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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 428 OF 2016
(Arising out of SLP(C) No. 17186 of 2010)

BIJENDER AND ANR. .. APPELLANT(S)

VERSUS

RAMESH CHAND AND ORS. .. RESPONDENT(S)

O R D E R

1. Leave granted.

2. Heard learned counsel for the parties.

3. The challenge in this appeal is to order dated 26.03.2010 passed by the High Court of Punjab and Haryana at Chandigarh, whereby in a Regular Second Appeal the High Court has reversed the concurrent findings and conclusions recorded by the Trial Court and the First Appellate Court.

4. The original plaintiff (Respondents are

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legal heirs) had instituted a suit against the appellant as defendant No. 1 for a declaration that adoption deed dated 07.06.1977 by which the defendant-appellant No. 1 was adopted by one Nanuwa to be void, illegal and inoperative in law. The original plaintiff in the suit was the daughter of the aforsaid Nanuwa.

5. The Trial Court and the First Appellate Court dismissed the suit. The decree of dismissal has been reversed by the High Court in Second Appeal giving rise to this appeal.

6. We have heard Ms. Indu Malhotra, learned senior counsel appearing for the appellants. Though a request has been made on behalf of the respondents for adjournment of the case, we are not inclined to accede to the said request as arguments of the appellants have been concluded. Nevertheless, we have perused the material on record and considered the judgments

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of the learned Trial Court and the First Appellate Court as well as the High Court.

7. Prior to the institution of the present suit on 14.08.1982, there was a decree in an earlier suit filed by the defendant-appellant as the plaintiff wherein a declaration of the validity of the adoption had been made (Suit No.440/222/1979). In the present suit the defendant-appellant had filed a written statement, inter alia, pointing out that the plaintiff was bound by the decree in the said suit i.e. Suit No. 440/222/1979. Suit No. 440/222/1979 was decreed on 26.02.1982 and the said decree was affirmed in appeal upto this Court. Yet the original plaintiff did not implead herself in any of the said proceedings, at any stage, to contest the decree in favour of the validity of the adoption of the defendant-appellant by Nanuwa.

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8. The adoption deed dated 07.06.1977 is a registered deed. Under Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (for short, â¬ Sthe Actâ¬ \235) there is a presumption in law as what is recorded in the said deed.
9. The High Court while construing the said adoption deed has taken the view that the persons who had given the defendant-appllant in adoption to Nanuwa had not signed the adoption deed as executants thereof and had appended their signatures thereto as attesting witnesses. The said finding of fact does not appear to be correct on a perusal of the copy of the adoption deed which is on record. We have noticed from a perusal of the adoption deed that apart from the natural guardians of the defendant-appellant who had given the defendant appellant in adoption to Nanuwa there were other persons who had signed the deed. Even otherwise, the view taken by the High Court with

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regard to the deed in question and the provisions of Section 16 of the Act appears to be contrary to what has been said by this Court in the case of Laxmibai (Dead) Through Lrs. and Anr. vs. Bhagwantbuval (Dead) Thr. Lrs. & Ors. reported in (2013) 4 SCC 97, particularly what has been recorded in paragraphs 31 and 34 of the report which may be reproduced as under :
â¬ S31. Mere technicalities therefore, cannot defeat the purpose of adoption, particularly when the respondent-defendants have not made any attempt to disprove the said document. No reference was ever made either by them, or by their witnesses, to this document i.e. registered adoption deed. Undoubtedly, the natural parents had signed along with 7 witnesses and not at the place where the executants could sign. But it is not a case where there were no witnesses except the executants. Instead of two witnesses, seven attesting witnesses put their signatures.
34. The trial Court in this regard has held that the fact that the natural patents of the adoptive child had signed along with seven other witnesses as attestants to the deed, and not as its executors, would

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not create any doubt regarding the validity of the adoption, or render the said registered document invalid, as they possessed sufficient knowledge with regard to the nature of the document that they were executing, and that additionally, no challenge was made to the registration of the document, immediately after its execution. The first appellate court took note of the deposition of Shri Vasant Bhagwantrao Pandav (PW1), who had deposed that the adoption deed had

been scribed, and that the signatures of the parties and witnesses to the deed had been taken on the same, only after the contents of the said documents had been read over to Smt. Laxmibai, the adoptive mother, and then to all parties present, Smt. Laxmibai, appellant-plaintiff was in good health, both physically and mentally, at the time of the adoption. The validity of the adoption deed, however, was being challenged on the basis of the mere technicality, that only interested witnesses had been examined and the court finally rejected the authenticity of the said document, observing that witnesses who wanted to give weight to their own case, could not be relied upon.â¬ \235

10. Over and above the said facts what we also find is that after the adoption deed was executed, the defendant-appellant had instituted

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a suit namely, Civil Suit No. 257 of 1997 against Nanuwa for a declaration that he is the owner of the suit property. The said declaration was sought for the purpose of mutation. Nanuwa appeared in the said suit and did not contest the claim of the defendant-appellant. In fact, Nanuwa had filed a written statement admitting the factum of adoption.

11. All the aforesaid facts, in our considered view, can lead only to one conclusion, namely, that the learned Trial Court and the First Appellate Court were perfectly justified in dismissing the suit of the respondent-plaintiff. The High Court in second appeal ought not to have disturbed the said findings and conclusions, particularly in the light of the overwhelming evidence on record as noticed by us above.

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12. For the aforesaid reason, the impugned judgment and order of the High court is set aside. The appeal is allowed accordingly.

.....J.
[RANJAN GOGOI]

.....J.
[PRAFULLA C. PANT]

NEW DELHI,
JANUARY 19, 2016.

ITEM NO.7 COURT NO.7 SECTION IVB

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 17186/2010

(Arising out of impugned final judgment and order dated 26/03/2010 in RSA No. 446/1987 passed by the High Court Of Punjab & Haryana At Chandigarh)

BIJENDER & ANR Petitioner(s)

VERSUS

RAMESH CHAND & ORS. Respondent(s)

(With appln. (s) for exemption from filing O.T. and permission to file additional documents and interim relief and office report)

Date :19/01/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Ms. Indu Malhotra, Sr. Adv.
Mr. Gagan Gupta,Adv.

For Respondent(s) Mr. Ansar Ahmed, Adv.
for Mr. Shakeel Ahmed,Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Consequently, applications for exemption from O.T. and permission to file additional documents are disposed of.

[Charanjeet Kaur] [Asha Soni]
A.R.-cum-P.S. Court Master
[Signed order is placed on the file]