

CASE NO.:
Appeal (civil) 5383 of 2001

PETITIONER:
NILIMA MUKHERJEE

Vs.

RESPONDENT:
KANTA BHUSAN GHOSH

DATE OF JUDGMENT: 17/08/2001

BENCH:
Syed Shah Mohhamed Quadri & S.N. Phukan

JUDGMENT:

PHUKAN, J

Leave is granted.

This appeal is directed against the order dated 28.8.2000 passed by the Calcutta High Court in SAT No. 2519/2000. The High Court has dismissed the second appeal in limine.

The respondent herein filed a suit for ejectment of the appellant from ground floor of the house situated at 9/3, Prince Anwar Shah Lane, Calcutta. One Ramesh Chand Ganguly was inducted as a tenant by the respondent in respect of the said ground floor. Late Ramesh Chand Ganguly died intestate on 15.11.87 leaving no heir or heirs. According to the respondent, on the death of late Ramesh Chand Ganguly the tenancy became extinct. The appellant, the daughter of one Pramatha Nath Banerjee, brother-in-law of Ramesh Chand Ganguly used to reside in the suit premises. The respondent asked the appellant to vacate the suit premises alleging that she was a trespasser. The appellant took the plea that she was the adopted daughter of late Ramesh Chand Ganguly. On these facts, the suit for eviction was filed which was decreed by the trial court and affirmed by the appellate court. As stated above, the second appeal was also dismissed. The only point for determination is whether the appellant was the adopted daughter of late Ramesh Chand Ganguly.

Section 11 of the Hindu Adoption and Maintenance Act, 1956 lays down the conditions for a valid adoption and for the present purpose Clause VI is relevant, which is extracted below:

11. Other conditions for a valid adoption.- In every adoption, the following conditions must be complied with:-

(i) (v) .

(vi) the child to be adopted must 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 an adoption.

This Court in Lakshman Singh Kothari versus Smt. Rup Kanwar [1962 (1) SCR 477], inter alia, held that there cannot be a valid adoption unless the adopted child is transferred from one family to another, the object being to secure due publicity. As appellant has taken the plea that she was adopted daughter of late Ramesh Chand Ganguly, she must discharge the burden of the factum of adoption and its validity.

The appellant did not come to the witness box and on her behalf her son PW 1 was examined. No document for adoption was produced before the court. The trial court has also noted that this witness had no personal knowledge about the fact of taking the appellant on adoption by late Ramesh Chand Ganguly. Another witness PW 2, who was a neighbour, was examined on behalf of the appellant to prove adoption. He also stated that he did not know anything about the alleged adoption.

Some documents were produced to prove the fact of adoption. Documents were produced to show that a bank account was in the joint name of late Ramesh Chand Ganguly and the appellant. Late Ramesh Chand Ganguly used to draw freedom fighters pension and a document was produced to show that in the nomination papers, the appellant was described as his daughter. These documents were duly considered by both the courts below and rejected by giving cogent reasons. Regarding nominating the appellant to draw pension on behalf of late Ramesh Chand Ganguly, the first appellate court has also noted that in the said paper there was no seal of the concerned authority. Mere having a joint bank account would not prove adoption in absence of any other cogent evidence.

From perusal of the judgments of the both the courts and the evidence recorded we find that the appellant has miserably failed to prove that she was actually given in adoption by her father and taken on adoption by late Ramesh Chand Ganguly. Accordingly, we hold that both the courts below have rightly rejected the plea of adoption set up by the appellant.

Mr. S.B. Sanyal, learned senior counsel for the appellant has relied on a decision of this court in L. Debi Prasad (D) by Lrs. versus Smt. Tribeni Devi & Ors. [1970 (1) SCC 677]. That was suit for possession and this court observed that it was a case of ancient transactions and, therefore, it was but natural that positive oral evidence was lacking and passage of time gradually wiped out such evidence. From the facts of that case we find that two close relatives, who were disinterested witnesses, deposed that ceremony of adoption was duly performed in the parental home of the child. In the case in hand, there is not an iota of evidence to

show that any ceremony of adoption was performed and the appellant was actually handed over for adoption by her parents to late Ramesh Chand Ganguly.

We, therefore, find no merit in the present appeal and consequently it is dismissed. Party to bear their own costs.

..J.
[Syed Shah Mohammed Quadri]

..J.
[S.N. Phukan]

August 17, 2001