



GAHC010137972018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./97/2018

ON THE DEATH OF BAJRANGLAL MODI HIS LEGAL HEIR SMT PREM LOTA
MODI
W/O LATE BAJRANGLAL MODI RESIDENT OF TITABOR CHARALI, P.S.
TITABOR, DIST. JORHAT-785630

2: SRI SURAJ KUMAR MODI
S/O LT BAJRANGLAL MODI
RESIDENT OF TITABOR CHARALI
P.S. TITABOR
DIST. JORHAT-78563

VERSUS

SRI RAJ KUMAR MODI AND 3 ORS
S/O LATE SUNDARMAL MODI, R/O TITABOR CHAR ALI, P.S. TITABOR,
JORHAT.

2:SRI SHOK KUMAR MODI
S/O LATE SUNDARMAL MODI
R/O TITABOR CHAR ALI
P.S. TITABOR
JORHAT.

3:SRI SUSHIL KUMAR MODI
S/O LATE SUNDARMAL MODI
R/O TITABOR CHAR ALI
P.S. TITABOR
JORHAT.

4:BIJAY KUMAR MODI
S/O LATE MANNALAL MODI A R/O TITABOR CHAR ALI
P.S. TITABOR
JORHA



Advocate for the Petitioner : MR G KHANDELIA

Advocate for the Respondent : MR G N SAHEWALLA

:: PRESENT ::

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioners : Mr. D.K. Misra,
Senior Advocate.

For the Respondents : Mr. G.N. Sahewalla,
Senior Advocate.

Date of Hearing : 12.09.2023.

Date of Judgment : 05.10.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. D.K. Misra, learned senior counsel representing the petitioners as well as Mr. G.N. Sahewalla, learned senior counsel appearing for the respondents.

2. This is an application under Section 114 read with Order XLVII Rule 1 of the Code of Civil Procedure, 1908 praying for reviewing the judgment and order dated 22.02.2018 passed by this Court in RSA No.73/2013.

3. Bajranglal Modi was adopted by Meghraj Modi on 02.09.1971. Bajranglal Modi was 17 years old on that day. Thereafter, a suit came into being. The question arose that the adoption of Bajranglala Modi was illegal in view of Section 10 of the *Hindu Adoption Maintenance Act*,



1956.

4. Sub-section (iv) of Section 10 of the Act of 1956 reads as under:

“(iv) he or she has not completed the age of 15 years, unless there is a custom or usages applicable to the parties which permits persons who have completed the age of 15 years being taken in adoption.”

5. In the said suit, a certificate issued by the Board of Secondary Education, Assam was exhibited as Ext.1. It also failed to prove that Bajranglal Modi was below 15 years of age on the day of adoption.

6. By filing the present review petition, the petitioners have submitted that they have discovered the document of the primary school where Bajranglal Modi had started his educational life and this document goes in his favour.

7. The original suit T.S. 15/2008 was filed in the year 2008. The first appeal being Title Appeal No.2/2011 was instituted in the year 2011 and the Regular Second Appeal RSA 73/2013 came into being in the year 2013.

8. There is no doubt that in the year 2008, when the Title Suit was filed, the primary school where Bajranglal Modi reportedly started his educational life existed and it still exists.

9. Now, a brief visit to Order XLVII Rule 1 of the Code of Civil Procedure would be fruitful. It is quoted as under:

“(1) Any person considering himself aggrieved-
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after



the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation-

The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."

10. Order 47 Rule 1 lays down that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.

11. The question is whether the petitioners had exercise due diligence before discovery of the primary school certificate? The answer to this question must be given in negative. I have already stated hereinbefore that the primary school as referred to by the petitioners existed at the



time of pendency of the suit before the court below. Instead of producing a document from this school, the petitioners tried to prove the age of Bajranglal Modi by exhibiting High School Leaving Certificate i.e. Ext.1. I have sufficient reasons to hold that the discovery of the primary school certificate, for proving the fact that at the time of adoption, Bajranglal Modi was below 15 years of age, shows lack of exercise of due diligence. If they had exercised due diligence, they could have produced the primary school certificate in the trial court.

12. It is clear on the face of the record that the petitioners failed to exercise due diligence before discovery of the primary school certificate and lately discovered the primary school certificate. Therefore, under Order XLVII Rule 1 of the Code of Civil Procedure the review petition is not maintainable.

13. The Review Petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant