

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A No. 182 of 2002

Manas Ranjan Pattanaik & others Appellants
Mr. Sidharth Mishra, Advocate

-Versus-

Indumati Das (Since Dead) through Respondents
her LR's & others
Mr. B.N. Bhuyan, Advocate &
Mr. H.N. Mohapatra, Advocate

CORAM:
JUSTICE R.K. PATTANAİK

DATE OF JUDGMENT: 20.12.2023

1. Instant order pertains to substitution of LR's of deceased respondent No.1 considering the rival claims and with reference to the findings of the learned Civil Judge (Senior Division) Puri vis-à-vis Misc. Case No. 522 of 2012 and Misc. No.252 of 2012 filed in the present second appeal.

2. The applicants, namely, Nimai Charan Das and Prafulla Chandra Das in Misc. Case No. 522 of 2012 claimed for substitution as the LR's of deceased respondent No.1, whereas, Misc. No.252 of 2012 is at the behest of one Gyana Ranjan Das claiming himself to be the adopted son of the deceased with the same relief, as a result of which, an inquiry was directed in terms of Order 22 of Rule 5 of CPC and to submit the findings on the question as to who is to succeed and to return the record together with evidence received and such direction was by virtue of this Court's order dated 5th February, 2014, consequent upon which, the findings have been received by an order dated 14th July, 2014 by the learned Civil Judge (Senior Division) Puri with a conclusion that the applicant, namely, Gyana Ranjan Das failed to establish his relationship with the deceased Indumati Das as the latter's

adopted son while seeking substitution, whereas, the case of Nimai Charan Das and Prafulla Chandra Das was suggested.

3. Later to the receipt of the findings and decision of learned court below, an objection was invited by the Court's order dated 27th July, 2023 and accordingly, it was submitted by Gyana Ranjan Das supported by documentary evidence.

4. Heard learned counsel for the respective parties.

5. In so far as the second appeal is concerned, the defendants are the appellants against a confirming judgment arising out of a suit decreed in favour of the deceased Indumati Das, namely, plaintiff before the learned Trial court and respondent No.1 herein. In the suit the husband of the plaintiff was arrayed as proforma defendant No.5. During the pendency of the second appeal, the husband of the plaintiff died leaving behind the deceased Indumati Das leading to the rival claims for. As earlier stated, an inquiry was directed to be conducted by the learned court below under Order 22 Rule 5 C.P.C. The findings and decision of the said enquiry are not in favour of the alleged adopted son. In fact, evidence was recorded both oral as well as documentary and ultimately a conclusion was drawn that Gyana Ranjan Das, who filed Misc. Case No.252 of 2012 could not establish his relationship with the deceased, namely, Indumati Das, whereas, the other applicants found to be class-II heirs, who may be substituted.

6. Since, a dispute with regard to substitution has emerged referring to the inquiry report and findings of learned court below, the applicants in Misc. Case No.522 of 2012 claim as the LRs of late Indumati Das, whereas, Mr. Bhuyan, learned counsel for Gyana Ranjan Das referring to the deed of acknowledgement of adoption claims that a presumption is attached to it in view of

Section 16 of the Hindu Adoption and Maintenance Act. It is contended by Mr. Bhuyan that such presumption operates so long as no rebuttal evidence is received. With regard to the capacity of the deceased to adopt, the same has also been questioned and it is contended that such deed of acknowledgment of adoption was purportedly executed by the deceased after death of her husband which makes it a suspicious circumstance on the face of it.

7. A deed acknowledging adoption, if registered and produced before the court made and signed by the persons giving and taking the child in adoption, presumption to be drawn in favour of adoption, which is rebuttable in nature. In so far as Order 22 Rule 5 CPC is concerned, when a question arises as to whether any person is or is not illegal representative of the deceased plaintiff or defendant, such question shall be determined by the court and as per proviso thereto, the Appellate Court may before determination the question, direct any subordinate court to try such question and to return the records together with evidence and its findings and reasons therefor. With such enquiry is held, the findings of learned court below is that adoption was claimed but with the nature of evidence received, said Gyana Ranjan Das failed to establish him to be the successor of the deceased, namely, Indumati Das by adoption. The alleged adoption is of the year 2001, whereafter, the deed was registered acknowledging it. In fact, according to Mr. Bhuyan, learned counsel for Gyana Ranjan Das would submit that the applicant happens to be the grandson of late Indumati Das and hence, a class-II heir, which was lost sight of by the learned courts below and that apart, he is looking after the affairs of the suit property and paying holding tax as well and along with the objection, produced a rent receipt as at Annexures-A & B.

8. Since the evidence was found against adoption and presumption attached to the deed was successfully rebutted, learned court below declined to admit Gyana Ranjan Das as the successor being the adopted son of the deceased Indumati Das. It is alleged that the learned Court below presumed that the adoption is suspicious on account of execution of Ext.1 is based on surmises and conjectures when a legal presumption attached to it as per Section 16 of the Hindu Adoption and Maintenance Act.

9. Having regard to the evidence on record received by learned court below, the Court is to examine and to determine as to who may be allowed to succeed by the deceased plaintiff. In so far as Nimai Charan Das and Prafulla Chandra Das are concerned they are not the immediate successors of late Padma Charan Dash, husband of the deceased plaintiff, who are the sons of the cousin of said late Padma Charan Das as made to suggest.

10. Having considered the evidence on record and since a presumption is attached to the deed of acknowledgment of adoption in view of Section 16 of Hindu Adoption and Maintenance Act which is of course rebuttable, the Court considering the competing interest is of the view that Nimai Charan Das and Prafulla Chandra Das should be substituted and not Gyana Ranjan Das since the presumption to Ext.1 appears to have been successfully rebutted.

11. In view of the legal position that substitution on the death of plaintiff or defendants is required to be determined forthwith and the same cannot be deferred as stressed upon by the Court in **Netrananda Dehuri Vs. Bhagirathi Dehuri and another 1991 (II) OLR-323**, the Court considering the evidence in its entirety is in favour of not allowing Gyana Ranjan Das to succeed the deceased plaintiff as it has substantially demolished the claim of adoption

with the presumption attached to Ext.1 to have been satisfactorily rebutted.

12. Hence, it is ordered.

13. In the result, Misc. Case No. 522 of 2012 stands allowed, whereas, Misc. No.252 of 2012 is hereby dismissed.

14. Consequently, substitution is to be carried out in view of the above order with the filling of the consolidated cause title of the Appeal Memorandum and to place the matter before the roster Bench for hearing and disposal of the second appeal.

(R.K. Pattanaik)
Judge

Balaram