

(5) For the aforesaid reasons, I accept the petition and direct that the amendment may be made in the decree-sheet. No order as to costs.

N. K. S.

*Before Surinder Singh, J.*

INDRAWATI—*Plaintiff-Petitioner.*

*versus*

JAGMAL AND ANOTHER—*Defendant-Respondents.*

Civil Revision No. 475 of 1978

October 13, 1978.

*Hindu Adoptions and Maintenance Act (32 of 1956)—Sections 16 and 30—Adoption made before the passing of the Act—Burden of proof in regard thereto—Whether lies on the person who claims on the basis of adoption.*

*Held*, that section 30 of the Hindu Adoptions and Maintenance Act 1956 specifically provides that nothing contained therein shall affect any adoption made before the commencement of the Act and therefore the validity and effect of any such adoption has to be determined as if the Act had not been passed. One has, therefore, to revert to the general law regarding placing of burden on the question of adoption if the same had taken place before the Act came into force. The general law is that evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. Thus, the burden of proving such an adoption lies on the person who claims on the basis of adoption. (Para 2)

*Petition under section 115 C.P.C. for revision of the order of the Court of Shri S. D. Arora, Sub Judge 1st Class, Charkhi Dadri dated 16th February, 1978 dismissing the application for the amendment and recasting of the issues.*

N. C. Jain, Advocate, for the Petitioner.

R. S. Mital, Advocate, for the Respondents.

## JUDGMENT

*Surinder Singh, J. (Oral)*

(1) In a declaratory suit filed by Indrawati petitioner against the respondents, an allegation was made that Jagmal, respondent who claimed to be the validly adopted son of Shrimati Karian, respondent was not actually so. The trial Court in consequence of the pleadings of the parties framed an issue in regard to the alleged adoption of Jagmal as son of Shrimati Karian and while doing so, placed the onus of proving the fact that Jagmal was not the validly adopted son of Shrimati Karian on the plaintiff. The plaintiff-petitioner then moved an application praying to the trial Court that the onus had been wrongly placed upon her and that, in fact, the onus of proving that Jagmal was the validly adopted son of Shrimati Karian should have been placed upon him, as adoption, by its very nature is against the natural course of succession. The application was considered by the trial Court and was dismissed by means of the impugned order, dated February 16, 1978.

(2) I have heard the learned counsel for the parties on the above point which, in fact, is the only point agitated in this Revision Petition. The learned counsel for the petitioner has drawn my attention to the provisions of sections 16 and 30 of the Hindu Adoptions and Maintenance Act, 1956, (hereinafter referred to as the Act). There is no dispute that the alleged adoption in the present case is by means of a registered document which was executed in the year 1962, in which it was recited that the actual adoption had taken place in the year 1952, i.e. before the coming into force of the Act. Under section 16 of the Act, whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption, the Court has to presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved. However, under section 30 of the Act, it has been specifically provided that nothing contained in this Act shall affect any adoption made before the commencement of this Act, and validity and effect of any such adoption shall be determined as if this Act had not been passed. As already observed, the actual adoption is said to have taken place in the year 1952, i.e., before the coming into force of the Act. By virtue of section 30 of the Act we cannot, therefore, seek assistance of section 16 for the

purpose of placing the burden of proving the adoption upon the plaintiff-petitioner. If the provisions of the said Act are ignored, we have to revert to the general law regarding placing of burden on the question of adoption. In this behalf, reference has been made to para 512 of Mulla's Hindu Law (Thirteenth Edition), wherein it has been mentioned that the evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption. The rule of law as laid down aforesaid has been reiterated in *Ranjit Sahu v. Nilambar Sahu and another*, (1). The said case, of course, dealt with the question of adoption under the Act, but during the course of the discussion, the learned Single Judge observed that apart from the Act, a heavy burden lay on the person who claims on the basis of adoption. In this position of law, the order of the trial Court placing the burden of proving the adoption on the petitioner is patently illegal and requires to be reversed.

(3) No other point has been argued in this Revision petition. The impugned order of the trial Court is reversed to the extent that the burden of proving issue No. 1 shall be placed upon the respondents instead of the petitioner. The case shall go back to the trial Court for proceeding further in accordance with law.

The parties, through their counsel have been directed to appear before the trial Court on November 2, 1978.

N. K. S.

Before S. S. Sandhawalia, C.J. and Harbans Lal, J.

DES RAJ JUNEJA AND OTHERS—Petitioners.

versus

UNION OF INDIA AND OTHERS—Respondents.

Civil Writ Petition No. 3958 of 1977

February 19, 1979.

*Capital of Punjab (Development and Regulation) Act (XXVII of 1952) as amended by Punjab Act (XXXVII of 1957)—Sections 7, 7A and Second Schedule—Punjab Municipal Act (III of 1911)—Sections 4, 11, 51, 52, 61 to 84—Constitution of India 1950—Article*

(1) A.I.R. 1978 Orissa 48.