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RAIMATI SAHUANI

v.

PANKAJA SAHU (DEAD) BY LRS. AND ORS.

SEPTEMBER 8, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

*Suit :*

C

*Suit for title and possession—Plaintiff claiming father's property—Defendant's claim based on adoption—Documentary evidence for claim—Examination of—Matter remitted to High Court.*

D

The appellant-plaintiff filed a suit for declaration of title and for possession of property belonging to her father. The respondents who were in possession of the disputed property based their claim on the ground that the first respondent-defendant was the adopted son of appellant's father. The Trial Court accepted the plea of adoption and dismissed the suit. The High Court affirmed the judgment of the Trial Court. In appeal to this Court it was contended for the appellant that the case requires reconsideration because there was no documentary evidence to establish that the first respondent-defendant was the adopted son of appellant's father. On the other hand, there was voluminous documentary evidence in proof of the appellant's case but the High Court has not adverted to the same.

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Allowing the appeal and setting aside the judgment of the High Court, this Court

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**HELD :** It is a matter to be examined in detail. This Court is not inclined to go into the facts in this case. It is appropriate that the High Court should dispose the appeal afresh after giving hearing to both the parties and decide the matter as per law. [448-C]

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**CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 8377 of 1995.

From the Judgment and Order dated 3.12.92 of the Orissa High Court in F.A. No. 106 of 1977.

H

Vinoo Bhagat, for the Appellant.

R.D. Upadhyay for the Respondents. A

The following Order of the Court was delivered :

Leave granted.

The learned counsel appearing for the respondent states that in spite of his repeated letters written to the respondents he did not receive any response. On April 21, 1995, we had given four weeks time to the counsel for the respondents at his request. Today also, he has repeated the same and requested another chance but we decline to grant further adjournment. B

We have heard learned counsel for the appellant. The appellant-plaintiff laid the suit for declaration of title and for possession. Her case is found on the undisputed fact that her father Urddhaba is owner of 88 acres of the plaint property. She claims that the respondents are not concerned with the property in whatsoever manner but remained in possession. The respondents set up the plea of adoption. Admittedly, the predecessor in interest of respondents is brother's son of the Urddhaba. The trial court accepted the plea of adoption and dismissed the suit. In First Appeal 196/77, by judgment and decree dated December 3, 1992, the learned single Judge of the High Court confirmed the decree. Hence, this appeal by special leave. C D E

The learned counsel for the appellant contended that the respondent in the written statement pleaded that Urddhaba was 50 years old when his first wife Mahadei died and his second wife had given birth to one daughter and one son who died later. He had requested his natural father, the defendant, to give adoption. As a result he became the adoptive son of Urddhaba. The first respondent claimed that he was practically adopted when he was one year old child and remained in the adopted family. The adopted father Urddhaba died in 1938. As a consequence, he claimed to have succeeded to the father's estate as a sole son. Counsel for the appellant contended that this plea is clearly unsustainable when it is taken note of is that the natural father had lost five children and the defendant being the only son, if would be highly improbable that the natural father would lose his only son and give him in adoption to Urddhaba. He also contended that from 1912 till 1950, there is no documentary evidence to establish that the defendant was an adopted son of Urddhaba. The only entry is in the electoral roll of 1950 in which his claim to be the son of F G H

A Urddhaba, which could be at any rate be a self created document. Reasons given by the courts below are clearly unsustainable. He has drawn our attention to the statement that Urddhaba was 35 years old at the time of adoption in the year 1912 and that was clearly show that Urddhaba would not be inclined to take the first respondent in adoption.

B In view of the fact that the respondent is not represented by a counsel and since it is a matter to be examined in detail, we do not feel inclined to go into the facts in this case. The learned counsel stated that there is voluminous documentary evidence in proof of the appellants case and the High Court had not adverted to the material documentary evidence and, therefore, case requires reconsideration. We deem it appropriate that the High Court would dispose the appeal afresh after giving hearing to both the parties and decide the matter as per law.

C The appeal is allowed accordingly and the judgment and decree of the High Court are set aside and matter is remitted for early disposal. No costs.

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T.N.A.

Appeal allowed.