

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.192 of 2011

Shobhakant Kumar @ Poddar, son of Late Ganesh Poddar, Resident of village – Bhithi, P.O. and P.S. - Sabour, District – Bhagalpur.

... .. Petitioner Appellant/s

Versus

1. Rani Devi, wife of Shobhakant Kumar @ Poddar aforesaid
2. Abhikant Poddar,
3. Abha Kumari,
4. Ansu Kumari,

All minors respectively son and daughters of Shobhakant Kumar @ Poddar aforesaid through their natural guardian and next friend Smt. Rani Devi. All of village Bhithi, P.O. and P.S. - Sabour, District Bhagalpur.

..... Opposite Parties- Respondent 1st set

5. Pritam Kumar Deepak, son of Anirudh Pd. Poddar.
6. Prahlad Poddar, son of Late Praduman Lal Poddar

resident of village – Bhithi, P.O. and P.S. - Sabour District – Bhagalpur.

..... Objector-Opposite Parties-Respondent 2nd set.

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Sr. Advocate Mr. Indeshwari Pd. Mandal, Advocate
For the Respondent/s	:	Mr. Ranjan Kumar Dubey, Advocate Mr. Rajiv Ranjan Singh, Advocate Mr. Shanti Bhushan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 14-03-2019

Heard the parties.

2. By the impugned order dated 30.11.2010 passed in
Succession Case No. 34 of 2005, the learned Fast Tract Court-1st,



Bhagalpur has refused to grant succession certificate in favour of the appellant mainly for the reason that appellant failed to prove that he is adopted son of Late Ganesh Poddar for whose property succession certificate was sought for.

3. The case of the applicant before the learned court below was that applicant-Shobhakant Kumar @ Poddar was adopted son of Late Ganesh Poddar vide registered adoption deed dated 22.10.1975 vide Ext. 1. The adoption was made by Shobhagayabati Devi, wife of Ganesh Poddar along with Ganesh Poddar. After death of Ganesh Poddar and his wife, the appellant claims to be a sole owner of his movable and immovable property.

4. Respondent No. 5 and 6 Pritam Kumar Deepak and Prahlad Poddar contested the claim of the appellant on the ground that appellant was never adopted by Late Ganesh Poddar or his wife who were issueless nor the appellant has disclosed the factum of adoption in his three earlier applications brought for grant of succession certificate in respect of the property of Late Ganesh Poddar which were dismissed for default. They further asserted that last rites were performed by nephew of Late Ganesh Poddar and not by the applicant.

5. The learned court below framed following five issues for consideration:-

(i) Whether the application as framed is maintainable?



- (ii) Whether the opposite party no. 5 and 6 have locus standi to oppose the application?
- (iii) Whether the applicant is duly and legally adopted son of the deceased father (Late Ganesh Poddar)?
- (iv) Whether the application under reference is barred by law of limitation or otherwise?
- (v) Whether the applicant is entitled to the succession certificate as asked for?

6. Learned court below considered and decided issue no. (iii) and (v) jointly and held that the appellant was not adopted son of Late Ganesh Poddar nor he is entitled for any relief.

7. The finding is based on the reason that the appellant had not stated in his earlier applications brought for issuance of succession certificate that he is adopted son of Late Ganesh Poddar. The learned court below further noticed that there is no evidence on the record to suggest as to on what date the adoption ceremony was performed. Who was the priest? Who were present at the time of adoption? Merely a certificate is no evidence of adoption.

8. Learned counsel for the appellant has challenged the finding of the learned court below as completely erroneous one arising out of misreading of evidence on the record and of the law. Learned counsel has drawn attention of the Court to the first case brought by the appellant for succession certificate which was registered as Succession Case No. 48 of 2000. The petition is



marked as Ext. E which was dismissed for non-payment of court-fee on 30.07.2003 vide order at Annexure-18. The appellant had stated in the petition that he is son of Late Ganesh Poddar. The second application was Succession Certificate Case No. 58 of 2001 marked as Ext. F which was dismissed for non-prosecution on 24.02.2003 vide order at Annexure-18A. In that application also, appellant stated that he is son of Late Ganesh Poddar. The third application was Succession Case No. 18 of 2003 at Ext. G which was dismissed for non-prosecution on 29.04.2004. In that application also, the appellant stated that he is son of Late Ganesh Poddar. Learned counsel submits that Section 12 of the Hindu Adoptions and Maintenance Act, 1956 says that 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. As such, there was no need to make statement that the appellant is adopted son or biological son of Late Ganesh Poddar.

9. I find substance in the submission of the learned counsel for the appellant that only for the reason that the appellant did not make specific averment that he is adopted son of Late



Ganesh Poddar, the learned court below should not have thrown away the application as done by the impugned order, in view of the law stated above.

10. Learned counsel for the appellant next submits that there is no requirement of performance of any rituals for adoption, save and except, actual giving and taking of the child. He further submits that the registered deed of adoption dated 22.10.1975 clearly mentions that appellant was taken in adoption by Shobhagayabati Devi, wife of Late Ganesh Poddar. The biological father of the appellant Gyandeo Poddar has also signed on the registered deed making statement that the adoption deed was executed by him which is correct one.

11. Section 16 of the Act aforesaid provides for presumption as to registered documents relating to adoption which reads as follows:

“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 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.”

12. There is no other material to disprove the aforesaid registered deed, save and except, the oral witnesses produced on behalf of respondent no. 5 and 6 who stated that adoption never



took place. The law is well settled that oral evidence cannot exclude the documentary evidence.

13. Learned counsel for the respondent no. 5 and 6 contends that Section 11(vi) of the Hindu Adoptions and Maintenance Act, 1956 requires as mandate of law that actual giving and taking in adoption by the parents or guardians concerned must take place, besides, fulfillment of other conditions mentioned in the said section. Learned counsel would submit that the registered deed of adoption nowhere states that the child was given in adoption. Only, the statement of adoptive mother is there that she took the child in adoption.

14. In my view, mere technicality cannot be allowed to come into the way of defeating the substantial justice. The biological father has signed the registered deed of adoption and has written in his pen that he signed on the adoption deed. That much is sufficient to prove that he had given the child in adoption, especially, in view of presumption of adoption on production of registered deed of adoption. Besides the aforesaid, the natural father of the appellant was examined before the learned court below as A.W. 4 wherein he specifically stated that he had given the appellant in adoption to Sobhagyawati Devi, wife of Late Ganesh Poddar. The appellant was aged about 9 to 10 years at that



time. The biological father had other sons also. Thus, a third person can not be allowed to challenge that actual giving and taking did not take place when there is statement of the person who gave the appellant in adoption and there is no denial at any stage by the adoptive parents. Besides the aforesaid, the appellant brought on the record the certificate issued by Bihar School Examination Board on 29.07.1980 which shows that appellant Shobhakant Kumar @ Poddar is son of Ganesh Poddar. The voter identity card issued by the Election Commission of India in favour of Shobhakant Poddar @ Shobhakant Singh also shows that he is son of Ganesh Poddar. In the insurance policy taken by Ganesh Poddar prior to 31.03.1997, the nominees are his wife and this appellant. Thus, there was ample documentary evidence on the record to show that the appellant was son of Late Ganesh Poddar from the date of adoption mentioned in the registered deed of adoption which is available on the record.

15. Hence, in my view, the learned court below has committed error of record in holding that there is no date of adoption. The law does not require any adoption ceremony or presence of witnesses. Only requirement is actual giving and taking and the best witness of giving has been examined before the court below. Therefore, in my view, the impugned order suffers



from error of record and misreading of law. Hence, the same is set aside and this appeal is allowed.

16. Let the Succession Certificate be issued in favour of the appellant at once.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	A.F.R
CAV DATE	N.A.
Uploading Date	15.03.2019
Transmission Date	15.03.2019

