

IN THE HIGH COURT OF JHARKHAND AT RANCHI**Second Appeal No. 298 of 2002**

[Against the judgment and decree dated 03.10.2022 (decree signed on 17.10.2022) passed by learned Additional District Judge-III, Deoghar in Title Appeal No. 41 of 1994]

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1. Bhubneshwar Mahto, son of Late Baidyanath Mahto,
 2. Bimla Devi, wife of Sri Bhubneshwar Mahto,
 3. Sandeep Kumar @ Congress Yadav, son of Sri Bhubneshwar Mahto,
All resident of village-Jamuwa, P.S. Mohanpur, Sub-Division and District-Deoghar
- **Appellants**

Versus

Kumari Namia, D/o Bhukhlal Mahto, R/o Village Jamuwa, P.S. Mohanpur, Sub Division District Deoghar

..... **Respondent**

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMARSRIVASTAVA

For the Appellants	:Mr. Kundan Kr. Ambastha, Advocate
	Mr. Sumit Kumar, Advocate
For the Respondent	:Mr. Ram Lakhan Yadav, Advocate

J U D G M E N T**C.A.V. on 01.07.2025****Pronounced on 10/07/2025****Per Pradeep Kumar Srivastava**

The instant Second Appeal is preferred being aggrieved and dissatisfied with the Judgment and Decree dated 03.10.2002 (decree signed on 17.10.2002) passed by learned Additional District Judge-III, Deoghar in Title Appeal No. 41 of 1994 whereby the Judgment and Decree dated 16.09.1994 (decree signed on 24.09.1994) passed by Subordinate Judge-II, Deoghar was set aside.

2. The case of the plaintiff in short is that the plaintiff namely Karmi Devi (original respondent in this appeal) had filed Title Suit No. 17/1986 for a declaration that the registered adoption deed dated 31.03.1986 executed by defendant No. 4 (deceased appellant No. 3) Bhukhlal Mahto is illegal, void and inoperative along with the cost of the suit.

The plaintiff has pleaded that she is legally married wife of defendant No. 4, Bhukhlal Yadav and out of their wedlock, one female child namely Kumari Namia was born. It is further alleged that due to some family dispute and differences in the year 1983, her husband started

living separately with her but marriage was never dissolved through decree of divorce or in any customary process. It is further alleged that plaintiff's husband has executed registered adoption deed dated 31.03.1986 whereby defendant No. 3 Sandeep Kumar has been adopted as his son. On query by the plaintiff, her husband denied about the execution of aforesaid adoption deed but admitted the execution of BhugatbandhaMortgage (usufructuary) in favour of defendant No. 1. It is further alleged that since the said adoption was illegally executed without consent of the plaintiff by her husband hence the same is void, illegal and inoperative and fit to be declared as void and illegal.

3. Joint written statement was filed on behalf of defendant No. 1, 2 and 4 and separate written statement was filed by minor defendant No. 3 through legal guardian. Defendant has admitted the factum of marriage between plaintiff and defendant No. 4. It is further alleged that since 1980, due to illness of the defendant No. 4 the plaintiff started illicit relationship with one Kartik Mahto. The defendant No. 4 has denied the birth of daughter out of wedlock with the plaintiff rather she was outcome with the illicit relationship between his wife and Kartik Mahto. It is further alleged that with a view to resolve the dispute and differences, they arrived at amicable settlement and Panchayati was held on occasion of Basant Panchami in the year 1982 wherein plaintiff along with her brother Kanti Mahto appeared and with the consent of the plaintiff and her brother, the Panchas decided to dissolve the marriage between plaintiff and defendant No. 4 with immediate effect. It is further alleged that such type of customary mutual divorce outside Court is prevalent in the society of the parties. The mutual divorce as well as decision of the Panchas was reduced into writing in two copies/panchnama and one copy was given to each party but the copy of Panchnama given to defendant No. 4 was damaged with rain water and to some extent it has become illegible. It is further alleged that after dissolution of marriage, plaintiff Karimi Devi remarried with her beloved Kartik Mahto and out of this wedlock, two daughters have been born to

her and she is residing at village Gaura since 1982, which is after dissolution of the marriage as is also evident from their voter-list. It is alleged that daughter Numuwa @ Namia born to plaintiff before dissolution of the marriage is an illegitimate child of defendant No. 4. It is further alleged that in the voter-list of village Gaura, plaintiff is named as wife of Kartik Mahto although her paternal village is Jamua. It is also admitted that defendant No. 1, 2 and 4 have executed registered adoption deed dated 31.03.1986 and the story of Bhugatbandha Mortgage is palpably false. Defendant No. 4 having no issue, adopted a son after valid dissolution of marriage. Therefore, no consent of the plaintiff was required and this suit is not maintainable and fit to be dismissed.

4. On the basis of the pleadings of the parties, the learned Trial Court has settled three vital issues amongst other as follows:

“Issue No. 4:-Whether Karmi Devi, the plaintiff has broken the marital tie with her husband, Bhukhlal Mahto, the defendant No. 4 and whether their marriage was dissolved as per custom prevalent in society in village Panchayati and whether she ceased to be wife of Bhukhlal Mahto?

Issue No. 5:-Whether Karmi Devi, the plaintiff was remarried with the Kartik Mahto of Village Gaura.

Issue No. 6:-Whether the deed of adoption dated 31.03.1986 executed by defendant No. 1, 2 and 4 in favour of defendant No. 3 is illegal, void and inoperative document or genuine document.”

5. The learned Trial Court has taken Issue No. 4 and 5 together for adjudication and after appreciating the evidences of defendants including defendant No. 4 as well as the documentary evidence in the shape of voter list of village Gaura arrived at a conclusion that the factum of dissolution of marriage through Panchayati as pleaded by defendant No. 4 has not been proved. The voter list also shows the name of wife of Kartik Mahto not to be plaintiff. The remarriage of Karmi Devi with Kartik Mahto is also falsified. The evidences of witnesses suffers from material discrepancies and contradictions rendering themselves

unreliable. No Panchnama was brought on record for dissolution of marriage between plaintiff and defendant No. 4, in spite of aforesaid observation, the learned Trial Court acted upon the pleadings of the defendant No. 4 in his written statement to be gospel truth and decided the above issue in favour of the defendant and against the plaintiff.

The learned Trial Court also found the adoption deed dated 31.03.1986 executed by defendant No. 1,2 and 4 in favour of defendant No. 3 to be legal and valid. Accordingly, decided the issue no. 6 also against the plaintiff and in favour of defendants. Accordingly, dismissed the suit of the plaintiff on contest with cost.

6. The plaintiff preferred an appeal No. 41 of 1994 before the District Judge, Deoghar. The first Appellate Court hearing the rival contentions and on the basis of evidence adduced before the Trial Court, proceeded to decide the main issues No. 4 , 5 and 6 afresh. The Appellate Court also took the issue No. 4 and 5 together and arrived at a conclusion that due to dispute and differences and frequent quarrels between plaintiff and defendant No. 4, the plaintiff left her husband and went to her Naiher. It was observed that there were two Kartik Mahto one of village Gaura and second of village Jamua who have been examined as P.W. 7 and P.W.-8, respectively but denied the marriage with Karmi Devi or any illicit relationship with her. As regards second marriage of the Karmi Devi, no concrete proof has been brought on record. Similarly, the defendant has also failed to prove the dissolution of marriage between plaintiff and defendant No. 4. Therefore, both the issues were found to be wrongly decided by the learned Trial Court hence finding was reversed and issues were decided in favour of plaintiff and against the defendants. As regards, issue No. 6, the Appellate Court found that the adoption deed executed by defendant No. 1, 2 and 4 in favour of defendant No. 3 dated 31.03.1986 without consent of his legally married wife Karmi Devi (which is admitted by the defendant No. 4 himself). Therefore the presumption of genuineness of adoption deed under Section 16 of the Hindu Adoption and Maintenance Act, 1956 stands rebutted. As per

provisions of Hindu Adoption and Maintenance Act, 1956, the alleged adoption deed executed by defendant No. 1, 2 and 4 in favour of defendant No. 3 is absolutely illegal, void and inoperative and not a genuine document. Accordingly, the judgment passed by the learned Trial Court was set aside and suit of the plaintiff was decreed.

7. This appeal has been admitted vide order dated 20.02.2004 on the following substantial question of law:-

“Whether the Judgment and Decree passed by the Court below reversing the finding of the trial Court on the question of dissolution of marriage and adoption without appreciating the relevant provisions of law particularly the presumption attached with a registered deed of adoption, can be sustained in law”.

8. Learned counsel for the appellants/defendants pressing the aforesaid substantial question of law has vehemently argued that entire approach of the first Appellate Court is vitiated due to wrong interpretation of the evidences of witnesses and misconceived notion about requirement of consent of the wife for the purpose of adoption of a child as mandatory when the wife was deserting the husband since three years ago and residing separately. It is further submitted that the first Appellate Court has failed to properly consider the exhibit G the receipt issued by DharmaRakshini Sabha of Baidyanath Temple and arrived at wrong conclusion. The learned first Appellate Court has also failed to consider the presumption attached to registered adoption deed under Section 16 of the Hindu Adoption and Maintenance Act, 1956. Hence, the whole approach of the learned first Appellate Court was unwarranted and beyond the record and based on his own conjecture and surmises, which is fit to be set aside and the judgment and decree passed by the learned trial Court be restored.

9. On the other hand, learned counsel for the respondent has controverted the aforesaid argument raised on behalf of the appellants and submitted that the appellant/defendant No. 4 himself admitted in his evidence that no formal divorce with the plaintiff was obtained and even

the plea taken by the defendants regarding dissolution of marriage between plaintiff and defendant No. 4 was proved to the satisfaction of the Court. The learned Trial Court misconceived and misinterpreted the evidences and valuable admissions of the defendant No. 4 (husband of the plaintiff) and arrived at wrong conclusion and dismissed the suit which has been rightly reappreciated by the learned first Appellate Court and the judgment and decree of trial Court was reversed. There is no illegality or infirmity in the Impugned Judgment and decree calling for any interference in this appeal, which is fit to be dismissed.

10. For proper appreciation of rival contentions of the parties and the substantial question involved in this appeal, relevant provisions of Hindu Adoption and Maintenance Act, 1956 are extracted hereinbelow:

“6. Requisites of a valid adoption.—*No adoption shall be valid unless—*

- (i) the person adopting has the capacity, and also the right, to take in adoption;*
- (ii) the person giving in adoption has the capacity to do so;*
- (iii) the person adopted is capable of being taken in adoption; and*
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”*

“7. Capacity of a male Hindu to take in adoption.—*Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:*

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.”

Explanation.—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding

proviso.”

“8. Capacity of a female Hindu to take in adoption.—Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.”

“9. Persons capable of giving in adoption.—(1)No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

(3)* * * * *

(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being

for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation.—For the purposes of this section—

(i) the expressions “father” and “mother” do not include an adoptive father and an adoptive mother;

(ia) “guardian” means a person having the care of the person of a child or of both his person and property and includes—

(a) a guardian appointed by the will of the child's father or mother, and

(b) a guardian appointed or declared by a court; and

(ii) “Court” means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.”

“10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

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

“11. Other conditions for a valid adoption.—In every adoption, the following

conditions must be complied with:—

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;*
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;*
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;*
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;*
- (v) the same child may not be adopted simultaneously by two or more persons;*
- (vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth [or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:*

Provided that the performance of dattahomam shall not be essential to the validity of an adoption.”

“12. Effects of adoption.—*An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the 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:

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.”

....

“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.”*

11. Now I have to consider the rival contentions of the parties in the light of findings recorded by both the Court below and the relevant provisions of law as discussed above. It is a simple case for declaration of registered deed of adoption dated 31.03.1986 executed by defendants to be illegal, null and void. It appears that the learned Trial Court has considered the defence of defendant No. 4 husband of the plaintiff only on the basis of the written statement filed by him taking specific plea that his wife has deserted him since more than three years and remarried with one Kartik Mahto and out of her second wedlock, there are two children. The marriage was dissolved through Panchayati and Panchnama was also executed and reduced into writing which has been deteriorated due to rain water and not produced in the Court, although the defendant No. 4 himself has been examined as P.W.-5 in which he has completely

denied the execution of any adoption deed of defendant No. 3 from defendant No. 1& 2. He has also not proved the divorce with the plaintiff through Panchayati. Therefore, the pleading of the defendant No. 4 accepted and acted upon by the learned trial Court is totally unwarranted under law, hence the learned First Appellate Court which has examined the oral as well as documentary evidences adduced by the plaintiff and defendants found that the defendant has not been able to prove his version of divorce with the plaintiff and her remarriage with one Kartik Mahto, the copy of voter list (Exhibit 2) showing that the plaintiff was married with Kartik Mahto is also not in consonance with the said voter list but at Sl. No. 4 and 8, the name of wife of Kartik Mahto is Chandrawati Devi. Therefore, the learned Appellate Court arrived at a firm conclusion that the marriage between plaintiff and defendant No. 4 is still subsisting and relationship of husband and wife was not dissolved through any customary procedure of Panchayati or by any competent court of law.

12. The learned counsel for the appellant has laid much emphasis that since wife was residing separately for more than three years deserting her husband, therefore, her consent was not required for making adoption of a son by the defendant No. 4. The giving and taking ceremony has been proved, therefore, presumption of Section 16 is applicable in this case establishing the validity of adoption deed. In this connection, the provision of section 7 appears to be mandatory and the consent of wife is required for taking a valid adoption by the husband unless exceptional circumstances i.e. (i) the wife has completely and finally renounced the world or (ii) has ceased to be a Hindu or (iii) has been declared by a court of competent jurisdiction to be of unsound mind. The above exceptional circumstances have not been brought on record to negate the requirement of consent of the wife for adoption.

13. In view of above discussion and reasons, I do not find any illegality and infirmity in the impugned judgment and decree passed by learned first Appellate Court while setting aside the judgment and decree

passed by the learned trial Court reversing the same.

14. Accordingly, I do not find any merit in this Second Appeal, which is hereby dismissed.

15. Pending I.A.s if any, stands disposed of.

16. Let a copy of this judgment along with the trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court
Dated 10/07/2025
Basant/N.A.F.R.