

IN THE HIGH COURT OF JHARKHAND AT RANCHI

S.A. No.2 of 2011

Dinanath Mandal

..... Appellant

Versus

Mostt. Jeera & Ors.

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant

:Mr.Deepak Kr. Bharati, Advocate

For the Respondents

:Mr. M.K.Sah, Advocate

11/Dated: 26/09/2018

Heard learned counsel for the appellant.

Appellant is original defendant.

The suit has been filed for declaring deed of adoption to be null and void. The appellant has lost before both the courts below.

It has been argued by learned counsel for the appellant that ceremony of adoption was performed in the year 1973.

There was dispute between the parties wherein proceeding under Sections 144 and 145 has been instituted.

The plaintiff is the first party in the dispute between the plaintiff and defendant in the year 1979. Thus, plea of having no knowledge is falsify by documentary evidence. This fact of the matter has not been properly appreciated by both the courts below.

In view of the above discussion, the present second appeal is **admitted** on following substantial questions of law:

- i. *Whether the finding of the learned Appellate Court confirming the judgment and decree of the learned Trial Court is bad in law and suffers from serious illegality, perversity and is fit to be rejected?*
- ii. *Whether in view of Section 16 of the Hindu Adoption & Maintenance Act, 1950 the finding of the learned Courts below with regard to registered deed of adoption No.115 dated 16.11.1979 (Ext.A/1) holding it to be illegal and fraudulent document can be sustained in law?*
- iii. *Whether in view of Section 79 of the Evidence Act the learned Courts below have erred in holding that Ext.1, i.e. order in RER Case No.520/79-80 and Ext.K, i.e. order dated 23.06.1986 passed in T.R. Case No.18/1980 a case of misrepresentation of fact and fraud?*
- iv. *Whether the finding of the learned Courts below that adoption of Dinanath Mandal was not taken by Shankar Mandal as contained in Ext.A/1 can be sustained in law in view of Section 32(5) & (6) of the Evidence Act?*

- v. *Whether the learned Courts below in view of Section 33 of the Evidence Act have committed error of law in holding that orders recorded in RER Case No.520/79-80 (Ext-I) and T.R. Case No.18/1980 (Ext-K) are not binding on the plaintiffs and they had no knowledge of adoption?*
- vi. *Whether in absence of specific documentary evidence adduced by plaintiffs that Shankar Mandal was leper and was incapable of executing deed of adoption- Ext-A/1, the finding of the learned Courts below that Shankar Mandal could not have executed Ext.A/1- Deed of Adoption can be sustained in law?*
- vii. *Whether in view of Hindu Adoption & Maintenance Act, 1950 the finding of the learned Courts below that Dinanath Mandal was not validly adopted by Shankar Mandal can be held to be sustainable in the eye of law?*
- viii. *Whether the learned Courts below have committed error of law in holding that the suit is maintainable and not barred by law of limitation when Ext.A/1-Deed of 1979 was challenged after 21 years in the year 2000 when the plaintiffs had already got knowledge of adoption of Dinanath Mandal by Shankar Mandal as apparent from Ext.I, i.e. ordre recorded in RER Case No.520/79 and Ext.K, i.e. order recorded in T.R. Case No.18/1980?*
- ix. *Whether in view of Section 16 of the Hindu Adoption & Maintenance Act, 1950 the learned Courts below have committed error of law in shifting burden of proof on defendant Dinanath Mandal to prove adoption?*
- x. *That the Appellants crave leave of this Hon'ble Court to urge other and further grounds at the time of hearing of this appeal?*

Respondents have already appeared, therefore, no notice is required to be issued.

Call for Lower Court Records.

(Rajesh Kumar, J.)

Shahid/