

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**O.J.C. No.10903 of 1999**

(An application under Article 227 of the Constitution of India.)

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Hajaru Mahakur (since dead, his legal heirs  
Tapasa Mahakur and others) ..... Petitioners

-versus-

Pitambar Pradhan and others ..... Opp. Parties

**AFR**

*Advocates appeared in this case:*

*For Petitioners* : Mr. Budhiram Das, Advocate

*For Opposite Parties* : Mr. U.C. Panda, Advocate  
(For Opposite Party No.1)  
Mr. Dillip Kumar Mishra,  
Additional Government Advocate  
(For Opposite Party Nos.2 to 4)

**CORAM :**  
**MR. JUSTICE K.R. MOHAPATRA**

**JUDGMENT**  
**01.09.2021**

1. This matter is taken up through hybrid mode.
2. The Petitioners in this writ petition seek to assail the order dated 15<sup>th</sup> December, 1998 (Annexure-6) passed by the Joint Commissioner, Settlement and Consolidation, Sambalpur-Opposite Party No.4 in Revision Case No.3 of 1996 filed by the Opposite Party No.1 under Section 36 of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short 'the Consolidation Act'). During pendency of the writ petition, said Hajaru

Mahakur died and the Petitioners as his legal heirs are substituted in his place.

3. Briefly stated the case of the Petitioners in the writ petition is that one Manglu Mahakur was the recorded tenant in respect of L.R. Holding No.13 to an extent of Ac.7.527 decimals and L.R. Holding No.14 to an extent of Ac.1.772 decimals in total Ac.9.299 decimals of Mouza-Saharapali in the undivided district of Sambalpur (for short 'the case land'). Said Manglu Mahakur and his wife Pira executed a registered deed of acknowledgement on 5<sup>th</sup> February, 1963 under Annexure-1 acknowledging adoption of Hajar Mahakur made by them earlier. Subsequently, said Manglu Mahakur cancelled the said deed of adoption vide Registered Deed No.60 dated 19<sup>th</sup> February, 1982 under Annexure-2. After cancellation of deed of adoption, said Manglu along with his wife Pira executed a deed of adoption in favour of Opposite Party No.1, namely, Pitambar Pradhan, on 12<sup>th</sup> October, 1982. While the matter stood thus, the consolidation operation started in the village. Since Manglu Mahakur was dead by then, the land register under Section 6 of the Consolidation Act was prepared in the name of Pira and Pitambar Pradhan. Thus, predecessor of the Petitioners, namely, Hajar Mahakur filed two objections in Objection Case Nos.122/27 and 123/28 respectively under Section 9(3) of the Consolidation Act to record the case land exclusively in his name on the basis of deed of acknowledgement of adoption (Annexure-1). Likewise, Opposite Party No.1-Pitambar Pradhan also filed one objection in Objection Case No. 64/18 to record the case land in his name exclusively in view of a previous partition between Pira and himself. The Consolidation Officer vide his order dated 19<sup>th</sup> July, 1995 while allowing the Objection Case No. 64/18 filed by the Opposite Party No.1 directing to record the case

land exclusively in his name rejected both the Objection Case Nos. 122/27 and 123/28 filed by Hajaruru. Assailing the same, Hajaruru filed Consolidation Appeal No. 53 of 1995. The Deputy Director, Consolidation of Holdings, Bolangir vide his order dated 15<sup>th</sup> November, 1995 (Annexure-4) allowed the consolidation appeal filed by Hajaruru accepting his adoption by Manglu Mahakur and his wife Pira. Thus, the Opposite Party No.1 being aggrieved filed Revision Case No.3 of 1996, which came to be disposed of on 15<sup>th</sup> December, 1998 allowing the said revision holding that Hajaruru failed to establish his adoption by proving giving and taking ceremony. Further, the deed of acknowledgement of adoption was subsequently cancelled by Manglu Mahakur and a deed of adoption in favour of Opposite Party No.1 was executed. Thus, the appellate forum committed error in holding Hajaruru to be the adopted son of Mangulu. Assailing the said order, this writ petition has been filed.

4. It is submitted by Mr. Das, learned counsel for the Petitioners that three objection cases being disposed of by one order, a single appeal is maintainable. In support of his case, he relied upon the case law in the case of *Ekantika Copiers (P) Ltd. -v- Collector of Central Excise*, reported in 1991 (56) ELT 350 and *Commissioner of Income Tax, West Bengal -v- Rupa Traders*, reported in (1979) 118 ITR 412. It is his contention that when objection cases filed by Hajaruru and Opposite Party No.1 were tagged together and a common order was passed, the substance as well as the form of the order being one can be assailed in a solitary appeal. Further, the said issue was neither raised before the appellate court nor before the revisional court by the Opposite Party No.1. Since the Opposite Party No.1 had filed one revision in Revision Case No.3 of 1996, this writ petition is maintainable. It is his submission that since Annexure-1 was executed on 4<sup>th</sup> February, 1963

acknowledging the adoption of Hajarū and was registered on the next day, i.e. on 5<sup>th</sup> February, 1963, the same does not need any formal proof as the adoption was an ancient one. He further submits that Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (for short 'the Act') also takes within its ambit the deed of acknowledgement of adoption. That being a registered one, there is a presumption of valid adoption unless it is disproved. Thus, strict proof of adoption of Hajarū by Mangulu and Pira is not required under law as there is recital of giving and taking ceremony in the deed of acknowledgement itself. In support of his case, he relied upon the decision in the case of **Bhajandas –v- Nanuram**, reported in AIR 1954 Raj. 17, wherein it has been held at paragraph-4 as follows:

*“4. The next point, that is urged, is that in view of what we have said in our judgment, dated 18th November, 1952 [Bhajandas v. Nanuram (1953 RLW.92).] the suit may be remanded for giving an opportunity to the appellant to prove that there was no giving and taking in adoption. In this connection, we may refer to a part of our previous judgment which runs as follows:—*

*“In our opinion, in Marwar, where the deed itself mentions that the boy had been given and received in adoption and nothing is shown whereby it may be inferred that the physical act could not take place as mentioned in the deed, a presumption does arise that the recitals in the deed have been truly made; since when a person goes to the length of sending for a scribe and executing the document and getting it registered, there is nothing to prevent him from performing the actual physical act of giving and taking. But if any party to the litigation can prove circumstances which would show that the physical act of giving and taking could not have been performed as recited in the deed of adoption, then it would be for the party setting up the adoption to prove by positive evidence that the physical act of giving and taking had taken place. In other words, it would be for the party challenging the adoption evidenced by a registered deed to plead specifically that the physical act of giving and taking had not been performed and also to indicate the particular circumstances which would negative the presumption as to recitals being correct and thereafter to lead evidence which would show that the*

*physical act could not have taken place as mentioned in the deed, and then the party relying on adoption is to prove by positive evidence that the physical act of giving and taking did take place.”*

In that view of the matter, he prays for setting aside the impugned order under Annexure-6 and to direct the Consolidation Officer to record the case land in the name of the Petitioners exclusively on the basis of the deed of acknowledgement of adoption under Annexure-1.

5. Mr. Panda, learned counsel for Opposite Party No.1 vehemently objected to the same. It is his submission that since the deed of acknowledgement of adoption under Annexure-1 was not signed by the natural parents, the same cannot attract the presumption under Section 16 of the Act. In support of his case, he relied upon the decision of the Hon'ble Supreme Court in the case of ***Ghisalal –v- Dhapubai (dead) by Mrs. and others***, reported in AIR 2011 SC 644. He further contended that deed of acknowledgement of adoption under Annexure-1 is also hit by Section 10(1)(iv) of the Act as the age of Hajaruru was more than 15 years at the time of execution of such deed. He further submits that the question of voidability of the deed can only be adjudicated by a competent civil court and not by the Consolidation Authority having limited jurisdiction. On the other hand, the registered deed of adoption in favour of Opposite Party No.1 is a valid one and the adoption is presumed to be valid in view of Section 16 of the Act. The Consolidation Officer as well as revisional court taking into consideration these material aspects passed the impugned order. As such, the same needs no interference.

6. Mr. Mishra, learned Additional Government Advocate for the State also reiterated the submission of Mr. Panda, learned counsel for the

Opposite Party No.1 and contended that since Hajaruru has not proved the factum of giving and taking ceremony, his adoption is a questionable one and can only be adjudicated by the competent civil court. He further submits that the plea of ancient adoption taken by Mr. Das, learned counsel for the Petitioners is not sustainable in the eyes of law as the deed of acknowledgement of adoption does not by itself prove the factum of adoption, more particularly when the same had already been cancelled by a registered deed of cancellation under Annexure-2. He, therefore, prays for dismissal of the writ petition.

7. Taking into consideration the rival contentions of learned counsel for the parties and on perusal of record, this Court finds that admittedly there is a registered deed under Annexure-1 executed on 4<sup>th</sup> February, 1963, which was registered on 5<sup>th</sup> February, 1963. Although Mr. Das, learned counsel for the Petitioners describes it to be a 'deed of acknowledgement of adoption', but the deed itself reveals that it is a 'deed of adoption'. Further, the date of adoption is conveniently withheld in the said deed. It, however, reveals from the recitals of the said deed under Annexure-1 that it was executed in acknowledgement of earlier adoption. The said deed under Annexure-1 came to be cancelled by executing registered deed on 19<sup>th</sup> February, 1982 (Annexure-2). Admittedly, the age of Hajaruru was more than 15 years at the time of execution of the deed under Annexure-1. Even if the deed under Annexure-1 is assumed to be a deed of acknowledgement of adoption, it is incumbent on the part of the Petitioners to prove giving and taking ceremony strictly in accordance with law to establish that the father of the Petitioners was validly adopted by Manglu Mahakur and his wife Pira. Recital of observance of giving and taking ceremony cannot waive its formal proof. It further appears that for some reasons or other,

Manglu Mahakur cancelled the registered deed under Annexure-1 by executing another registered deed on 19<sup>th</sup> February, 1982. Thus, the adoption of Hajarū is highly questionable. The case law in *Bhajandas* (supra) has no application to the case at hand, because it relates to a deed of adoption and not acknowledgement of adoption. On the other hand, the registered deed of adoption in respect of the Opposite Party No.1 is a registered one. Thus, in view of Section 16 of the Act, a presumption of valid adoption is attached to it unless it is disproved in accordance with law.

8. This Court in the case of *Nityananda Panigrahi and others –v- Commissioner of Consolidation, Orissa, Sambalpur and others*, reported in 1994 (II) OLR 214 held at paragraphs-5 and 6 as follows:

*“5. A similar question came up for consideration before a Bench of this Court in the case of Titagarh Paper Mills Co. Ltd. v. State of Orissa (A.I.R. 1975 Orissa 90) and this Court held that a single writ petition seeking to quash two different orders passed in two different proceedings cannot be maintained. In coming to the aforesaid conclusion the Bench of this Court had relied upon the earlier decision of the Patna High Court in A.I.R. 1958 Patna 653 and Allahabad High Court in A.I.R. 1965 Allahabad 517.*

*6. In the Patna case (A.I.R. 1958 Patna 653 - Biswaranjan Bose v. Honorary Secy., Ram Krishna Mission, Vivekanand Society, Jamshedpur) their Lordships had observed:—*

*“Separate applications must be made for issue of separate writs to quash separate orders; otherwise, on one application, if it succeeds, several separate writs will have to be issued and that will lead to an absurd position.”*

9. True it is that Hajarū had filed one appeal before the Deputy Director, Consolidation of Holdings, Bolangir against the common order passed in three objection cases, i.e. two filed by him and one by Opposite Party No.1. But, no objection with regard to maintainability of

one appeal against a common order passed in three objection cases was raised by the Opposite Party No.1 before the Deputy Director, Consolidation of Holdings, Bolangir. Assailing the order passed in Consolidation Appeal No.53 of 1995, the Opposite Party No.1 filed Revision Case No.3 of 1996 under Section 36 of the Consolidation Act. Hence, the factual position in this case is slightly different from the aforesaid case law. In view of the above, I am of the considered opinion that this writ petition is maintainable.

10. But, the Petitioners having not proved the giving and taking ceremony of adoption in accordance with law, I am constrained to hold that the registered deed under Annexure-1 is questionable. Again the validity of the registered deed of cancellation can only be gone into by the competent civil court and till it is held to be void, it cannot be ignored. On the other hand, the registered deed of adoption in favour of the Opposite Party No.1 attaches a presumption of valid adoption in view of Section 16 of the Act as the same has not yet been disproved in accordance with law.

11. Accordingly, I find no infirmity in the impugned order under Annexure-6. Thus, the writ petition being devoid of any merit stands dismissed.

12. L.C.R. be sent back to the concerned court immediately.

13. The interim order dated 15<sup>th</sup> October, 1999 passed in Misc. Case No. 10027 of 1999 stands vacated.

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**(K.R. Mohapatra)**  
**Judge**