

HIGH COURT OF MADHYA PRADESH:
BENCH AT INDORE: INDORE

SINGLE BENCH: HON'BLE SHRI JUSTICE
S.K.SETH

First Appeal No. 43 of 1996

Bhapusingh

Versus

Bondarsingh and others

X-X-X-X-X-X-X-X-X

J U D G M E N T

(Passed on 31st January 2013)

Seth J:-

This is plaintiff's first appeal. It is directed against the judgment and decree passed by the 4th A.D.J. Dhar. By the impugned judgment and decree, trial Court dismissed the suit filed by the appellant/plaintiff.

2. Admittedly the property in dispute belonged to one Bherosingh who died in the year 1990.

3. Plaintiff came out with the case that late Bherosingh had adopted his nephew-(plaintiff) about 38 years' back. Bherosingh died on 7-8-1990 leaving behind the plaintiff as the sole surviving heir, therefore, he performed last rites and other religious ceremonies after the death of

Bherosingh. It was alleged that plaintiff became owner of properties of Bherosingh. He therefore applied for mutation of his name in revenue records. In those proceedings respondent No. 1 and 2 also applied for mutation of their names on the basis of a so called 'Will' of Bherosingh. It was further alleged that respondent No. 1 and 2 with the help of anti-social elements forcibly dispossessed the plaintiff from one of the suit houses as described in the plaint. It was further alleged that under threat of life, respondent No. 1 and 2 forced the Plaintiff to enter into an agreement in respect of Survey No. 31 and 165 area 4.047 hectare and got their names recorded in revenue records. Subsequently, by two sale-deeds of even date 10-4-1992 they sold these Survey Numbers to respondent No. 3 and 4 which were not binding upon him, therefore plaintiff filed the suit for declaration of title and permanent injunction in the alternative possession and mense profits.

4. Respondents contested the suit. In their joint written statement, respondents denied that the plaintiff was adopted by Bherosingh; they claimed that Bherosingh had no relatives therefore, during his life time he executed a 'Will' dated 7-8-1990 and bequeathed his properties to respondent No. 1 and 2. They further stated that on the basis of Will they applied to Revenue authorities for mutation of their names in

the Revenue Record and during mutation proceedings, appellant compromised the matter with respondent No. 1 and 2 out of his own accord without any duress or force. Thereafter, name of respondent No. 1 and 2 was mutated in revenue record. Later on respondent No. 1 and 2 by two separate registered sale-deeds have sold agriculture lands in favour of respondent No. 3 and 4 and delivered possession to them. Now respondent No. 3 and 4 are in cultivating possession of said land as owner thereof. With these pleadings they prayed for the dismissal of the suit with costs.

5. Trial Judge, on due consideration of evidence found that plaintiff was succeeded in establishing the plea that he was duly adopted by Bherosing during his life time. The adoption was found proved and valid and it was held that the plaintiff was entitled to succeed to properties left behind Bherosingh upon his death by survivorship. It was also found that the respondent No. 1 and 2 could not prove and establish the 'will' set up them. It was found Bherosingh had not executed any will as claimed by the respondent No. 1 and 2 therefore they had not acquired any interest in the properties of late Bherosingh. In view these findings, trial Court although accepted the adoption but non-suited the plaintiff on the ground that he had compromised the dispute with respondent No. 1 and 2 and by virtue of said

compromise recognised the title of respondent No. 1 and 2 over Survey No. 31 and 165, therefore now he cannot back out and challenge the sale-deeds executed in favour of 3 and 4. On these findings the suit was dismissed by the impugned judgment and decree. Hence this appeal by the plaintiff as stated above. It may be mentioned that respondents No 1 to 4 have preferred Cross-Objection and against the finding of adoption. We have therefore, heard rival submissions at length and perused the record of the Court below.

6. After having heard learned counsel for the parties, we are of the considered opinion that the findings recorded by the trial Court to non-suit the appellant cannot be sustained. Plaintiff came out with the specific case that he was coerced by respondent No.1 and 2 to enter into a compromise. This plea is duly supported by the other evidence apart from the oral deposition of appellant. On the other hand, on this aspect, there is no evidence led by the respondents. It is well settled that a person is not bound by his acts when he is forced to do such acts under the threat to his life. The trial Court has completely lost sight of this settled principle. In view of the evidence, the findings of the trial Court in this regard cannot be sustained and has to be set aside. Once the trial Court accepted the adoption of

appellant as valid and held that he was entitled to succeed to the estate of Bherosingh, then he could not have been non-suited on the ground of so called compromise which was not voluntary. Thus, the judgment and decree passed by the trial Court cannot be sustained and has to be set aside. Consequently, the suit filed by the plaintiff deserves to be and is hereby decreed.

7. Now, this takes us to the cross objection filed by the respondents against the findings of adoption. In view of the foregoing discussion, we do not find any force and substance in the cross objection so as to warrant interference with the finding of adoption recorded by the trial Court. Consequently, the cross objection filed by the respondents is hereby dismissed.

8. Before closing with the case, we may also mention that after the arguments were heard and the case was closed for judgment, respondents filed an application (I.A. No.157/2013) for re-hearing of the appeal. Suffice to say that the arguments are heard once and after the case is closed for judgment/orders, it cannot be re-opened on frivolous applications, otherwise it will be next to impossible to close the case for judgments/orders. We, therefore, find no merit and substance in the application.

Accordingly, I.A. No.157/2013 stands rejected and closed.

9. Appeal stands allowed with costs throughout. Respondents to bear costs of plaintiffs also. Counsel fee Rs.5,000/-, if certified.

(S.K.SETH. J.)

Alok/-

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Reserved for consideration 7-1-2013.

Post for Judgment -1-2013.

(S.K.SETH.J.)

Alok/-