JAI SINGH

v.

SHAKUNTALA

MARCH 14, 2002

[UMESH C. BANERJEE AND BRIJESH KUMAR, JJ.]

Hindu Adoption and Maintenance Act, 1956—Section 16—Registered document relating to adoption—Statutory presumption that adoption made in accordance with law—Whether such presumption rebuttable—Held, such presumption arising from adoption deed can be rebutted by evidence available on record—On fact, no specific ceremonies of adoption nor any evidence tendered pertaining to adoption—Thus presumption is rebuttable.

Constitution of India—Article 136—Special leave jurisdiction—Reappreciation of evidence—Scope of—Held, is permissible in very exceptional cases and on extreme perversity.

Respondent—natural daughter of deceased filed suit for declaration that she was the owner of the property left by her father. She alleged that the decree passed in civil suit instituted earlier and registered will alleged to have been executed by her father together with the Adoption Deed recording that appellant had been adopted by her father were illegal and thus not binding on her. Trial Court decreed the suit. Aggrieved, appellant filed appeal which was dismissed. High Court also dismissed the appeal thus negating the adoption.

Hence the present appeal.

The question that arose for consideration is whether presumption envisaged under Section 16 of Hindu Adoption and Maintenance Act, 1956 in respect of a registered document pertaining to adoption that the adoption has been made in accordance with law is irrebuttable.

Dismissing the appeal, the Court

HELD: 1.1. Section 16 of the Hindu Adoption and Maintenance Act, 1956 envisages a statutory presumption that in the event of there being a registered document pertaining to adoption there would be a presumption

A that adoption has been made in accordance with law. Mandate of the Statute is rather definite since the Legislature has used "shall" instead of any other word of lesser significance. Incidentally, however, the inclusion of the words "unless and until it is disproved" appearing at the end of the statutory provision has made the situation not that rigid but flexible enough to depend upon the evidence available on record in support of adoption. It is a matter B of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession thus onus of proof is rather heavy. Statute has allowed some amount of flexibility, lest it turns out to be solely dependent on a registered adoption deed. The reason for inclusion of the words "unless and until it is disproved" shall have to be ascertained in its C proper perspective and as such the presumption cannot but be said to be a rebuttable presumption Statutory intent thus stands out to be rather expressive depicting therein that the presumption cannot be an irrebuttable presumption by reason of the inclusion of the words. [433-G-H; 434-A-C]

Modan Singh v. *Mst. Sham Kaur and Ors.*, AIR (1973) P & H 122, D approved.

1.2. While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would be too broad a proposition and too rigid an interpretation of law not worthy of acceptance but that does not also clothe the superior courts within E jurisdiction to intervene and interferes in any and every matter-it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible-it is a rarity rather than a regularity and thus it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances F and upon proper circumspection. This is, however, without expression of any opinion pertaining to Section 100 of the Code of Civil Procedure. [435-A-C]

1.3. Presumption is a rebuttable presumption. While it is true that the registered instrument of adoption presumably stands out to be taken to be correct but the Court is not precluded from looking into it upon production G of some evidence contra the adoption. Evidence, which is made available to the Court for rebutting the presumption, can always be looked into and it is on production of that evidence that the High Court has recorded a finding of non-availability of the presumption to the Appellant. [435-G-H; 436-A]

1.4. It is on this factual backdrop that no specific ceremonies have been H noted neither any evidence has been tendered pertaining to the adoption, High

Court upon, recording the fact of the presumption being rebuttable, came to a conclusion negating the adoption. Thus, there is no reason to lend concurrence to the submissions of appellant that the statutory presumption should give way to all other instances available on record. The presumption as the Statute prescribes and on the state of evidence available on record question of decrying the order of the trial court as also of the two appellate courts on the fact situation of the matter in issue cannot be termed to be so perverse so as to authorise this Court to scan the evidence and reappreciate the same. [438-B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9469 of 1996.

From the Judgment and Order dated 5.2.96 of the Punjab and Haryana High Court in R.S.A.S. No. 285 of 1996.

P.C. Jain Balbir Singh Gupta for the Appellant.

Raju Ramachandran, R.S. Rao and Ms. Indu Malhotra for the Respondent.

The Judgment of the Court was delivered by

BANERJEE, J. The matter under consideration pertains to the effect of statutory presumption as envisaged under Section 16 of the Hindu Adoption and Maintenance Act, 1956. For convenience sake it would be worthwhile to note the provision for its true purport. Section 16 reads as below:

> *"16. Presumption as to registered documents 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."

The Section thus envisages a statutory presumption that in the event of there being a registered document pertaining to adoption there would be a presumption that adoption has been made in accordance with law. Mandate of the Statute is rather definite since the Legislature has used "shall" in stead of any other word of lesser significance. Incidentally, however the inclusion of the words "unless and until it is disproved" appearing at the end of the

A statutory provision has made the situation not that rigid but flexible enough to depend upon the evidence available on record in support of adoption. It is a matter of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession - thus onus of proof is rather heavy. Statute has allowed some amount of flexibility, lest it turns out to be solely dependent on a registered adoption deed. The reason B for inclusion of the words "unless and until it is disproved" shall have to be ascertained in its proper perspective and as such the presumption cannot but be said to be a rebuttable presumption. Statutory intent thus stands out to be rather expressive depicting therein that the presumption cannot be an irrebuttable presumption by reason of the inclusion of the words just noticed C above. On the wake of the aforesaid the observations of the learned single Judge in *Modan Singh* v. *Mst. Sham Kaur and Ors.*, AIR (1973) P&H 122) stands confirmed and we record our concurrence therewith.

In the contextual facts a Deed of Adoption dated 1.6.1973 came into existence and stands registered in the Sub Registrar's office at Charkhi, Dadri D in the State of Punjab.

Adverting to the factual backdrop briefly at this juncture it is to be noted that the dispute relates to the estate of one Sunda Ram and the contest stands out to be between one Shakuntala being the daughter of Sunda Ram and Jai Singh, who claims to be the adopted son.

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Record depicts that the plaintiff (respondent herein) filed a suit for declaration that she was the owner in possession of the suit land and that the decree dated August 1, 1986 passed in Civil Suit instituted on July 23, 1986 and registered will dated February 14, 1974 alleged to have been executed by her father together with the Adoption Deed dated June 1, 1973 recording that F Jai Singh had been adopted by Sunda Ram were illegal and result of misrepresentation of facts and thus not binding on her. The trial Court decreed the suit. Appeal therefrom filed by the defendant/appellant was dismissed and even the second appeal also stands dismissed.

G Mr. Jain, the learned senior Advocate appearing in support of the appeal contended that in the event of due compliance with the four requirements as envisaged under Section 16 of the Act of 1956 question of there being any further requirement depicting acceptance thereof does not and cannot arise. The submissions undoubtedly at the first blush seem to be rather attractive and it is on this particular issue which prompted this Court to have the matter H argued in detail irrespective of the technicality as raised before this Court

pertaining to the maintainability issue vis-a-vis the appeal. While scrutiny of evidence does not stand out to be totally prohibited in the matter of exercise of jurisdiction in the second appeal and that would in our view be too broad a proposition and too rigid an interpretation of law not worthy of acceptance but that does not also clothe the superior courts within jurisdiction to intervene and interfere in any and every matter – It is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible – it is a rarity rather than a regularity and thus in fine it can thus be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection. This is, however, without expression of any opinion pertaining to Section 100 of the Code of Civil Procedure.

Needless to record that the trial Court decreed the suit and the first Appellate Court as also the High Court were pleased to dismiss the appeals. It is in this context the recording of the High Court may be looked into for proper appreciation of the matter.

The High Court observed:

> "It also deserves notice that on July 22, 1986 the appellant had filed a suit claiming the property of Sunda Ram. Surprisingly, the suit was decreed within less than 10 days on August 1, 1986. It is also the day when Sunda Ram had expired. It is correct that Mr.Mittal has not raised any plea on the basis of this decree. The fact, however, remains that the appellant tried to usurp the property by even getting a decree in his favour. The proceedings do reflect upon his conduct. In fact, he did not rest contended with the adoption deed and the decree. He had even propounded a Will. The courts below have found that the will is shrounded by suspicious circumstances and have not accepted its authenticity. No argument has been addressed by the learned counsel in this behalf. In view of the above, the conclusions recorded by both the courts below do not call any interference."

The issue thus arises as to whether High Court was justified in laying emphasis on the conduct of the adopted son. As noticed herein before the presumption is a rebuttable presumption. While it is true that the registered instrument of adoption presumably stands out to be taken to be correct but the Court is not precluded from looking in to it upon production of some evidence contra the adoption. Evidence, which is made available to the Court for rebutting the presumption, can always be looked into and it is on production

A of that evidence that the High court has recorded a finding non-availability of the presumption to the Appellant. A brief reference to the available evidence may be convenient at this juncture. The following documents were placed on record:

(i) Voters list prepared in the year 1991;

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(ii) Receipts of chulha tax said to have been paid by the appellant;

(iii) Mutation proceedings dated August 23, 1986;

(iv) Jamabandi for the year 1988-89.

C As regards (i) no fault can be ascribed on rejection of this piece of evidence by reason of the fact that the suit was instituted on September 24, 1986 and being aware of the pendency of the dispute the appellant described himself as son of Sunda Ram. Incidentally in the voters list prepared in 1984, the appellant has been described as the son of his natural father i.e. Jage Ram and accordingly the High Court came to a definite conclusion that D-8 being D the document, which came into existence after the institution of the suit can be of no consequence whatsoever.

Similar is the situation as regards the next set of evidence, namely, payment of chulha tax – receipts admittedly relate to a period after the institution of the suit (period between October 7, 1986 and July 21, 1991). E The mutation proceedings being the third set of evidence noticed herein before stood initiated by the appellant immediately after the death of Sunda Ram, who admittedly expired on 1st August, 1986 and the appellant had got the mutation entries without any notice as such the same cannot possibly be taken recourse to and similar is the situation with regard to the Jamabandi for F the years 1988-89.

It is also on record that in the reply filed by the appellant in proceedings under Section 125 of the Criminal Procedure Code initiated by his wife, the appellant described himself as a son of his natural father as also the voters list prepared in the year 1984 – it has thus been stated that these two documents G on the face of it militates against the proof of adoption

It is at this juncture, a brief look at the Deed of Adoption would be of some interest. Relevant extracts of the Deed of Adoption are as below:

"..... I have no son. According to Hindu Dharam Shastra, every H Hindu should have one son so that he may give pind water. There is

one boy of age of 10 years son of Jage Ram, Resident of village Rassiwas, who is Jat by caste and who has been brought up by me. I have fatherly love for him. In the month of March, parents of Jai Singh gave him to me in adoption, in the presence of the relatives of Rassiwas, at the occasion of Holly, and I had taken Jai Singh in my lap, I adopted him. Now, I as well as parents of Jai Singh want that a deed of adoption should be prepared. Jai Singh is living with me for the last five years. Now with sound disposition of mind, I adopt Jai Singh willingly as my adopted son and he shall be my son in the eyes of others. Jai Singh, my adopted son shall have same rights as a natural son has.

This deed of adoption has been written on 31.5.1973, (10 Jaith, 1895 Shudi)."

The Deed records that the parents of Jai Singh have given him in adoption to Sunda Ram in the month of March and he had taken him on his lap. No specific ceremonies have been noted neither any evidence has been tendered pertaining to the adoption in March, 1973. It is on this Deed that Mr. Ramchandran, the learned senior Advocate appearing for the respondent contended that the document even on the face of it does not justify any consideration by reason of the recording that 'the adopted son shall have the same rights as a natural son has' – this insertion of preservation of his right as a natural son is rather significant and ought to be read along with the Will dated 14th February, 1974 wherein it has been recorded that 'entire property will be inherited by the adopted son, Jai Singh and no one else shall have any share in it' : whereas the recording of the Will that the testator being not desirous of giving any share to the daughter cannot but be termed to be otherwise in accordance with the normal human conduct under certain circumstances but recording to the effect "in case after my death my daughter Shakuntla claims any property that should be rejected" together with the recording that "this Will has been written in favour of my adopted son Jai Singh so that it may be used at the time of need" depict the true nature of the claim of the appellant which it has been argued for the Respondent tantamounts to be utterly false. Mr. Ramchandran also placed reliance on Section 11(vi) of the Act, which records that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned with intent to transfer the child from the family of its birth to the family of its adoption. The give and take in adoption is a requirement, which stands as a *sine-qua-non* for a valid adoption and it is in this context that Mr.

A Ramchandran contended that the rebuttable presumption has thus been duly rebutted by the evidence put forth by the respondent and stands reinforced by the appellant's own evidence.

It is on this factual backdrop, the High Court upon, recording the fact of the presumption being rebuttable, came to a conclusion negating the B adoption. On the wake of the aforesaid, we do not see any reason to lend concurrence to the submissions of Mr. Jain that the statutory presumption should give way to all other instances available on record. The presumption under Section 16 being a rebuttable presumption as the statute prescribes and on the state of evidence available on record question of decrying the order C of the trial court as also of the two appellate courts on the fact situation of the matter in issue cannot be termed to be so perverse so as to authorise this Court to scan the evidence and reappreciate the same. This is where Mr. Ramachandran contended that scope of Article 136 being limited and by reason of definite allegation of fraud in the matter of bringing forth the document of adoption interference with the orders of three different forums D would not arise. We do find a great deal of substance thereon since the appreciation of evidence as noticed above cannot be had at this stage of the proceedings unless the order can be ascribed to be totally perverse.

In the present fact situation of the matter we do feel it expedient to record our concurrence to the statement of Mr. Ramachandran that perversity E is a far cry in the matter and the order of the High Court does not call for any interference in the contextual facts.

In that view of the matter, we do not find any merit in the appeal. The appeal thus stands dismissed without, however, any order as to costs.

F N.J. Appeal dismissed.