whole case of the petitioner is that the adoption deed dated 06.01.1974 is a fabricated document.

14. The judgments relied upon by the learned counsel for respondents No. 1 & 2, besides being different in their factual context, even otherwise would be inapplicable as the whole case set up by the petitioner is that the adoption of respondent No. 7 was not a valid adoption.

15. In this factual scenario, the impugned order is liable to be set aside. It is accordingly set aside. The trial Court will frame issues in accordance with law (if not already framed) and the parties shall lead evidence on all the issues so framed. Petition disposed of in the above terms.