

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 10200 OF 2010**

SAJJAN SINGH AND ORS.

... APPELLANT(S)

VERSUS

ANOKHILAL AND ORS.

..RESPONDENT(S)

**ORDER**

1. In this appeal, the Appellant assails the judgment passed by the High Court of Madhya Pradesh at Indore in Second Appeal No. 263/1997 whereby and whereunder the judgment and decree of the First Appellate Court in Civil Appeal No. 12-A of 1995 was reversed and the judgment and decree of the Trial Court in Civil Suit No. 168/1990 passed by the Civil Judge, Class-I, Shujalpur, Shajapur, Madhya Pradesh was restored.

2. Heard learned counsel appearing for the Appellant and also the learned counsel appearing for the respondents.

3. We succinctly state the relevant facts, as hereunder:

One Balwant Singh got two sons by name Ganpat and Kanhaiya Lal. The subject matter of the *lis* that culminated in the impugned judgment is the partition of the properties left behind by Ganpat. Muniyabai was his wife and Ajudhyabai and Parvat were the children of the said couple. Parvat, his wife and children pre-deceased their parents and sister. Ganpat died in the year 1940

and he was then survived by his widow Muniyabai and his daughter. Thereafter, Ajudhyabai pre-deceased her mother in 1978, and Muniyabai, the widow died on 18.06.1979.

4. Kanhaiya Lal, the brother of the deceased Ganpat, had two sons viz., Devbaksh and Makhan Singh. In other words, they are the nephews of the deceased Ganpat. Makhan Singh filed Civil Suit No.168-A/90 (Original Civil Suit No.179-A of 1980), which is a suit for partition and delivery of possession of the suit schedule properties. Defendant No.2 is his brother Sri Devbaksh and Defendant No.1 and 4 are the grandsons of Defendant No.2. They filed the captioned appeal and during the pendency the second appellant viz., Defendant No.2 breathed his last and consequently, Ram Prasad who is his son and also the father of Defendant Nos.1 and 4, was got substituted as per order dated 23.11.2010. The respondents herein are the legal representatives of deceased Makhan Singh, the original plaintiff and in fact, they were the appellants before the High Court. Hereafter, in this order the parties are referred to in accordance with their rank and status in the Civil Suit unless otherwise specifically mentioned.

5. Defendant Nos. 1 and 2 jointly filed written statement and the 4<sup>th</sup> defendant filed a separate written statement. However, in essence, they reiterated the same claims and contentions. It is their case that as per Ex. D-1 widow of Ganpat adopted Mohan Lal, the 4<sup>th</sup> defendant and Ajudhyabai daughter of Muniyabai

adopted Sajjan Singh (the first defendant) as per Ex. D-2. In short, they contended that being the adopted sons, they alone are entitled to the suit schedule properties as the respective legal representatives of deceased Muniyabai and deceased Ajudhyabai.

6. After considering the rival pleadings and contentions, the Trial Court formulated the issues in regard to adoption and also partition. Eventually, after appreciating the evidence on record, the Trial Court arrived at the conclusion that essential ceremonies in terms of the provisions of Section 11 of the Hindu Adoptions and Maintenance Act, 1956 (for short, "the Act"), more particularly, pertaining to giving and taking of children to be adopted, were not performed in accordance with the statutory mandate. That apart, it was found that the consent of the mother of the persons who were said to have been adopted, was also not obtained for adoption and thereby Section 9(3) of the Act was also not complied with. For arriving at such conclusions and findings, the Trial Court took note of the contradictions and incongruities in the evidence of the defence witnesses, namely, DW-1-Ram Prasad, who is the father of the defendants no. 1 and 4, the persons said to have been adopted and that of DW-5 Kailash Narayana Sharma. Mainly, it was found that DW-1 stated during his examination that exhibits D-1 and D-2 (adoption deeds) were registered and adoption ceremonies were performed only subsequently and that DW-5 deposed to the effect that it was he who put the children to be adopted into the laps of Muniyabai and Ajudhyabai. It was found that giving and taking in adoption of the children was not done in terms of the statutory mandate. So also, it was found that though the wife of DW-1 Ram Prasad who is the mother of Defendant Nos.1 and 4 was then alive nothing was

brought in evidence to establish that she gave consent for giving her sons in adoption. Suffice it to say that based on such findings it was held that the adoption was bad in law and consequently the question of entitlement of partition of the properties was considered. It is found that since the adoption was held as invalid, the plaintiff Makhan Singh and defendant No.2, being the brothers of the deceased Ganpat, alone are entitled to be his successors. Consequently, it was held that suit schedule properties are liable to be partitioned and the plaintiff is entitled to get possession of half share.

7. Aggrieved by the judgment and decree, the defendants Nos.1, 2 and 4 therein preferred Civil Appeal No. 12-A/95. The first Appellate Court, on re-appreciation of the evidence, arrived at the conclusion that the adoption of defendant Nos. 1 and 4 was valid and they are the only persons entitled to the suit scheduled properties. In that view of the matter, the first Appellate Court reversed the judgment and decree of the Trial Court.

8. Being aggrieved by the reversal of the judgment of the Trial Court, the legal representatives of the original plaintiff, preferred the Second Appeal, which culminated in the impugned judgment whereunder the judgment and decree of the trial Court was restored upon reversal of the judgment and decree of the First Appellate Court. A perusal of the impugned judgment would reveal that the High Court framed three substantial questions of law and after appreciation of evidence, answered the questions of law in favour of the appellants, who are the legal representatives of the original plaintiff.

9. The learned counsel for the Appellants herein would submit that the High Court committed an error in reversing the judgment of the first Appellate Court. It is submitted that the first Appellate Court properly appreciated the entire evidence and came to the rightful conclusion that the ceremonies which are mandatory to be performed in terms of the provisions under the Act, were performed and consequently held that being the adopted sons of the legal heirs of deceased Ganpat, Murti and Aditya, Defendant no. 1 and Defendant No. 4, are entitled to the suit scheduled properties.

10. We have given our anxious consideration to the rival contentions. There cannot be any doubt with respect to the position that in order to hold adoption deeds, valid in terms of the provisions under the Act, the ceremonies that are mandatory to be performed in terms of the provisions under the Act should have been performed. Since the adoption said to have been occurred in the year 1976, the consent of the mother of the persons to be given in adoption should have been obtained for adoption in terms of the provisions under Section 9 (2) of the Act. The High Court found that there is absolutely no recital in Exhibit D-1 and D-2 to the effect that the mother of DW-1 and DW-4 had given her consent for adoption. In this context, it is to be noted that the mother of DW-1 and DW-4 was not examined. That apart, the High Court did not find any reason to dissent with the findings of the Trial Court that in view of the contradiction in the deposition of DW-1 and DW-5, it cannot be said that there occurred taking and giving of the persons in adoption of DW-1 and DW-4. In short, while answering the questions

of law, the High Court found that on proper appreciation of evidence, the Trial Court arrived at the conclusion that the mandatory ceremonies qualifying a valid adoption were not performed. Resultantly, the High Court reversed the judgment of the first Appellate Court and restored the judgment and decree of the Trial Court. The conclusions arrived at, as above, based on factual findings are plausible. We do not find any reason at all to interfere with the factual findings of the Trial Court, which were confirmed by the High Court on proper appreciation, taking note of the grounds of interference by the First Appellate Court.

11. In the aforesaid circumstances, the impugned judgment of the High Court, reversing the judgment of the first Appellate Court and restoring the judgment and decree of the Trial Court requires no interference. Resultantly, the appeal stands dismissed.

12. Pending application(s), if any, stands disposed of.

.....J.  
**(C.T. Ravikumar)**

.....J.  
**(Sudhanshu Dhulia)**

**New Delhi**  
**11<sup>th</sup> October, 2023**

ITEM NO.111

COURT NO.14

SECTION IV-C

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

Civil Appeal No(s). 10200/2010

SAJJAN SINGH & ORS.

Appellant(s)

VERSUS

ANOKHILAL . & ORS.

Respondent(s)

Date : 11-10-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE C.T. RAVIKUMAR  
HON'BLE MR. JUSTICE SUDHANSHU DHULIA

For Appellant(s) Mr. Raj Kishor Choudhary, AOR  
Mr. Shakeel Ahmed, Adv.  
Ms. Prathiba Singh, Adv.  
Mr. Nakul Chaudhary, Adv.  
Mr. Amir Kaleem, Adv.  
Mr. Puneet Jaiswal, Adv.

For Respondent(s) Mr. Mahesh Srivastava, Adv.  
Mr. Ranjan Dwivedi, AOR  
Mr. Vaibhav Manu Srivastava, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The Civil Appeal is dismissed of in terms of the signed order placed on file.

(HEMALATHA MOHAN)  
P.S. to REGISTRAR

(RAM SUBHAG SINGH)  
COURT MASTER (NSH)