

SMT. CHANDAN BILASINI (DEAD) BY LRS. ETC.

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v.

AFTABUDDIN KHAN AND ORS. ETC.

NOVEMBER 16, 1995

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

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Hindu Adoptions and Maintenance Act, 1956 :

Ss. 11, 12 & 14—Adoption by widow—Proof of—Ceremony of giving and taking performed—Adoptive mother executing a deed acknowledging adoption—Witnesses present at adoption ceremony including priest who performed the ceremony and one attesting witness of adoption deed testifying the ceremony of giving and taking—High Court drawing adverse inference against validity of adoption on the ground that adoptive mother did not examine herself—Held, High Court erred in drawing inference—Evidence on record establishes factum of adoption.

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In a suit pertaining to certain property dispute the factum of adoption of the respondent (in C.A. No. 2462/77) by the plaintiff-appellant (in CA No. 1245/77) was disputed. The case of the plaintiff-appellant was that her husband died in 1905 leaving behind a will whereunder she was authorised to adopt a son and, in the event of such adopted son's death, to adopt a second son. Accordingly, she adopted a son who died unmarried in 1965. Thereafter she adopted the respondent on 24.8.1965 i.e. after coming into force of the Hindu Adoptions and Maintenance Act, 1956. She executed a registered deed on 30.9.1965 acknowledging the adoption. The said deed, however, was not counter-signed by the natural parents of the adoptive child. Later the natural father also executed a deed on 15.4.1967 acknowledging the adoption. The first appellate Court, on the basis of the oral evidence as well as the two supporting documents, held that there was a valid adoption. On appeal, the Division Bench of the High Court, however, held that there was no valid adoption as the adoptive mother, who was alive at the time when the evidence was recorded by the trial Court, did not examine herself.

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On appeal to this Court, the parties settled their dispute with regard to the property.

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A Disposing of the appeals on the issue of adoption, this Court

HELD : 1.1. There was a valid adoption of the respondent by the plaintiff-appellant. The adoption was made in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1956.

B 1.2. The High Court was not right in drawing an adverse inference from the fact that before the Trial Court the adoptive mother did not examine herself. Admittedly, at the time of recording of the evidence by the Trial Court, she was of 86 years - too old to be produced in Court for giving evidence. The High Court failed to take into account the fact that there were other witnesses present at the time of adoption, who were examined. **C** PW- 1, the natural father of the adopted son, and PW-2, the priest who performed the adoption ceremony, deposed that the adoption took place on 24.8.1965 and the ceremony of giving and taking was performed. PW-6 is the attesting witness to the deed of adoption executed by the adoptive mother. The mere fact that some other persons who were present at the adoption ceremony were not examined, cannot be considered as making the adoption doubtful. Besides, the registered document regarding the adoption which was executed within one month of adoption by the adoptive mother should also be given its due weight as evidence of adoption. Thus, the evidence of record clearly establishes that the adoption took place by the ceremony of giving and taking. [364-B-F; G]

E 2. In view of Ss.12 and 14(4) of the Hindu Adoptions and Maintenance Act, 1956, on adoption of the respondent by the plaintiff-appellant, he would be deemed to be the child of the plaintiff-appellant and her deceased husband, for all purposes with effect from the date of the adoption and from that date all ties of the child in the family of his birth would be deemed to be severed and replaced by those created by the adoption in the adoptive family. The family relationship got crystalized as on the date of adoption. [365-B-C]

F **G** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1245 of 1977 Etc.

From the Judgment and Order dated 11.10.1976 of the Orissa High Court in A.H.O. No. 37 of 1975.

H Santosh Hedge, Dr. Shankar Ghosh, Jayant Das, Janaranjan Das

M.S. Dayan, B. Chandrasekhar, K.N. Tripathi, G.S. Chatterjee and Ms. Aruna Banarjee for the appearing parties. A

The Judgment of the Court was delivered by

SUJATA V. MANOHAR, J. Since the parties before us have already settled their property dispute, the only question which is left for us to decide is whether the respondent Amaresh Sarkar in Civil Appeal No. 2462/1977 was the duly adopted son of Chandan Bilasini Dasi, the original first-plaintiff. B

Chandan Bilasini Dasi was married to one Kalikrishna Sarkar who died on 11.12.1905 leaving a Will under which, *inter alia*, he had authorised his widow, the original plaintiff No. 1 to adopt a son and in the event of the adopted son's death to adopt a second son. The adoption had to be made with the consent of the executors. Accordingly the first-plaintiff had adopted one Sudhanshu Mohan Sarkar as per the directions contained in the Will of Kalikrishna. Sudhanshu Mohan Sarkar died in an unmarried state on 7.3.65. Thereafter she adopted the said respondent Amaresh Sarkar on 24.8.65. By this time all the executors were dead. She also executed a registered deed acknowledging the adoption of Amaresh Sarkar which is dated 30.9.65. This deed, however, was not counter-signed by the natural parents of the adopted child. The natural father executed a deed acknowledging adoption which is dated 15.4.67. This deed is also registered. Apart from these documents, evidence was led in order to prove the ceremony of giving and taking in adoption. It is necessary to bear in mind that this second adoption took place after coming into force of the Hindu Adoptions and Maintenance Act, 1956 under which the first-plaintiff Chandan Bilasini Dasi being a widow was entitled to adopt a son even otherwise than under the authority given to her under the Will of her deceased husband. C
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PWs 1, 2 and 6 have given oral evidence relating to the adoption ceremony. PW1, who is the natural father of the adopted son has given evidence to the effect that the adoption took place on 24.8.65 and the ceremony of giving and taking in adoption was performed. A priest was also present and Kalasa Pooja Homa, were performed. PW2 is the priest who performed the adoption ceremony and PW6 is an attesting witness to G
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A the deed of adoption which was executed by the adoptive mother on 30.9.65. He was also present at the time of the adoption ceremony.

B The first appellate court on the basis of the oral evidence as well as the two supporting documents held that there was a valid adoption of the respondent Amaresh Sarkar by the original plaintiff No. 1. The Division Bench of the High Court in appeal, however, held that there was no valid adoption. It appears to have drawn an adverse inference on the basis of the fact that the adoptive mother who was alive at the time when the evidence was recorded by the Trial Court, had not examined herself. It is accepted by both sides that at the time when the evidence was recorded C the adoptive mother was a very old lady 86 years of age and she was too old to be produced in Court for giving evidence. The Division Bench failed to take into account the fact that there were three other witnesses who were present at the time of the adoption ceremony who were examined - one of them being the priest and the other one being a person who was D also present at the time when the deed of admission of adoption was executed by the first plaintiff adoptive mother and was an attesting witness to the deed. The mere fact that some other persons who were also present at the adoption ceremony were not examined, cannot be considered as making the adoption doubtful. There is clear testimony relating to the ceremony of taking and giving the respondent Amaresh Sarkar in adoption E as between the natural parents and the adoptive mother. The registered document regarding this adoption which was executed within a month of the adoption by the adoptive mother should also be given its due weight as evidence of adoption. There is also a second document executed by the natural father after a lapse of two years. Since the natural father would be F interested in executing such a document which would give an advantage to his natural son, the same probative value may not be attached to the second document. But the earlier document which is executed by the adoptive mother must be given its due weight. It has been properly proved and is a registered document.

G Looking to the entire evidence which is on record which goes to establish that adoption took place by the ceremony of giving and taking, we hold that there was a valid adoption of the respondent Amaresh Sarkar by the original first-plaintiff Chandan Bilasini Dasi. After the coming into H force of the Hindu Adoptions and Maintenance Act of 1956, this adoption

was made in accordance with the provisions of Hindu Adoptions and Maintenance Act. A

On adoption of the respondent Amaresh Sarkar by the widow of the deceased Kalikrishna Sarkar, the adopted son Amaresh Sarkar severed his ties with his natural family and became a part of the adoptive family. As such, Chandan Bilasini Dasi became his mother and Kalikrishna became his deceased father. Section 12 of the Hindu Adoptions and Maintenance Act clearly provides that an adopted child shall be deemed to be the child of his adoptive father or mother for all purposes with effect from the date of the adoption and from such date all ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. As a consequence, when a widow adopts a child, the child not merely acquires an adoptive mother but also acquires other relationship in the adoptive family, unless there is anything to the contrary in the Hindu Adoptions and Maintenance Act. B
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This position is reinforced by Section 14(4) which sets out that where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child. In other words, the family relationship gets crystalised as at the date of adoption. The child will be deemed to be the child of the parent who adopts the child and the existing or deceased spouse of that parent (as the case may be), if any, will be considered the child's father or mother. A spouse subsequently acquired by the adoptive parent becomes the step-parent of the adopted child. The adopted child, however, cannot divest any person of any property already vested in that person (Section 12(c)). D
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In the premises, we set aside the impugned judgment in so far as it holds that Amaresh Sarkar was not the validly adopted son of Chandan Bilasini Dasi and Kalikrishna Sarkar. The appellants in Civil Appeal No. 2462/1977 have, through their counsel, agreed that the status of the respondent Amaresh Sarkar as adoptive son of late Shri Kalikrishna Sarkar and Chandan Bilasini Dasi is not disputed. G

In Civil Appeal No. 1245/1977 the parties through their counsel have agreed that the appellant will not question the validity of the sale-deed which is the subject-matter of this appeal and it is declared that the H

- A** sale-deed is valid and binding. Respondents will pay rupees five lakhs to the appellant in full and final settlement of all his claims against the respondents. The respondents have requested for some time for making payment of this amount. We direct that 50% of the amount will be paid on or before 30th of November, 1995 and the balance amount will be paid on or before 31st of March, 1996.
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The appeals are disposed of accordingly. In the circumstances, there will be no order as to costs.

R.P.

Appeals disposed of.