



2026:CGHC:11872

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment Reserved on 17.10.2025

Judgment Delivered on 12.03.2026

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FA No. 43 of 2012

1 - Union Of India, Railway Administration, General Manager, South East Central Railway, Bilaspur Zone, Bilaspur (CG)

2- Senior Divisional Personnel Officer, S.E.C. Railway, Bilaspur, District-Bilaspur (CG)

... Appellant (s)

versus

Lakhi Ram Yadav, Adopted S/o Late Shri Papa Rao, Age-33 Years, R/o Chirimiri, Tah.- Khadgawa, Dist. Korla, C.G.

... Respondent(s)

For Appellants :Mr. Ramakant Mishra, Dy. Solicitor General
with Mr. Rishabh Dev Singh, Advocate

For Respondent :Ms. Meena Shastri, Advocate

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

CAV Judgment

1. This is defendants' first appeal filed under Section 96 of the Code of Civil Procedure questioning legality and sustainability of judgment and decree dated 14th October 2010 passed in Civil Suit No.7-A/2009 by

Third Additional District Judge (FTC), Manendragarh, District- Korla whereby suit filed by respondent/plaintiff was allowed and plaintiff was declared to be adopted son of Late Papa Rao and Laxmibai.

2. Facts relevant for disposal of this appeal are that respondents/plaintiff filed a suit for his declaration to be adopted son of Late Papa Rao pleading therein that Papa Rao and Laxmi Bai were issue-less. Father of plaintiff and Papa Rao were known to each other as they were friend. On the request made by Papa Rao, biological parents of plaintiff agreed to give plaintiff in adoption. It is also pleaded that when plaintiff was aged about 5-6 years, plaintiff was given to Papa Rao and his wife Laxmi Bai in accordance with customs prevailing in their community. Give and take ceremony was completed in his childhood. He was brought up and grown along with his adoptive father and mother. During lifetime, Papa Rao had nominated the plaintiff as nominee in provident fund as also in group insurance and he was also declared to be son in his service record. It is also pleaded that a deed of adoption was also executed and got registered on 19.02.1998. Defendants/appellants have refused to accept registered deed of adoption and therefore civil suit was filed.
3. Defendant No.2 submitted written statement denying the contents of pleading made in plaint. It is also submitted that deed of adoption was registered on 29.08.1998 in the office of Deputy Registrar, Manendragarh. In the adoption deed, date of birth of plaintiff was prior to 25.03.1976, from which, it is apparent that on the date of execution of adoption deed age of plaintiff was above 21 years and therefore adoption on the date of registration was not valid. It is also submitted

that for adoption of male child age of the child should not be more than 15 years. It is also submitted that in service records, there is no mention of successor and the claim as adopted son was made after long time from the date of death of Papa Rao i.e. 11.01.2001.

4. Learned trial Court based on pleadings made by respective parties has formulated as many as five issues for consideration and after conclusion of trial had allowed the suit and declared the plaintiff to be adopted son of Late Papa Rao.
5. Learned counsel for the appellants/defendants would submit that finding recorded by learned trial Court that respondent/plaintiff is an adopted son of Late Papa Rao is without there being any sufficient evidence in this regard. He contended that procedure of adoption is not proved in accordance with the provision under Section 11 of the Hindu Adoptions and Maintenance Act, 1956 (for short "*Act of 1956*"). Give and take ceremony has not been proved by plaintiff in accordance with law and therefore impugned judgment and decree passed by learned trial Court is not sustainable. In support of his contention, he places reliance upon decision in case of **N. L. Manjunatha Vs. B.L. Ananda @ B.L. Anantha Shankara** passed in **Regular Second Appeal No.443 of 2009 (PAR)** decided on 10th Day of July 2023 by High Court of Karnataka at Bengaluru .
6. Learned counsel for respondent/plaintiff vehemently opposed the submission of learned counsel for the appellants/defendants and would submit that plaintiff in plaint has categorically pleaded that give and take ceremony took place when he was 5-6 years of age. Adoption deed got registered in the year 1998 but mentioning the procedure of

adoption which took place much earlier when age of plaintiff was 5-6 years. In the registered deed, date of adoption is mentioned as 25.03.1976. Registered deed was executed on 19.02.1998 and therefore learned trial Court upon appreciation of documentary and oral evidence had allowed the suit for declaration that, plaintiff is adopted son of Late Papa Rao. There is no infirmity or illegality in the impugned judgment and decree. In support of her contention, she places reliance upon decision in case of **Param Pal Singh through father Vs. National Insurance Company and Anr.** (2013) 3 SCC 409, **Laxmibai (dead) through LRs. and Anr. Vs. Bhagwantbuva (dead) through LRs and Ors.** (2013) 4 SCC 97, (2016), **Bijender and Anr. Vs. Ramesh Chand & Ors.** (2016) 12 SCC 483 and **Atluri Brahmanandam (dead) through LRs Vs. Anne Sai Bapupji** (2010) 14 SCC 466.

7. I have heard learned counsel for the parties and perused the record of trial Court.
8. In pleading, plaintiff/respondent has pleaded that as Late Papa Rao was issue-less he and his wife had requested biological father of plaintiff for giving plaintiff in adoption. When the plaintiff was aged about 5-6 years, biological parents of plaintiff gave him in adoption to Papa Rao and Laxmi Bai. Since childhood plaintiff was residing along with adoptive father and mother. Proceedings of adoption was recorded and it was registered on 19.02.1998. In support of proof of pleading, plaintiff has produced copy of legal notice issued by Advocate on 02.02.2009 as Ex.P-1; copy of postal receipt sending notice as Ex.P-2; copy of rejection of application for grant of compassionate

appointment dated 01.11.2006 as Annexure P-3; copy of rejection of second application for grant of compassionate appointment dated 15.02.2007 as Ex.P-4; copy of adoption deed dated 19.02.1998 as Ex.P-5; copy of death certificate of Late Papa Rao as Ex.P-6; copy of application submitted in the name of Papa Rao to respondent No.2 dated 29.08.1998 as Ex.P-7; nomination for provident fund dated 15.11.1998 as Ex.P-8. Plaintiff had examined Lakhi Ram Yadav (himself) as PW1, Janak Ram Yadav (biological father) as PW2, Manish Kumar Jain as PW-3 and Puniram Yadav as PW4.

9. Defendants have not examined any witness.
10. Even if the defendants have not led any evidence before trial Court, but then also plaintiff has to prove his own case and to stand on his own legs.
11. Before proceeding further, I find it appropriate to have a glance of relevant provision under the Act of 1956. Section 5 of the Act of 1956 deals with adoption to be regulated by this Chapter. Section 6 talks of requisites of valid adoption. Section 9 talks of persons capable of giving in adoption. Section 10 provides for, persons who may be adopted. It clearly indicates that no person shall be capable of being taken in adoption unless following conditions are fulfilled and one of conditions enumerated in Section 10 is that he or she has not completed age of 15 years, unless there is a custom or usage applicable to parties which permits persons who have completed age of 15 years being taken in adoption. Section 11 talks of other conditions for valid adoption which reads as under:

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

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

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

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12. Section 11 (vi) clearly mentions that child to be adopted must be actually given and taken in adoption by parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in case of abandoned child or child whose parentage is not known, from place or family where it has been brought up to family of its adoption.”
13. In the light of aforementioned provision, if evidence brought in record by plaintiff is looked into, it is apparent that plaintiff (PW1) in his evidence has stated that he was given by his biological father & mother to adoptive father & mother with mutual consent and customs prevailing in their community. In cross-examination he stated that at the time of said proceeding he was aged about 5-6 years. Biological father of plaintiff is examined as PW2 Janak Ram Yadav. In examination in chief, he stated that he with the consent of his wife, when plaintiff was 5-6 years of age, was given in adoption by making him sit on lap. There is no specific averment in examination-in-chief as to in whose lap plaintiff was made to sit, whereas, plaintiff had stated that his biological parents gave the plaintiff in lap of adoptive mother and adoptive father. PW3 Manish Kumar Jain and PW4 Puniram Yadav had not specifically mentioned anything in this regard as to who gave the plaintiff to whom in categorical terms in their examination-in-chief but only mentioned that with mutual consent and the custom prevailing in their community plaintiff was adopted.
14. Janak Ram (PW2) in cross-examination has stated that in front of community members he gave the plaintiff on lap of Papa Rao . At that time sweets were distributed. He also stated that at the time when

adoption took place it was winter season and ceremony took place in afternoon at about 2:00 -3:00 pm. Manish Kumar Jain in his cross-examination has stated that adoption ceremony took place in summer season. He denied the suggestion that he was not present at the time of ceremony of adoption. From age of plaintiff and this witness PW3 Manish Jain as mentioned in deposition sheet it appears to be 34 years and 40 years respectively. Manish Jain was shown to be 6 years elder. He is shown to be resident of Chirmiri. According to PW4 Puniram Yadav in cross-examination admitted that PW2 Janak Ram is his uncle and Papa Rao is friend of his uncle. Perusal of evidence on record by plaintiff would show that none of witnesses has clearly stated that where the give and take ceremony had taken place. There is contradiction in the statement of PW2 and PW3 about the season in which alleged adoption had taken place. None of witnesses has named the other community members in whose presence ceremony of give and take had taken place. Evidence of PW-3 does to appear to be reliable evidence more particularly considering his age on the alleged date of adoption, in the facts of case. Though according to pleading made in deed of adoption that adoption took place on 25.03.1976, but it was registered only on 19.02.1998, which shows that adoption deed was prepared only in the year 1998 and not at the time of alleged date of adoption. It is in the adoption deed only, it is mentioned that proceedings of adoption is taken place in resident of party No.2 i.e. adoptive father in Railway Colony i.e. Railway Station Chirmiri. Plaintiff had filed copy of application for entering the adoption of plaintiff in service record dated 29.08.1998 as Ex.P-7, copy of State Railway Provident Fund as Ex.P-8 dated 15.11.1998 and copy of service record

mentioning the family member of employer. All these documents are after getting alleged deed of adoption registered. Plaintiff has not placed on record any document of his education like admission in school or any other document showing him to be the adopted son of Papa Rao and Laxmi Bai of prior to 1998.

15. Learned trial Court had not taken into consideration the requisite of a valid adoption as provided under Section 11 of the Act of 1956 in particular Section 11 (vi) of the Act. No witness of the community is examined to prove the fact of give and take ceremony. Witnesses PW3 and PW4 who are examined are the witnesses to deed of adoption. Name of the person of their community present at the time of adoption in year 1976 is not specifically mentioned.
16. Hon'ble Supreme Court in case of **Jai Singh Vs. Shakuntala** (2002) 3 SCC 634 has noted the statutory presumption envisaged by Section 16 of the Act of 1956 and observed as under:

“2. The Section thus envisages a statutory presumption that in the event of there being a registered document pertaining to adoption there would be a presumption that adoption has been made in accordance with law. Mandate of the Statute is rather definite since the Legislature has used "shall" in stead of any other word of lesser significance. Incidentally, however the inclusion of the words "unless and until it is disproved" appearing at the end of the statutory provision has made the situation not that rigid but flexible enough to depend upon the evidence available on record in support of adoption. It is a matter of grave significance by reason of the factum of adoption and displacement of the person adopted from the natural succession - thus onus of proof is rather heavy. Statute has allowed some amount of flexibility, lest it turns out to be

solely dependent on a registered adoption deed. The reason for inclusion of the words "unless and until it is disproved" shall have to be ascertained in its proper perspective and as such the presumption cannot but be said to be a rebuttable presumption. Statutory intent thus stands out to be rather expressive depicting therein that the presumption cannot be an irrebuttable presumption by reason of the inclusion of the words just noticed above. On the wake of the aforesaid the observations of the learned single Judge in *Modan Singh vs. Mst. Sham Kaur & Ors.* (AIR 1973 P&H 122) stands confirmed and we record our concurrence therewith."

17. In case of **M. Vanaja Vs. M. Sarla Devi** (dead) (2020) 5 SCC 307, Hon'ble Supreme Court upon taking note of relevant provision of the Act of 1956 held that a plain reading of said provision made it clear that compliance with the conditions in Chapter-I of the Act of 1956 is mandatory for adoption to be treated as valid. Two important conditions as mentioned in Section 7 and 11 of the Act of 1956 are consent of wife before a male Hindu adopts a child and proof of ceremony of actual giving and taking adoption.
18. In case of **Smt. Dhanno and Ors. Vs. Tuhiram (died) & Ors.** 1996 SCC OnLine P & H 301 while considering the argument that Section 16 of the Act of 1956 required a registered adoption deed to be believed, held that presumption thereunder, if any, is rebuttable and by merely placing document on record without proving the ceremony of deed of adoption it cannot be said that there was a valid adoption. In that case, Court had noted that factum of adoption must be proved in same way as any other fact and such evidence in support of adoption

must be sufficient to satisfy the heavy burden that rests upon any person who seeks to displace natural succession by alleged an adoption.

19. Hon'ble Supreme Court in case of **Moturu Nalini Kanth Vs. Gainedi Kaliprasad (dead, through Legal Representatives)** (2024) 16 SCC 78 , while considering deed of adoption has observed thus:

“**54.** Ext. A-9 adoption deed records the age of Venkubayamma as 70 years and states that she was desirous of taking a male child in adoption as she had no male issues. The document also records that the adoptive child would perform the annual shraddha ceremonies and offering of Pinda and water, as her natural son, to her ancestors. Nalini Kanth was aged less than a year when this adoption deed was executed whereas the adoptive mother, going by the document itself, was aged 70 years. Being of that age, it is strange that Venkubayamma would have expected this toddler to perform her obsequies after her death and such other ceremonies for her and her ancestors. Further, it is difficult to believe that a woman of such advanced years would willingly take on the responsibility of caring for an infant at that age.

55. Last but not the least, Ext. A-9 adoption deed mentions that the adoption took place at Sri Sri Raghunadha Swamy Temple but Ext. A-10 will records that Venkubayamma adopted the child with the consent of his parents in the presence of relations at the house of his parents at Chandramanipeta, Berhampur. Therefore, as per this document, the adoption took place, not at a temple, but at the house of the natural parents ie. PW 2's house. There is, thus, a contradiction between Ext. A-9 adoption deed and Ext. A-10 will as to

the place where the adoption took place. An attempt was made to discredit the scribe (PW 6) in this regard, but this disparity in the two documents which were drawn up within a short span of time speaks for itself.

56. On the above analysis, we are of the opinion that the adoption of Nalini Kanth by Venkubayamma on 18-4-1982 is not proved in accordance with law despite the registration of Ext. A-9 adoption deed dated 20-4-1982. The very adoption, itself, is not believable, given the multitude of suspicious circumstances surrounding it. Nalini Kanth cannot, therefore, be treated as her heir by adoption. Further, as Ext. A-10 will dated 3-5-1982 was also not proved in accordance with law, it does not create any right in his favour. In consequence, Nalini Kanth is not entitled to claim any right or share in Venkubayamma's properties. The findings of the High Court to that effect, albeit for reasons altogether different, therefore, do not warrant interference.”

20. In case of **Om Prakash Sharma Alias O.P. Joshi Vs. Rajendra Prasad Shewda & Ors.** (2015) 15 SCC 556, Hon’ble Supreme Court observed as under:

“**7**..... The High Court further held that the adoption of Sitaram Joshi was not proved and therefore on the death of Moni Debi in 1963 the entire suit property had devolved on her daughter Gomati Debi.”.....

x x x
 x x x
 x x x

25. In view of the above position demonstrated by the evidence on record the High Court was

fully justified in not entering into the issue of validity of the adoption of Defendant No.1.”....

21. In case at hand, adoption deed was not prepared and registered immediately at the time of alleged date of adoption, but it got registered only after 22 years from the date of alleged adoption.
22. As discussed above, no members of community present at the time of adoption were named in the plaint or in the evidence of witnesses. Evidence of PW3 is not inspiring confidence in view of his age to be only about 12 years at the time of registration of adoption deed and further his contradictory statement with regard to season in which adoption alleged to have been taken place, with evidence of PW2.
23. Decision relied upon by learned counsel for respondent/plaintiff in case of **Atluri Brahmanandam** (supra) is on different facts. The deed of adoption in that case was dated 27.04.1966, which appears to be prepared at the time of adoption and got registered and in that facts of case Hon'ble Supreme Court taking into consideration Section 16- *Presumption as to registered documents relating to adoption* as provided under Act of 1956 has accepted the document and drawn presumption .
24. Decision relied upon by learned counsel for respondent in case of **Bijender** (supra) is also on different facts. In that case also adoption deed dated 07.06.1977 (registered deed). The said adoption deed was signed by adoptive father along with other witnesses.
25. Case of **Laxmibai** (supra) relied upon by learned counsel for respondent is also on different facts. In that case also the Court upon

appreciation of evidence found that all the pre- requisites for valid adoption have been performed like give and take ceremony of valid adoption was conducted in presence of natural parents and adoptive parents in presence of large number of persons including several relatives and deed of adoption was prepared and registration of adoption deed was done on the same day immediately after its execution before the Registrar concerned, whereas in case at hand, there is no evidence in record to show that at the time of alleged adoption, the deed was prepared. Adoption Deed which is produced as Ex.5 was registered after about 22 years from the alleged date of adoption, only on 19.02.1998.

26. Case of **Param Pal Singh** (supra) relied upon by learned counsel for respondent is also on different facts. In that case, on the date of adoption, adoption deed was prepared by Sarpanch of Village Panchayat and at that time apart from witnesses to deed of adoption 15-20 persons including women were also present.
27. In case at hand from perusal of document Ex. P-5 registered deed of adoption would show that it was prepared and got registered only in the year 1998 and therefore this adoption deed cannot be accepted as gospel truth drawing presumption that adoption has been made in accordance of the provision of the Act.
28. For the foregoing discussions, in the opinion of this Court, respondent-plaintiff who wants to take the benefit of alleged adoption was having heavy burden upon him to prove fact of valid adoption in accordance with provision of Act of 1956, in which he failed.
29. Learned trial Court fell into error in observing that proceedings of

adoption as provided under Section 11 of the act of 1956 had taken place in 1983-84 which is perverse to contents of adoption deed produced by plaintiff himself as Ex.P-5 wherein there is mention of date of adoption as 25.03.1976. Learned trial Court has heavily relied upon registered deed of adoption Ex.P-5 which could not have been done, in absence of admissible evidence of proof of valid adoption as provided under Section 11 of the Act of 1956 and has arrived at wrong conclusion of allowing the suit. Accordingly, judgment and decree passed by leaned trial Court is not sustainable in eyes of law and is therefore set aside.

30. Appeal is accordingly allowed.
31. Let a decree be drawn accordingly.

Sd/-
(Parth Prateem Sahu)
Judge