

## HIGH COURT OF ORISSA: CUTTACK

### S.A. No.152 of 1991

From the judgment and decree dated 27.3.1991 and 5.4.1991 respectively passed by Sri N.B.K. Murty, learned Sub-Judge, Jagatsinghpur in T.A. No.14 of 1986 confirming the judgment and decree dated 28.8.1986 and 11.9.1986 respectively passed by Sri B.K. Mishra, learned Addl. Munsif, Jagatsinghpur in T.S. No.137 of 1982.

Prafulla Kumar Sahu

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Appellant

---versus---

Uchaba Sahoo (since dead)  
through L.R. and others

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Respondents

For Appellant : Mr. D.P. Mohanty, Advocate,

For Respondents : None

### J U D G M E N T

#### P R E S E N T:

#### THE HON'BLE DR. JUSTICE A.K. RATH

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Date of Hearing :29.03.2018 | Date of Judgment:29.03.2018  
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**Dr. A.K. Rath, J.** This is plaintiff's appeal against an affirming judgment in a suit for permanent injunction.

**02.** The case of the plaintiff is that he is the natural born son of Ekadasi Sahu. He was adopted by Naran Sahu. On 8.8.66, Naran Sahu executed a deed acknowledging adoption, Ext.5, in his favour. Uchhaba Sahu, the brother of Ekadasi, married to Sushila, daughter of Naran Sahu. Uchhaba got a sale deed from Naran on 4.12.1957 in respect of schedule 'A' property illegally. After death of Naran, his widow Nila did not maintain the plaintiff, when he was a

minor. Thereafter, Ekadasi, natural father of the plaintiff, filed misc. case no.74 of 1973 under Sec.7 of the Hindu Minority and Guardianship Act, 1956 before the District Judge, Cuttack for appointing him as the guardian. The case was allowed. Plaintiff came to know about the illegal transaction made by Uchhaba on 22.12.1981 and got the certified copy of the sale deed, Ext.7. With this factual scenario, he instituted the suit seeking the reliefs mentioned supra.

**03.** The defendant no.1 filed a written statement denying the assertions made in the plaint. According to him, the plaintiff is not the adopted son of Naran. The sale deed was executed by Naran for legal necessity.

**04.** Stemming on the pleadings of the parties, learned trial court struck eighteen issues. Parties led evidence, oral and documentary, to substantiate their respective cases. Learned trial court dismissed the suit holding inter alia that plaintiff is not the adopted son of Naran Sahu. Unsuccessful plaintiff filed T.A. No.14 of 1986 before the learned Sub-Judge, Jagatsinghpur, which was eventually dismissed.

**05.** The second appeal was admitted on the following substantial question of law.

"Whether the appellate judgment is correct in view of the decision reported in 1989 O.J.D. (Civil) 187 ?"

**06.** Heard Mr. D.P. Mohanty, learned counsel for the appellant. None appears for the respondents.

**07.** Mr. Mohanty, learned counsel for the appellant, submits that the suit having been dismissed, the plaintiff filed T.A. No.14 of 1986 before the learned Sub-Judge, Jagatsinghpur. It is the duty of

the first appellate court to scan the evidence on record and pleadings and answer all issues. Learned appellate court did not delve into the matter and dismissed the appeal holding inter alia that plaintiff has failed to prove that he is the adopted son of Naran Sahu. No reason has been assigned. Thus the judgment is perverse.

**08.** In *Santosh Hazari vs. Purushottam Tiwari (deceased)* by *LRs*, (2001) 3 SCC 179, the apex Court reminded the duty of the first appellate court. The apex Court held:

“... The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. The task of an appellate court affirming the findings of the trial court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (*See Girijanandini Devi v. Bijendra Narain Choudhary*). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. ...”  
(Emphasis laid)

**09.** First appeal is valuable right of the parties. The whole case is open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed

by the parties for decision of the appellate court. It is the duty of the first appellate court to scan the evidence on record and pleadings and answer all issues. In the instant case, the judgment is a laconic one. No reason has been assigned.

**10.** In *MMRDA Officers Association Kedarnath Rao Ghorpade vs. Mumbai Metropolitan Regional Development Authority and another*, (2005) 2 SCC 235, the apex Court held:

"Even in respect of administrative orders Lord Denning, M. P. in *Breen Vrs. Amalgamated Engg. Union* reported in (1971) 1 All ER 1148 observed : (All ER p. 1154h). "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree* reported in 1974 ICR 120 (NIRC) it was observed:

"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at."

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx," it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. (Chairman and Managing Director, United Commercial Bank Vrs. P.C. Kakkar, reported in (2003) 4 SCC 364."

**11.** A priori, the judgment and decree of the learned lower appellate court is set aside. The matter is remitted back to the learned lower appellate court for de novo hearing. Since the matter

is remitted back to the learned lower appellate court, this Court refrains from answering the substantial question of law.

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**Dr. A.K. Rath,J.**