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Court No. - 49

Case :- WRIT - B No. - 10320 of 1983

Petitioner :- Ashok Kumar

Respondent :- D.D.C.

Counsel for Petitioner :- Rajeshwar Tiwari,Dipendra Kumar,Faujdar Rai,O.P. Mishra,Pradeep Kumar Rai

Counsel for Respondent :- S.N.Singh,R.N.Singh,Rahul Sahai,SC

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Pradeep Kumar Rai, learned counsel for petitioner and Sri Somitra Anand, Advocate, holding brief of Sri Rahul Sahai, learned counsel for contesting respondents.

2. Present proceedings are arising out of objections filed under Section 9-A(2) of U.P. Consolidation of Holdings Act. Petitioner filed objection on basis of a registered adoption deed dated 12.05.1967, whereas other two objections were filed on basis of an unregistered will and on basis of inheritance.

3. The Consolidation Officer by an order dated 25.04.1977 rejected objections filed by the petitioner and held that adoption proceedings were not legal and were not in accordance with law so much as that adoption deed was not signed by adopted mother, therefore, a mandatory condition was not complied with. Similarly, objections on basis of an unregistered will was also rejected. Objection on basis of inheritance was only accepted. Findings returned in regard to adoption are reproduced hereinafter :-

*"एडप्शन के प्रमाण में रजिस्टर्ड गोदनामा दस्तावेज दिनांक **09.08.67** प्रस्तुत है। साथ ही एक फोटो जिसे गोदनामा भी फोटो बताया जाता है, भी दिया गया है। इस पर भवनेश्वर सिंह सुबेदार सिंह तथा उनकी पती के हस्ताक्षर है एवं अंगूठा निशान है। राम नरेश, सुदर्शन व राम लक्षन के गवाह की हैसियत से हस्ताक्षर है किन्तु एस०आर० के समक्ष पहचान के समय केवल राम नरेश व सुदर्शन उपस्थित है। साक्ष्य में भी यही दो गवाह आये। इनकी निष्पक्षता के सम्बन्ध में ऊपर निष्कर्ष निकाले जा चुके है। ऐस०आर० ने अपनी तसदीक में स्पष्ट किया है कि भुवनेश्वर सिंह पालकी के अन्दर से दस्तावेज को स्वीकार किया। इस प्रकार वे उस समय काफी कम जोर थे उपरोक्त परिस्थितयों, गोदनामों की कार्यवाही संदिग्ध बनाती है। इस मुकदमा में प्रस्तुत अशोक आदि ने भी यह अपने बयान में स्पष्ट किया है कि ब्रम्हदेव जो सूबेदार के भाई थे, गोदनामें की कार्यवाही के समय उपस्थित थे। गोदनामें के फोटो में उनका चित्र सूबेदार के बगल में है। एस०पी० के प्रमाण पत्र तथा उसके बयान से स्पष्ट है कि ब्रह्मदेव जो पश्चिमी बंगाल में हुगली जिले में कान्स्टेबुल थे । दिनांक **12-5-67** से **14-5-67** तक अवकाश पर नहीं थे। गोद की कार्यवाही जैसा कि गवाहों ने बयान किया है कि तथा गोदनामा दस्तावेज में अंकित है। दिनांक **12-5-67** को हुई। बताया जाता है। इस तरह एक संदेहास्पद स्थिति पुनः सामने आती है या तो गोदनामा की कार्यवाही दिनांक **12-5-67** से **14-5-67** के पहले या बाद हुई इससे एक निष्कर्ष और निकाला जा सकता है कि गोदनामा का फोटो बाद में सबूत के लिए बनाया गया ।*

गोद के प्रमाण में जो फोटो दिया गया है उसकी तसदीक फोटोग्राफर द्वारा नहीं करायी के सम्बन्ध में पूजा पाठ की कार्यवाही में लगे पंडित व नाऊ आदि को न ही गोद के सत्यापन के लिए साक्ष्य में प्रस्तुत किया गया है और न फोटो मे बताया गया है।

16 हिन्दू एजाप्शन एक्ट मेंटिनेन्स एक्ट में पंजीकृत गोदनामा के दस्तावेज से गोद के सम्बन्ध में प्रिजम्पशन करने का प्राविधान अवश्य है किन्तु गोद का दावा करने वालों पर तब भी तथा इससे पक्ष इसे रीबूट इसे साबित करने का भार अदालत रहता है क्योकि कर सकता है। उदक्षत धारा के अनुसार केवल वह प्रीज्यूम किया जा सकता है कि हिन्दू एडप्शन एक्ट मेन्टीनेन्स एक्ट के प्राविधानो के अनुसार गोद की कार्यवाही हुई है। इसके अतिरिक्त कपिलदेव आदि की ओर से इस गोदनामें के विरूद्ध जो साक्ष्य एवं सबूत प्रस्तुत है तथा गोदनामा के दस्तावेज एवं गवाहों के साक्ष्य है उससे गोदनामा काफी संदेहास्पद स्थित हो गयी है। इस प्रकार यदि दस्तावेज के रजिस्टर्ड होने के कारण यदि गोदनामा के सम्बन्ध में ही लिया जाय तो भी विवादित तथ्यों के आ जाने पर अशोक की ओर से गोदनामा को साबित करना चाहिए था। किन्तु इसे उनकी ओर से साबित नहीं किया जा सकता है।

***11** हिन्दू एडाप्शन एण्ड मेन्टीनंस एक्ट के अनुसार गोद की वैधता के लिए यह आवश्यक है कि गोद में लिया जाने वाले बच्चो को दोनों लेने व देने वाले माता व पिता वास्तव में दे लेवे इस मुकदमा में जो फोटो दिया गया है, उसमें स्पष्ट नहीं होता कि देने वाले सूबेदार व उनकी पत्नी ने बच्चो को दिया है। फोटो में जिसे गोद का प्रमाण बताया जाता है, में केवल सूबेदार बच्चों को पकडे हुए दिखाई देते है। उनकी पत्नी उनके साथ इसमें शरीक दिखाई नहीं देती। इसी*

*प्रकार भूवनेश्वर व उनकी पत्नी को लेते हुए दिखाई नहीं आये है। गोदनामा दस्तावेज पर केवल सूबेदार की औरत का अंगूठा निशानी बताया जाता है। भुवनेश्वर की पत्नी का अंगूठा निशान या हस्ताक्षर नहीं है। इस प्रकाश धारा **11** के उप खण्ड **6** का पालन नहीं हुआ। गोद में अवैधता का दोष है तथा गोद साबित नहीं है।"*

4. In aforesaid circumstances, the petitioner as well as other filed two appeals before Assistant Settlement Officer Consolidation. The Appeal of petitioner was allowed by an order dated **10.11.1982,** that registered adoption deed was valid document and adoption was carried out by a due legal process. A registered document carries presumption unless rebutted. The relevant part thereof so far as adoption is concerned is reproduced hereinafter :-

*"मैने विद्वान अधिवक्ताओं की बहस सुनी तथा पत्रावली पर आए सबूत के अवलोकन से इस निष्कर्ष पर पहुँचा कि पत्रावली पर आए कागजी व जबानी सबूत श्रीमती शिव कुमारी व हरमुनिया भुवनेश्वर सिंह की लड़की साबित है। हरमुनिया के राजेन्द्र प्रसाद सिंह लड़के है। नकल पैदाइश रजिस्टर दाखिल है इसमें भुवनेश्वर सिंह के एक लड़की **25.08.31** की और दूसरी **13.03.34** की पैदा दिखाई है। रजिस्टर दाखिल खारिज में शिव कुमारी व हरमुनिया भुवनेश्वर सिंह की लड़की दर्ज है। बैजनाथ सिंह रामगहन तथा हरमुनिया के इस सम्बन्ध में बयान हुआ है। दूसरी ओर से इसके विरूद्ध कोई सबूत दाखिल नहीं है। ब्रम्हा शंकर की तरफ से जो वसीयत दिनांक **30.01.67** की दाखिल की गयी है, वह रजिस्ट्रीशुदा दस्तावेज नहीं है। इसमें लिखने की तारीख को मशकूक किया गया है। यह तारीख दूसरी रोशनाई से लिखी गयी है। इस दस्तावेज के आधार पर मकुदमा चलने के काफी बाद में आपत्ति दायर की गई है। इन परिस्थितियों में इन दस्तावेज संदिग्ध है तथा वैध नहीं माना जा सकता। जहां तक गोदनामें का प्रश्न है , यह गोदनामा रजिस्ट्रीशुदा दस्तावेज है। इस पर गोद लेने वाले एवं देने वाले के दस्तखत है। इसलिए धारा **16** हिन्दू एडाप्शन एवं मेन्टीनेंस एक्ट के अनुसार इसको वैध माना जाएगा जब कि इसे अवैध न साबित किया जाय यह जिम्मेदारी दूसरी पक्ष की थी। इस दस्तावेज को अवैध साबित नहीं किया जा सकता है। रजिस्ट्रार के समक्ष भुवनेश्वर सिंह ने इसको स्वीकार किया है। भुवनेश्वर सिंह के कमजोर होने से यह दस्तावेज संदिग्ध नहीं माना जा सकता। गोदनामे की रसम भी हुई है, जिसका फोटो कराया गया है। इस फोटो को गवाहान ने साबित किया है। यह **12-5-67** को होना बताया गया है। दूसरा पक्ष इस आधार पर इसे फर्जी कहता है कि इसमें ब्रम्हदेव सिंह भी है जो उस दिन छुट्टी पर नहीं थे परन्तु **7-5-67** का जारी किया हुवा सुपरिन्टेन्डेन्ट आफ पुलिस पश्चिमी बंगाल का सटफिकेट है, जिसमें **7** दिन की छुट्टी ब्रम्हदेव सिंह को स्वीकार की गयी है। एडवोकेट कमिश्नर द्वारा **3-4-76** को एस०पी० हुगली का बयान दर्ज किया गया है। यह बयान पत्रावली पर दाखिल*

है। इसमें कहा गया है कि ब्रम्हदेव सिंह इस तारीख को अर्जित अवकाश पर नहीं थे परन्तु आकस्मिक अवकाश के सम्बन्ध में कोई कागजात उपलब्ध नहीं पाए गये। भले ही ब्रम्हदेव सिंह अवकाश पर थे या नहीं परन्तु जो फोटो दाखिल किया गया है, उसमें ब्रम्हदेव सिंह हैं। छुट्टी पर होने या न होने से इसको फर्जी नहीं माना जा सकता । इस फोटो को गवाहान ने साबित किया है।

इन परिस्थितियों में गोदनामें की कार्यवाही साबित है तथा गोद का दस्तावेज वैध है। इसके आधार पर अशोक कुमार सिंह ही भुवनेश्वर सिंह का दत्तक पुत्र है। अन्य आपत्ति कर्ताओं को कोई हक नहीं मिल सकता।"

5. The contesting respondents thereafter filed a revision petition before the Board of Revenue and by order dated **02.07.1983,** which was allowed and order passed by Settlement Officer Consolidation was set aside and claim of petitioner on basis of registered adoption deed was rejected. Wife of Bhuneshwar Singh (adopted father) has not signed on adoption deed. The findings returned that adoption deed was not proved. The relevant part thereof is reproduced hereinafter :-

*"श्री अशोक कुमार सिंह स्वयं को मृतक भुवनेश्वर का दत्तक पुत्र बताते हैं । उनके कथन के समर्थन में सुदर्शन सिंह व रामनरेश सिंह व सुवेदार सिंह का बयान हुवा है। साक्ष्यों से स्पष्ट है कि सामनरेश व कपिल देव से दुश्मनी है। दोनों में मुकदमेबाजी हुई है। सुदर्शन ने स्वयं स्वीकार किया है कि अन्य मुकदमों में उन्होंने कपिलदेव आदि के विरुद्ध गवाही दी है। सुवेदार अशोक कुमार के पिता है। इनकी गवाही स्वभावतः इन्टरेस्टेड गवाही है। उक्त गवाहों के बयान के अतिरिक्त गोदानामा के प्रमाण में रजिस्ट्रीशुदा गोदनामा दिनांक **9-8-67** प्रस्तुत किया गया है । तवा साथ ही साथ एक फोटो प्रस्तुत किया गया है। जिसे गोदनामा में का फोटो बताया जाता है। गोदनामें पर भुवनेश्वर सिंह तथा सुवेदार सिंह के पत्नी के हस्ताक्षर है एवं अंगूठा निशानी है। राम नरेश, सुदर्शन राम लखन के गवाह की हैसियत से हस्ताक्षर है। सब रजिस्ट्रार के समक्ष पहचान के समय केवल राम नरेश व सुदर्शन उपस्थित हुए हैं। अधीनस्थ न्यायालय में भी इन्हीं लोगों ने गवाही की है। तब रजिस्ट्रार ने अपने तस्दीक में उल्लेख किया है कि भुवनेश्वर ने पालकी के अन्दर से दस्तावेज को स्वीकार किया । अशोक कुमार के गवाहों ने अपने बयान में स्पष्ट किया है कि ब्रम्हदेव जो सुवेदार के भाई है , गोदनामा में की कार्यवाही के समय उपस्थित थे। गोदनामे के फोटो पर उनका चित्र है, जो सुवेदार के बगल मे है। पुलिस अधीक्षक का प्रमाण पत्र तथा उनके ब्यान से स्पष्ट है कि ब्रम्हदेव पश्चिम बंगाल में हुगली जिले में कान्स्टेबुल थे । इस प्रकार गोदनामा में को साबित करने के लिए गवाहों का ब्यान कराया गया है। फोटोग्राफ में ब्रम्हासिंह सुवेदार के बगल में है। पुलिस अधीक्षक का स्थान कमीशन के जरिए लिया गया। ब्यान से स्पष्ट होता है कि ब्रम्हा सिह दिनाँक **12-***

5-67 से 14-5-67 तक कोई अवकाश पर नहीं थे। गोदनामा की कार्यवाही दिनांक 12-5-67 को हुई । इस प्रकार एक सन्देहास्पद स्थिति सामने आ जाती है। या तो गोदनामा की कार्यवाही दिनांक 12-5-67 से 14-5-67 के पहले या बाद में हुई हो। जब ब्रम्हदेव दिनाँक 12-5-67 से 14-5-67 तक अवकाश पर नहीं थे तो दिनांक 12-5-67 को वह गोदनामा के समय उपस्थित कैसे हो सकते हैं ।

निगरानीकर्तागण के विद्वान अधिवक्ता ने यह बहस किया कि पुलिस अधीक्षक का बयान ठीक नहीं हुआ है। अतः उसे मानना न्यायसंगत न होगा । लेकिन पुलिस अधीक्षक का बयान बजरिये कमीशन हुआ है और एक अधिकारी के बयान को न मानने का कोई कारण समक्ष में नहीं आता है इससे स्पष्ट है कि जो फोटो दाखिल किया गया है, वह सम्भवतः किसी धार्मिक अनुष्ठान का फोटो है, जिसमें सभी लोग उपस्थित थे और बाद में सम्भवतः सबूत बनाने के लिए इसे दाखिल कर दिया गया हो । जहाँ तक गोदनामा का सवाल है, धारा 16 हिन्दू एडाप्शन एक्ट में पंजीकृत गोदनामा के सम्बन्ध में प्रीजम्पशन करने का प्राविधान अवश्य है किन्तु यह भी उल्लिखित है कि गोदनामा का दावा करने वाले की उसे निर्विवाद रूप से साबित करने का तथा अन्य पक्षों को खिलाफत करने का अधिकार है। मेरे समक्ष ए०डब्लू०सी० 1981, पृष्ठ 204 पर उल्लिखित माननीय उच्च न्यायालय की व्यवस्था प्रस्तुत की गयी इस व्यवस्था में यह उल्लेख है कि यदि गोद लेने वाले व गोदनामा देने वाले ने गोदनामा में पर हस्ताक्षर किया है तो गोदनामा में की रस्म सावित करने के लिए अन्य सबूत देने की जरूरत नहीं है । 1977 ए०आई०वार० पृष्ठ ।। पर प्रदत्त व्यवस्था का हवाला निगरानीकर्ता गण की ओर से दी गयी और कहा गया कि जब तक दस्तावेज अवैध साबित नहीं हो, उसे मानना होगा। इस आधार पर विद्वान अधिवक्ता ने यह तर्क किया कि दस्तावेज गोदनामा में को वैध मानकर अग्रिम कार्यवाही करना न्याय संगत होगी ।

परन्तु गोदनामे का ध्यानपूर्वक अवलोकन करने से विदित होता है कि सभी पक्षों के गोदनामें पर हस्ताक्षर नहीं है। प्रस्तुत स्थल पर गोदनामें के समय भुवनेश्वर सिंह की पत्नी के हस्ताक्षर गोदनामें पर नहीं है जब कि साक्ष्यों से स्पष्ट है कि भुवनेश्वर की पत्नी दस्तावेज गोदनामा लिखने के समय जीवित थी सूबेदार सिंह अशोक कुमार की गवाही में शामिल भी हुए थे। ऐसा परिस्थिति में उनका हस्ताक्षर गोदनामा पर अनिवार्य है । मुनेश्वर की पत्नी के गोदनामा में पर हस्ताक्षर न होने के कारण गोदनामा में की प्रक्रिया विधानतः दूषित हो जाती है और यह धारा ।। के उप खण्ड 6 का उल्लंधन है। इसके अतिरिक्त कपिलदेव आदि की ओर से इस गोदनामें के विरुद्ध जो साक्ष्यादि प्रस्तुत हैं , उससे स्थिति काफी सन्देहास्पद हुई है और ऐसी परिस्थिति में अशोक कुमार की ओर से निर्विवाद रूप से गोदनामा साबित करना चाहिए था । उत्तरवादीगण की ओर से 1956 ए०आई०आर० पृष्ठ 504, किशोरी लाल बनाम मु० चलती बाई वाद में उल्लिखित माननीय सुप्रीम कोर्ट की व्यवस्था प्रस्तुत की गयी है, जिसमें यह उल्लेख है कि चूंकि गोदनामें के फलस्वरुप सारा स्वत्त्व और अधिकार दूसरे बच्चे में स्थानान्तरित हो जाता है, गोदनामा में को निर्विवाद रुप से साबित होना आवश्यक है। प्रस्तुत स्थल पर ब्रम्हदेव का गोदनामे के समय उपस्थित होना, लेकिन स्वयं उनका अवकाश पर न होना, फोटो का फोटोग्राफ आदि का तसदीक न करवाना, भुवनेश्वर की पत्नी द्वारा गोदनामें पर हस्ताक्षर न करना तथा गोदनामें

को ग्राम के पुरोहित तथा नाई आदि से साबित न करवाना यह सारी की सारी परिस्थितियां गोदनामें की पूरी कार्यवाही को विवादग्रस्त बना देता है और विवादग्रस्त परिस्थिति में गोदनामा को स्वीकार करना न तो न्याय संगत ही कहा जा सकता है और न ही युक्तिसंगत कहा जा सकता है ।

*अशोक कुमार की ओर से वरासत के प्रश्न पर तहसीलदार के आदेश दिनांक **26-6-76** की नकल प्रस्तुत की गयी है। यह आदेश सुपरवाइजर कानूनगो का है। इसे न्यायिक आदेश नहीं माना जा सकता। इस प्रकार की प्रविष्टियों का वरासत के प्रश्न पर निर्णय लेते समय कोई महत्व नहीं है । इस प्रकार गोदनामा के आधार पर विशेषकर उस परिस्थिती मे जब कि गोदनामा संदिग्ध है, अशोक कुमार के पक्ष में कोई आदेश प्रदत्त करना न्यायसंगत नहीं प्रतीत होता । निगरानी स्तर पर मेरे समक्ष मुकदमा नम्बर **282/77** सरकार बनाम रामदाहिन धारा **380** भा०दं०वि० व अदालत मुंसिफ मजिस्ट्रेट पूर्वी मैं दिए गए सूबेदार सिंह के ब्यान की नकल प्रस्तुत की गयी है, जिसमें सूवेदार सिंह ने कहा है कि गोदनामा कब हुआ, इसकी जानकारी उसे नहीं है। कहाँ पर हुआ, इसकी जानकारी उसे नहीं है। गोदनामा का संस्कार मेरे सामने नहीं हुवा। मुझे रामगहन की गवाही के बावत तथा मुकदमा होने के बावत कोई जानकारी नहीं है। उल्लेखनीय है कि अशोक कुमार श्री सूवेदार सिंह के पुत्र हैं। स्वयं सूबेदार सिंह के इस बयान से भी गोदनामे की परिस्थितियां अत्यन्त संदिग्ध हो जाती हैं। सूबेदार सिंह ने स्वयं अपने बयान में कहा है कि इनके सामने गोदनामें की रसम पूरी नहीं हुई थी। उनकी इस स्वीकारोक्ति के समक्ष गोदनामें के सम्बन्ध में दिए गए सारे के सारे प्रमाण निरर्थक हो जाते है। इस प्रकार गोदनामा मान्य नहीं कहा जा सकता।*
"

6. The aforesaid order is challenged at the behest of petitioner in present writ petition. This Court by an order dated 26.08.1983 granted stay, however, by an order dated 25.09.1992, stay application was rejected since no one has appeared on behalf of petitioner and according to further order-sheet, it appears that interim order was later on granted.

7. Sri Pradeep Kumar Rai, learned counsel for petitioner submitted that adoption was carried out in a due process and witnesses have specifically stated that procedure was followed and since it was a registered document as such it has a presumption of its correctness. He further submitted that Board of Revenue has erroneously emphasised that photograph of Brahma Shankar Singh during the adoption was not possible

since on that date he was on duty in West Bengal, however, a certificate from concerned Police Authority shows that he was on leave on particular date on a special ground.

8. Learned counsel further submitted that adopted father and mother of petitioner were not alive during objections and biological father of petitioner has recorded his statement that in his presence adoption proceedings were carried out, with consent of adopted father and mother in presence of number of persons and after Puja and Ceremony, a Bhoj was also organized.

9. Per contra, Sri Somitra Anand learned counsel for contesting respondents submitted that adoption deed has to be proved in terms of provisions provided under the Maintenance and Adoption Act 1956 and consent of wife of a male who adopts a child was mandatory as well as there must be proof of ceremony of actual giving and taking adoption. However, in the present case, signature of adopted mother was neither on adoption deed nor she was present at the time of its registration. Adopted father has given his consent while sitting in a 'Palki' at the time of registration.

10. Learned counsel further referred findings returned by Board of Revenue that on basis of evidence of biological father, adoption procedure could not be proved. In photographs of ceremony placed on record, adopted mother was not seen as well as witnesses produced were interested. The other relevant witnesses such as 'Pandit and Nau' were not even produced.

11. I have considered the above submissions and perused the record. Before considering the rival submission, few paragraphs

of a judgment passed by this Court in case of **Uttam Chandra and 2 others Vs. State of U.P. and 10 others, 2023:AHC:225752** would be relevant, wherein judgments of Supreme Court in **M. Vanaja Vs M. Sarla Devi(Dead), (2020) 5 SCC 307**, **Moturu Nalini Kanth Vs. Gainedi Kaliprasad (Dead, Through Lrs.), (2023) SCC OnLine SC 1488** were followed and its relevant paragraphs are mentioned hereinafter:-

M. Vanaja (supra) :-

> *"**13.** Section 6 of the 1956 Act, prescribes the prerequisites for a valid adoption, which are:*
>
> > *"**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."*
>
> ***14.** Section 7 provides that the male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. The consent of his wife has been made mandatory by the proviso to Section 7. Section 9 deals with persons who are capable of giving a child in adoption. The other conditions for a valid adoption are stipulated in Section 11 of the 1956 Act. One such condition is Section 11(vi) which is as under:*
>
> > *"**11. Other conditions for a valid adoption.—**...*
> >
> > *****
> >
> > *(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 datta homan shall not be essential to the validity of an adoption."

15. *A plain reading of the above provisions would make it clear that compliance of the conditions in Chapter I of the 1956 Act is mandatory for an adoption to be treated as valid. The two important conditions as mentioned in Sections 7 and 11 of the 1956 Act are the consent of the wife before a male Hindu adopts a child and proof of the ceremony of actual giving and taking in adoption. The appellant admitted in her evidence that she does not have the proof of the ceremony of giving and taking of her in adoption. Admittedly, there is no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. That apart, the respondent who is the adoptive mother has categorically stated in her evidence that the appellant was never adopted though she was merely brought up by her and her husband. Even the grandmother of the appellant who appeared before the Court as PW 3 deposed that the appellant who lost her parents in her childhood was given to the respondent and her husband to be brought up. PW 3 also stated in her evidence that the appellant was not adopted by the respondent and her husband. Therefore, the appellant had failed to prove that she had been adopted by the respondent and her husband Narasimhulu Naidu.*

16. *The appellant relied upon a judgment of this Court in L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] to submit that abundant evidence submitted by her before the Court would point to the fact that she was brought up as the daughter of the respondent and her husband (Late) Narasimhulu Naidu. Such evidence can be taken into account to draw inference that she was adopted by them. The facts in L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] are similar to those in the instant case. In that case, Shyam Behari Lal was adopted by Gopal Das in the year 1892 when he was an infant. Shyam Behari Lal was unable to establish the actual adoption but has produced considerable*

documentary evidence to show that he was treated as the son of Gopal Das for a quarter of century. This Court accepted the submission of Shyam Behari Lal and held that there was sufficient evidence on record to infer a valid adoption. Though the facts are similar, we are unable to apply the law laid down in L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] to the instant case. L. Debi Prasad [L. Debi Prasad v. Tribeni Devi, (1970) 1 SCC 677] case pertains to adoption that took place in the year 1892 and we are concerned with an adoption that has taken place after the 1956 Act has come into force. Though the appellant has produced evidence to show that she was treated as a daughter by (Late) Narasimhulu Naidu and the defendant, she has not been able to establish her adoption. The mandate of the 1956 Act is that no adoption shall be valid unless it has been made in compliance with the conditions mentioned in Chapter I of the 1956 Act. The two essential conditions i.e. the consent of the wife and the actual ceremony of adoption have not been established. This Court by its judgment in Ghisalal v. Dhapubai [Ghisalal v. Dhapubai, (2011) 2 SCC 298 : (2011) 1 SCC (Civ) 411] held that the consent of the wife is mandatory for proving adoption.

Moturu Nalini Kanth *(supra)*: -

"36. The presumption, as is clear from the provision itself, is rebuttable. In G. Vasu v. Syed Yaseen Sifuddin Quadri' AIR 1987 AP 139, a Full Bench of the Andhra Pradesh High Court pointed out that presumptions are of two kinds - presumptions of fact and of law. It was noted that a presumption of fact is an inference logically drawn from one fact as to the existence of other facts and such presumptions of fact are rebuttable by evidence to the contrary. It was also held that presumptions of law may be either irrebuttable, so that no evidence to a contrary may be given, or rebuttable, and a rebuttable presumption of law is a legal rule to be applied by the Courts in the absence of conflicting evidence. This view was affirmed by this Court in Bharat Barrel & Drum Manufacturing Company v. Amin Chand Payrelal, (1999) 3 SCC 35, and it was held that in order to disprove a presumption, such facts and circumstances have to be brought on record, upon consideration of which, the Court may either believe that the

consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that it did not exist.

37. *In this regard, we may also note that Section 11 of the Act of 1956 stipulates the conditions to be complied with to constitute a valid adoption and, to the extent relevant, it reads as under:*

> *'**11. Other conditions for a valid adoption.** - In every adoption, the following conditions must be complied with:"*
>
> *(i) to (v) ….;*
>
> *(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 datta homam shall not be essential to the validity of adoption'*

38. *We may now take note of relevant case law. In Laxmibai (Dead) through LRs. v. Bhagwantbuva (Dead) through Lrs., (2013) 4 SCC 97, this Court held that the mere signature or thumb impression on a document is not adequate to prove the contents thereof but, in a case where a person who has given his son in adoption appears in the witness box and proves the validity of the said document, the Court ought to accept the same taking into consideration the presumption under Section 16 of the Act of 1956. Ergo, the proving of the validity of the document is a must.*

39. *Much earlier, in Kishori Lal v. Mst. Chaltibai, AIR 1959 SC 504, a 3-Judge Bench of this Court held that, as an adoption results in changing the course of succession, it is necessary that the evidence to support it should be such that it is free from all suspicions of fraud and so consistent and probable as to leave no occasion for doubting its truth. On facts, the Bench found that no invitations were sent to the*

brotherhood, friends or relations and no publicity was given to the adoption, rendering it difficult to believe.

40. *In Govinda v. Chimabai, AIR 1968 Mys 309, a Division Bench of the Mysore High Court observed that the mere fact that a deed of adoption has been registered cannot be taken as evidence of proof of adoption, as an adoption deed never proves an adoption. It was rightly held that the factum of adoption has to be proved by oral evidence of giving or taking of the child and that the necessary ceremonies, where they are necessary to be performed, were carried out in accordance with shastras.*

41. *In Padmalav Achariya v. Srimatyia Fakira Debya, AIR 1931 PC 81, the Privy Council found that a cloud of suspicion rested upon an alleged second adoption and the factum of the second adoption was sought to be proved on the basis of evidence of near relatives who were also partisan, which made it unsafe to act upon their testimonies. The Privy Council held that both the adoptions were most improbable in themselves and were not supported by contemporaneous evidence.*

42. *In Jai Singh v. Shakuntala, (2002) 3 SCC 634, this Court noted the statutory presumption envisaged by Section 16 of the Act of 1956 and observed that though the legislature had used 'shall' instead of any other word of lesser significance, the inclusion of the words 'unless and until it is disproved' appearing at the end of the statutory provision makes the situation not that rigid but flexible enough to depend upon the evidence available on record in support of the adoption. This Court further noted that it is a matter of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession - thus onus of proof is rather heavy. This Court held that the statute allowed some amount of flexibility, lest it turns out to be solely dependent on a registered adoption deed. The reason for inclusion of the words 'unless and until it is disproved', per this Court, have to be ascertained in proper perspective and as such, the presumption cannot but be said to be a rebuttable presumption. This Court further held that the registered instrument of adoption presumably stands out to be taken to be correct but the Court is not precluded from looking into it*

upon production of some evidence contra the adoption and the Court can always look into such evidence. This Court further noted the mandate of Section 11 (vi) of the Act of 1956 and held that the 'give and take in adoption' is a requirement which stands as a sine qua non for a valid adoption.

43. *In Mst. Deu v. Laxmi Narayan, (1998) 8 SCC 701, this Court observed that in view of Section 16 of the Act of 1956, whenever any document registered under law is produced before the Court purporting to record an adoption made and is signed by the persons mentioned therein, the Court should presume that the adoption has been made in compliance with the provisions of the said statute, unless and until it is disproved. It was further held that in view of Section 16 of the Act of 1956, it is open to the persons who challenge the registered deed of adoption to disprove the same by taking independent proceedings.*

44. *In Lakshman Singh Kothari v. Rup Kanwar (Smt) alias Rup Kanwar Bai, AIR 1961 SC 1378, having referred to texts on Hindu Law, this Court observed:*

> *'10. The law may be briefly stated thus : Under the Hindu law, whether among the regenerate caste or among Sudras, there cannot be a valid adoption unless the adoptive boy is transferred from one family to another and that can be done only by the ceremony of giving and taking. The object of the corporeal giving and receiving in adoption is obviously to secure due publicity. To achieve this object, it is essential to have a formal ceremony. No particular form is prescribed for the ceremony, but the law requires that the natural parent shall hand over the adoptive boy and the adoptive parent shall receive him. The nature of the ceremony may vary depending upon the circumstances of each case. But a ceremony there shall be, and giving and taking shall be part of it. The exigencies of the situation arising out of diverse circumstances necessitated the introduction of the doctrine of delegation; and, therefore, the parents, after exercising their volition to give and take the boy in adoption, may both or either of them delegate the physical act of*

handing over the boy or receiving him, as the case may be, to a third party.'

45. *In M. Vanaja v. M. Sarla Devi (Dead), (2020) 5 SCC 307, this Court took note of the relevant provisions of the Act of 1956 and held that a plain reading of the said provisions made it clear that compliance with the conditions in Chapter 1 of the Act of 1956 is mandatory for an adoption to be treated as valid and that the two important conditions mentioned in Sections 7 and 11 of the Act of 1956 are the consent of the wife before a male Hindu adopts a child and the proof of the ceremony of actual giving and taking in adoption.*

46. *In Dhanno wd/o Balbir Singh v. Tuhi Ram (Died) represented by his Lrs, AIR 1996 P&H 203, a learned Judge of the Punjab & Haryana High Court, faced with the argument that Section 16 of the Act of 1956 required a registered adoption deed to be believed, held that the presumption thereunder, if any, is rebuttable and by merely placing the document on record without proving the ceremony of due adoption, it could not be said that there was a valid adoption. The learned Judge rightly noted that the factum of adoption must be proved in the same way as any other fact and such evidence in support of the adoption must be sufficient to satisfy the heavy burden that rests upon any person who seeks to displace the natural succession by alleging an adoption."*

(Emphasis Supplied)

12. As referred above it is mandatory for an adoption to be treated as valid that two important conditions mentioned in Section 11 of Act of 1956 are present i.e. the consent of wife before male hindu adopt a child and prove of a ceremony of giving and taking adoption.

13. It is on record that adopted father and mother of petitioner died prior to proceedings. During proceedings statement of Subedar Singh (biological father of petitioner) was

recorded wherein he has stated that during adoption proceeding parents of both sides were present including the wife of adopted father, however, witnesses have stated that at the time of registration of the adoption deed, adopted mother (wife of adopted father) was not present.

14. The Court also perused the statement of Sudarshan Singh who has stated that he was witness to ceremony and parents of both sides were present and he was also a signatory to registered document, however, he has also stated that wife of Bhunshwar Singh was present during registration.

15. Similarly, other witness Ram Naresh though stated that he recognized Bhuneshwar Singh and his wife, however, not able to identify them from photographs. The said witness did not know her name (wife of Bhuneshwar Singh).

16. I have also perused the orders passed by the Consolidation Officer and that a finding was returned that adoption process was not legally followed and essential conditions were absent as wife of Bhuneshwar Singh was not visible in photographs. Even the wife of Subedar Singh (natural father) was also absent. The wife of Bhuvneswar (adopted father) has not put her signature or thumb impression on adoption deed and as such the said document was not sufficient to prove adoption.

17. The Settlement Officer Consolidation has not referred about presence of wife of adopted father and has not set aside the above referred findings returned by Consolidation Officer and only on ground that presence of Brahmdev Singh could not be doubted, disturbed the findings returned by the

Consolidation Officer. The Board of Revenue has considered the material and specifically held that a mandatory requirement was not completed since the wife of Bhuvneshwar has not even signed on adoption deed which indicates that she has not given her consent for adoption, which was a mandatory requirement. The Board of Revenue has also considered the statements of witnesses that they were not sufficient to prove the adoption ceremony.

18. In the aforesaid circumstances, it could be held without any doubt that wife of adopted father has not signed the adoption deed as well as the photographs also indicate that she has not participated in the ceremony. One witness has not even identified her in photographs, therefore, the Court is of considered opinion that mandatory requirement that person who adopts a child must have consent of his wife was absent.

19. The Consolidation Officer has returned a finding to this effect and rejected the objection of petitioner, however, without even referring to it as well as without disturbing it, the Settlement Officer Consolidation has erred in causing interference and wrongly allowed the objections of the petitioner. The said error was rightly cured by Board of Revenue and by a very detailed reasoned order has set aside the order passed by the Settlement Officer Consolidation and upheld the findings returned by the Consolidation Officer that adoption was conducted without permission and consent of wife of adopted father. She has not even signed the adoption deed, therefore, adoption was not legally valid.

20. The aforesaid findings returned by the Board of Revenue are in terms of above referred judgment **Uttam Chandra (supra)** and since there are evidence which has not been contradicted, that adoption proceedings were conducted without consent of wife of person who adopted the child, therefore, mandatory requirement was not fulfilled as well as nature of evidence has also not proved beyond reasonable doubt that ceremony of giving and taking was under taken.

21. In the aforesaid circumstances, the Court is of considered opinion that there is no reason to interfere with reasoned order passed by Board of Revenue as the mandatory requirement for valid adoption were not followed, therefore, this writ petition is **dismissed.**

22. The Court extends apology to litigants since this writ petition is being decided after more than four decades.

Order Date :- 11.12.2024
Pushpendra Pandey

[SAURABH SHYAM SHAMSHERY, J.]