IN THE HIGH COURT OF JHARKHAND AT RANCHI
S.A. No.57 of 2005

(Against the judgment dated 17.12.2004 passed by learned 4th Additional District Judge, Dumka in Title Appeal No.07 of 1998/09 of 2004)

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1. (i) Mostt. Rina w/o Late Lachman Rai @ Titu Rai

1. (ii) Shyam Rai s/o Late Lachman Rai

1. (iii) Prakash Rai s/o Late Lachman Rai

1. (iv) Sanjay Rai s/o Late Lachman Rai

2. Aklu Rai, s/o Darogi Rai.

All residents of village Bhorandiha, P.O. & P.S. Saraiyahat, Sub-Division and District Dumka

.... …. Plaintiff /Respondent/Appellant

Versus

1. Company Marik son of Baldeo Marik

2. Usha Devi wife of Company Marik,

3. Mirtunjay Marik (minor) son of Company Marik being represented through his father and natural guardian Company Marik whose interest is not adverse to that of his minor son,

All residents of village- Bhuranaina, P.S. Saraiyahat, Sub-Division and District Dumka

.... …. Defendants /Appellants/Respondents

For the Appellants : Mr. Kundan Kumar Ambastha, Advocate
For the Respondents : Mr. Rajeeva Sharma, Sr. Advocate
Mr. Ritesh Kumar, Advocate
Mr. Ram Badan Chaubey, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Second Appeal, under Section 100 of the Code of Civil Procedure, has been preferred against the judgment and decree dated 17.12.2004 passed by learned 4th Additional District Judge, Dumka in Title Appeal No.07 of 1998/09 of 2004 whereby and where under in the judgment of reversal, the learned First Appellate Court has allowed the appeal and set aside the judgment and decree passed by the trial court being the Subordinate Judge-I, Dumka in Title Suit No.04 of 1990 by which the learned trial court decreed the suit of the plaintiff filed with the following prayers:-

> *(a) A decree declaring that the defendant No.1 is not the validly adopted son of Rajia Ghatwalin.*
> *(b) A decree declaring that the registered Deed of Adoption No.221 of 1988 of Dumka Sub-Registry Office is a forged and fabricated document and for cancellation of the same.*
> *(c) A decree for the costs of the suit.*
> *(d) Any other relief or reliefs the plaintiffs are entitled to.*

3. The case of the plaintiffs in brief is that the parties to the suit are Hindus and are governed by *Mitakshara* School of Hindu Law. Maharaji Rai had two sons namely Ajodhi Rai and Barju Rai. Plaintiff No.1 is the son of Ajodhi Rai and plaintiff Nos.2 and 3 are sons of Darogi Rai and Darogi Rai was the son of Ajodhi Rai. Maharaji Rai died in a state of jointness with his sons about three years after *Mr. Gantzer's Survey and Settlement* and he was succeeded by his sons Ajodhi Rai and Barju Rai who constituted a joint family with their father. Barju Rai died four years after the death of his father. He left his widow Rajia Ghatwalin and a son namely Ramu Rai. Ramu Rai died in jointness with his uncle Ajodhi Rai about three years after the death of his father and his interest in the joint properties devolved upon the surviving coparcener. Ajodhi Rai used to maintain Rajia Ghatwalin and after the death of her husband about 30 years prior to filing of the suit, Rajia Ghatwalin continued to live with the plaintiff No.1, who maintained her. Rajia Ghatwalin was a rustic and illiterate woman and had weak physique and intellect and had no knowledge of worldly affairs. She died at the age of 85 years on 12.09.1988. She was a pensioner under Social Security Scheme of the Government. She due to extreme old age lost her capacity to move out of her residence and she remained confined to bed since the beginning of

July, 1988. The plaintiff No.1 performed the last rites and *Shradha* of Rajia Ghatwalin. It is the further the case of the plaintiffs that the defendant No.2 in the month of *Baisakh* last approached the plaintiff No.1 and demanded partition of the lands recorded in the name of Maharaji Rai on the ground that his son defendant No.1 was adopted by Rajia Ghatwalin on *Rakhi Purnima* Day (27.08.1988). Thereafter, the plaintiff No.1 made an enquiry and came to know that the defendant Nos.2 and 3 had maneuvered to create a forged and fabricated document purported to be a deed of adoption of defendant No.1 alleged to have been executed by Rajia Ghatwalin. It is asserted by the plaintiffs that the Registered Deed of Adoption bearing No.221 dated 31.10.1988 is a forged and fabricated document created by the defendant Nos.2 and 3 in collusion with the deed writer and Ankari Manjhi and Sugrib Marik, brother-in-law and brother respectively of the defendant No.2. Hence, the plaintiffs filed the said suit.

4. In their joint written statement, the defendant Nos.2 and 3 challenged the maintainability of the suit on various technical grounds and they pleaded that the averments made in the plaint of the plaintiffs are false. It was further pleaded by the defendant Nos.2 and 3 that during the lifetime of Maharaji Rai both the sons had separated in mess and were cultivating the lands separately according to their convenience and Maharaji Rai died ten years after the settlement and not three years as stated by the plaintiffs. They further pleaded that Birju Rai died in the year 1957 in the state of separate mess leaving his minor son Ramu and Ramu died in the year 1967 and they remained separate from Ayodhi Rai in mess and residence. These defendants further pleaded that Rajia Ghatwalin remained and continued all along in separate mess from the plaintiff and getting her husband and sons share of lands cultivating with the help of her brother Sibal Rail of Village Thandari who was living with her in her house and was looking after her cultivation. They further pleaded that Rajia Ghatwalin died at the age of 62 years in her own house at village Bhurandiha and she was hale and hearty and was moving about everywhere and she was never confined to bed before her death. They further pleaded that Rajia Ghatwalin out of her choice had adopted the

defendant No.1 after observing all the formalities including *Satya Narayan Puja Katha* and arranging *Bhoj Bhat* in presence of villagers and relations of defendant Nos.2 and 3 at her residence in Bhurandiha. On 31.10.1988, deed of adoption was jointly executed by Rajiya and defendant Nos.2 and 3 and thereafter the said adoption deed was jointly registered in the Registry Office at Dumka in presence of the Executive Magistrate and the witnesses. The defendant No.1 being a minor boy and since after his adoption, he was all along living with Rajia Ghatwalin in her house but when she died on 02.12.1988 then after her death his natural parents are looking after him due to his minority as he is in need of help.

5. The defendant No.1 filed his written statement through his *guardian ad litem* G.A.L. Binod Mallah and he adopted the written statement of the defendant Nos.2 and 3.

6. On the basis of rival pleadings of the parties, learned trial court framed the seven issues which read as under:-

(I) Is the suit as framed maintainable?
(II) Whether the plaintiffs have valid cause of action for the suit?
(III) Whether the suit is barred by law of limitation?
(IV) Whether the plaintiffs have legal status to file the suit?
(V) Whether defendant No.1 was legally adopted son of late Razia Ghatwalin?
(VI) Whether the alleged deed of adoption is false, fabricated, void and liable to be set aside?
(VII) Whether the plaintiff entitled to the reliefs claimed?

7. The learned trial court considered the oral testimonies of the eight witnesses examined by the plaintiffs. It is pertinent to mention here that the plaintiffs did not file any document. The trial court also considered the oral testimonies of the ten witnesses examined by the defendants and the documents which have been marked Ext. A series, B series and Ext. C to Ext. G.

8. The learned trial court first took up issue Nos.(V) and (VI) together for consideration and after considering the evidence in the record came to the conclusion that the defendant No.1 is not the adopted son of late Rajia Ghatwalin and the impugned adoption deed is forged, fabricated and declared the same to be *void ab initito*. The learned trial court also held that the plaintiffs were and are the natural successors of the property of late Rajia Ghatwalin and as such they have genuine grievance and legal status

to file the suit for setting aside the adoption deed and decided the issue Nos.(V) and (VI) in affirmative.

9. The trial court then took up issue No. (III) and arrived at the conclusion that the suit is within time.

10. The trial court thereafter took up the issue Nos.(I) and (IV) together and held that in view of its findings in respect of issue Nos. (V) and (VI), the suit is maintainable in its present form.

11. Lastly, the trial court took up issue Nos.(II) and (VII) and came to the conclusion that the plaintiffs have valid cause of action for the suit and decreed the suit on contest.

12. Being aggrieved by the judgment and decree passed by the trial court, the defendants filed Title Appeal No.07 of 1998/09 of 2004 in the court of District Judge, Dumka and the same was ultimately heard and disposed of by the impugned judgment and decree passed by the learned First Appellate Court.

13. The learned First Appellate Court made independent appreciation of the evidence in the record and after summarizing the principle of law, came to the conclusion that the burden to prove that the alleged adoption deed is forged and fabricated document and no valid adoption took place is upon the plaintiffs.

14. The learned First Appellate Court then took up issue Nos.(V) and (VI) together and after considering the evidence in the record believed the oral testimony of the witnesses examined by the defendants regarding execution of the deed of adoption. The learned First Appellate Court also considered the oral testimony of the witnesses examined by the plaintiffs in detail and came to the conclusion that the plaintiffs have not discharged their duty to prove that the deed of adoption marked Ext. C has not been executed by Rajia Ghatwalin and though it was the bounden duty of the plaintiffs to prove that Rajia Ghatwalin died on 12.09.1988 and the L.T.I. on the adoption deed is not that of Razia Ghatwalin but they have failed to do that. The learned First Appellate Court also considered the presumptive value of the Registered Deed of Adoption marked Ext. C about its genuineness and coupled with the oral testimonies of the witnesses examined by the defendants who have also stated about the

ceremony of adoption by which Razia changed the name of Mritunjoy Marik as Sanjay Rai. The learned First Appellate Court also considered Ext. F. which shows that on 07.07.1989 the said Sanjay Rai had filed a petition to implead him as a party in a case R.E.A. No.210 of 1988 which was a case between **Gokhli Marik and Others versus Darogi Rai** and came to the conclusion that the defendant No.1 who was the appellant No.3 before the learned First Appellate Court was the legally adopted son of Razia Ghatwalin and deed of adoption dated 31.10.1988 is a valid document and decided the issue No. (V) in affirmative in favour of the defendants and against the plaintiffs and decided issue No. (VI) in negative in favour of the defendants and against the plaintiffs.

15. The learned First Appellate Court, thereafter, took up issue No. (III) and disposed the issue No. (III) as not pressed.

16. Lastly, the learned First Appellate Court took up issue Nos.(I), (II), (IV) and (VII) and on the basis of the discussions made in respect of the findings of other issues, found that the suit is not maintainable and the plaintiffs have not got any valid cause of action for the suit and after adoption by Razia Ghatwalin, the plaintiffs have got no legal status to file the suit and the plaintiffs are not entitled to any relief as claimed by them and accordingly decided the said issues in negative against the plaintiffs and went on to set aside the judgment and decree dated 30.05.1998 passed by learned Subordinate Judge-I, Dumka in Title Suit No.04 of 1990 and allowed the appeal on contest.

17. At the time of admission of this appeal vide order dated 23.06.2009, the following substantial question of law was formulated:-

"*Whether the learned lower appellate court has correctly met with the reasonings of the trial court while reversing the findings?*"

18. Mr. Kundan Kumar Ambastha- learned counsel for the appellants relies upon the judgment of Hon'ble Supreme Court of India in the case of **Manjula and Others vs. Shyamsundar and Others** reported in **(2022) 3 SCC 90** paragraphs-7 and 8 of which read as under:-

> *"7. As noticed above, the trial court had framed as many as six issues. The appeal before the High Court involved questions of law and facts. However, the High Court, without examination of any of these aspects save for the medical evidence at Ext. D-4, has dismissed the appeal by a*

cryptic order. The High Court has not adverted to any of the contentions of the parties. The High Court has also not appreciated the oral evidence adduced by the parties.

8. Section 96 of the Civil Procedure Code, 1908 (for short "CPC") provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state:

(a) points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the trial court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court's jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the trial court are open for reconsideration. The judgment of the appellate court must, therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment."

and submits that the learned First Appellate Court has not formulated any point for determination, hence, the impugned judgment and decree be set aside and the suit be remanded back to the learned First Appellate Court for deciding the appeal fresh after formulating the point for determination. In this respect, Mr. Ambastha also relies upon the judgment of the Hon'ble Supreme Court of India in the case of **K. Karuppuraj vs M. Ganesan** reported in **(2021) 10 SCC 777.**

19. Mr. Ambastha next submits that the learned First Appellate Court failed to consider the evidence of D.W.7 wherein he stated that the recital of deed of adoption was drafted at the instance of Jagdish Narayan Singh and others and the learned First Appellate Court has failed to meet the reasonings of the trial court while reversing the judgment and decree passed by the trial court. Hence, the impugned judgment and decree, being not sustainable in law be dismissed.

20. Mr. Rajeeva Sharma- learned senior counsel appearing for the respondents defends the impugned judgment and decree passed by the learned First Appellate Court and by relying upon the judgment of a co-

ordinate Bench of this Court in the case of **Shakuntala Devi vs Angia Mandalain** reported in (**2002) 3 JLJR 557** submits that it is a settled principle of law that under a registered deed of adoption duly signed by the person giving and the person taking the child in adoption, there is a presumption that adoption was made in compliance with the provisions of the Registration Act, until and unless it is disproved and the trial court erred in law by not following the settled principle of law and by ignoring the evidence in the record both towards the ceremonies of adoption as well as the execution of the registered deed of adoption and the presumption which is to be drawn from the registered deed of adoption and the same has rightly been set aside by the learned First Appellate Court by dismissing the suit of the plaintiff. It is further submitted by Mr. Rajeeva Sharma- learned senior counsel for the respondents that meeting the reasonings of the trial court is not the substantial question of law in itself and as the learned First Appellate Court has in a well discussed judgment has taken up and considered each of the issues involved in the dispute between the parties in its right perspective in detail, hence, the facts of this case are certainly different from the facts of **Manjula and Others vs. Shyamsundar and Others (supra)** and **K. Karuppuraj vs M. Ganesan (supra).** It is lastly submitted by Mr Sharma that as learned First Appellate Court has complied with the provisions of Order XLI Rule 31 of the Code of Civil Procedure, hence, this appeal, being without any merit, be dismissed.

21. Having heard the rival submissions made at the Bar and after going through the materials available in the record, this Court finds that so far as submission of Mr. Kundan Kumar Ambastha- learned counsel for the appellants regarding the non-compliance of the provisions under Order XLI Rule 31 is concerned, in the case of **Manjula and Others vs. Shyamsundar and Others (supra),** the learned First Appellate Court being the High Court, without examination of any of the aspects of the contention of the appellants before it dismissed the appeal by a cryptic order. The High Court in that case did not advert to any of the contentions of the parties and did not discuss or consider the oral evidence adduced by the parties and thus the judgment of the learned First Appellate Court

could not reflect conscious application of mind nor were the findings supported by reasons for such decision in respect of all the issues along with the contentions put forth and pressed by the parties, hence the Hon'ble Supreme Court of India set aside the judgment passed by the High Court in the First Appeal and remanded the case to the High Court for fresh decision in accordance with law.

22. Similarly, in the case of **K. Karuppuraj vs M. Ganesan (supra)** para-11 of which read as under:-

> *"11. Applying the law laid down by this Court in the aforesaid decisions, if the impugned judgment and order passed by the High Court is considered, in that case, there is a total non-compliance of the provisions of Order 41 Rule 31 CPC. The High Court has failed to exercise the jurisdiction vested in it as a first appellate court; the High Court has not at all re-appreciated the entire evidence on record; and not even considered the reasoning given by the learned trial court, in particular, on findings recorded by the learned trial court on the issue of willingness. Therefore, as such, the impugned judgment and order passed by the High Court is unsustainable and in normal circumstances we would have accepted the request of the learned Senior Counsel appearing on behalf of the respondent to remand the matter to the High Court for fresh consideration of appeal. However, even on other points also, the impugned judgment and order passed by the High Court is not sustainable. We refrain from remanding the matter to the High Court and we decide the appeal on merits."*

the High Court failed to exercise the jurisdiction vested in it in that case as a First Appellate Court and the High Court has not at all re-appreciated the entire evidence on record and not even considered the reasonings given by the learned trial court in particular on findings recorded by the learned trial court on the issue of willingness. But the Hon'ble Supreme Court of India instead of remanding the matter to the High Court for fresh consideration of the appeal decided the appeal on its merit. Hence, in the considered opinion of this Court, the ratio of **Manjula and Others vs. Shyamsundar and Others (supra)** is not applicable to the facts of this case as the impugned judgment of the learned First Appellate Court is neither cryptic nor the same falls within any of the shortcomings as mentioned in paragraph-8 of the judgment of **Manjula and Others vs. Shyamsundar and Others (supra)** or for that matter the ratio of judgment of **K. Karuppuraj vs M. Ganesan (supra)** is not applicable.

23. It is pertinent in this respect to refer to the judgment of Hon'ble Supreme Court of India in the case of **G. Amalorpavam & Others v. R.C.**

Diocese of Madurai & Others reported in **(2006) 3 SCC 224** paragraph-9 of which reads as under:-

> *"9. The question whether in a particular case there has been substantial compliance with the provisions of Order 41 Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate court is in a position to ascertain the findings of the lower appellate court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate court there is substantial compliance with the provisions of Order 41 Rule 31 CPC and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisement of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment even though it does not contain the points for determination. The object of the rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of second appeal conferred by Section 100 CPC." (Emphasis supplied)*

24. Keeping in view the ratio of **G. Amalorpavam & Others v. R.C. Diocese of Madurai & Others (supra)** as was done by the Hon'ble Supreme Court of India in the case of **K. Karuppuraj vs M. Ganesan (supra)** it is certainly not a mandate of law that a second appellate court will set aside the judgment passed by the First Appellate Court on a mere technical ground for non-compliance of the Order XLI Rule 31 of the Code of Civil Procedure by not enumerating the points for determination; and where there is substantial compliance of the Order XLI Rule 31 of the Code of Civil Procedure by the learned First Appellate Court by considering the entire evidence on record and discussing the same in detail, coming to conclusion and its findings are supported by reasons; such judgments are not to be set aside and remanded. Hence, this Court is of the considered view that this is not a fit case where the

impugned judgment and decree passed by the learned First Appellate Court is to be set aside and remanded on the ground of non-compliance of the Order XLI Rule 31 of the Code of Civil Procedure by the learned First Appellate Court.

25. So far as the substantial question of law formulated in this appeal is concerned, it is a settled principle of law that the judgment of First Appellate Court cannot be reversed on the ground that the First Appellate Court had not come with the reasonings of the Trial Court, as held by the Hon'ble Supreme Court of India in the case of **Arumugham (dead) by L. Rs. and others vs. Sundarambal and Another** *r*eported in **AIR 1999 SC 2216**, paragraph 14 of which, reads as under:-

> *" 14. From the aforesaid judgment of the three Judges bench in Ramachandra Ayyar's case (AIR 1963 SC 302), it is clear that this Court held that second appellate Court cannot interfere with the judgment of the first appellate Court on the ground that the first appellate Court had not come to close grips with the reasoning of the trial Court. It is open to the first appellate Court to consider the evidence adduced by the parties and give its own reasons for accepting the evidence on one side or rejecting the evidence on other side. It is not permissible for the second appellate Court to interfere with such findings of the first appellate Court only on the ground that the first appellate Court had not come to grips with the reasoning given by the appellate trial Court. The aforesaid judgment of this Court in Ramachandra Ayyar's case (AIR 1963 SC 302) specifically distinguished Rani Hemanta Kumar Debi v. Maharaja Jagadindra Nath Roy Bahadur, (1906) 16 Mad LJ 272 (PC) rendered by the Privy Council on the ground that that was a case wherein the High Court was dealing with a first appeal. The observations made by the Privy Council in that context would not be applicable to cases where the second appellate Court was dealing with the correctness of the judgment of the first appellate court which reversed the trial Court." (Emphasis supplied)*

26. Now, coming to the facts of the case, as already discussed in detail in the foregoing paragraphs of this judgment, the learned First Appellate Court has considered each of the issues which arose between the parties on the basis of their pleadings and about which there is dispute, being inappropriate or inadequate settlement of the issues and has also considered at length the arguments made by rival parties before it. The learned First Appellate Court, for cogent reasons, has reversed the finding of facts of the Trial Court, hence, this Court is of the considered view that the judgment passed by the First Appellate Court does not suffer from mis-appreciation of evidence or taking into consideration any

inadmissible document or improper application of law.

27. Under such circumstances, this Court is of the considered view that by no stretch of imagination the finding of facts arrived at by the First Appellate Court, which is the final court of facts, can be termed as perverse; which is a *sine qua non* for interference by this Court in exercise of its jurisdiction under Section 100 of the Code of Civil Procedure with the finding of fact arrived at by the First Appellate Court. The sole substantial question of law is answered accordingly.

28. In view of the discussions made above, this Court is of the considered view that this appeal, is without any merit, accordingly this appeal is dismissed on contest but under the circumstances without any costs.

29. Let a copy of this judgment along with the lower court records be sent to the courts concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 30th of November, 2022
AFR/ Animesh