



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 19133/2018

Sunil Singhvi S/o Shri Vijay Singh Singhvi, Aged About 58 Years,
R/o 1 Old Fatehpura, Udaipur.

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary Department Of Registration And Stamps, Government Of Rajasthan, Jaipur.
2. Collector (Stamps), Circle, Udaipur.
3. Sub-Registrar (First), Udaipur.
4. Shanti Lal Singhvi S/o Adopted Son Of Late Shri Kanahaya Lal Singhvi, And Biological Son Of Shri Vijay Singh Singhvi, Aged About 64 Years, R/o 01, Old Fathepura, Udaipur.

-----Respondents

For Petitioner(s)	:	Mr. Muktesh Maheshwari assisted by Mr. Aidan Choudhary
For Respondent(s)	:	Mr. Vikas Balia, Sr. Advocate, assisted by Mr. Hemant Ballani Ms. Akshiti Singhvi

HON'BLE DR. JUSTICE NUPUR BHATI

J U D G M E N T

<u>Judgment Reserved on</u>	< >	20/09/2023
<u>Date of Pronouncement</u>	< >	10/10/2023

Reportable

1. Though the matter is listed under 'Orders ' Category, but on the request of learned counsels for the parties, the matter is finally heard today itself.
2. The instant writ petition has been preferred by the petitioner under Article 226 of the Constitution of India, with the following prayers:-



"1. The impugned order dt.19.11.2018 (Annexure-8) and the impugned order dt.26.11.2018 (Annexure-9) may kindly be declared illegal, be quashed and set aside;

2. The Hon'ble Court may further observe that the stamp duty calculated while allowing rebate in stamp duty at the time of registering the Gift deed (Anx.2) for land situated at Goverdhan Vilas Talab, Kachi Basti Military Area, Udaipur in favour of the petitioner, is just and proper;

3. Any other adverse order passed by the respondent authorities against the right of petitioner during the pendency of the writ petition may kindly be taken on record and be quashed and set aside.

4. Any other appropriate order or direction, which the Hon'ble Court considers just and proper in the facts and circumstances of this case, may kindly be passed in favour of the Petitioner.

5. Costs of the writ petition may kindly be awarded to the Petitioner."

3. Briefly stated facts of the case are that Shri Vijay Singh Singhvi and Shri Kanhaiya Lal Singhvi were real brothers and one Shri Vijay Singh Singhvi had three progeny namely; Shri Shanti Lal Singhvi (respondent No.4 herein) and Shri Anil Singhvi and Shri Sunil Singhvi (the petitioner herein). Shri Shanti Lal Singhvi went into adoption to his uncle Shri Kanhaiya Lal Singhvi and was recognized as his adopted son but he continued to reside in the residence of his natural father namely Shri Vijay Singh Singhvi.

4. Shri Shanti Lal Singhvi, out of his own expenses, purchased a property situated at Goverdhan Vilas Talab, Kachi Basti Military Area, Udaipur. The said property was purchased by Shri Shanti Lal Singhvi alongwith his brother Shri Sunil Singhvi (the petitioner) with Smt. Meena Singhvi and other party in the year 1990 and partly in the year 2001. In the year 2016, Shanti Lal Singhvi gifted a portion of his share of land in favour of the petitioner by way of





a registered gift deed dated 22.03.2016 (Annexure-2) and thereafter, the petitioner applied under the Rajasthan Stamp Act, 2004, before the Sub-Registrar, Udaipur for registration of the aforesaid land in his favour. The Sub-Registrar, after a due examination of the relevant documents, calculated the stamp duty for the registration of land by extending 2.5% rebate in the stamp duty and upon submitting the same, the aforesaid land was registered in favour of the petitioner. In the application for registration, it was mentioned that Shri Shanti Lal Singhvi (respondent No.4) is an adopted son of Shri Kanhaya Lal Singhvi and natural/biological son of Shri Vijay Singh Singhvi and looking to it, the respondent authority assessed the stamp duty @ 2.5% of valuation.

5. After that, the Accountant General Office (Economic and Revenue Sector Audit) Rajasthan, while auditing the records of the Sub-Registrar, raised an objection vide notice dated 04.10.2016 (Annexure-5) wherein, it was observed that on account of gifting an immovable property relating to the father of the Donor Late Shri Kanhaya Lal Singhvi in favour of his natural/biological brother is not eligible for 2.5% rebate in the stamp duty and therefore, the same is liable to be recovered alongwith surcharge. A reference in pursuance of the audit objection dated 04.10.2016 (Annexure-5) was registered and a notice dated 20.06.2017 (Annexure-6) was issued by the respondent No.2-The Collector (Stamps), Udaipur to the petitioner and in response to the said notice, the petitioner submitted a detailed reply and written arguments before the Respondent No.2.



6. The respondent No.2-Collector (Stamps), Udaipur, even after submitting a detailed reply and written arguments vide impugned order dated 19.11.2018 (Annexure-8), accepted the reference made by the respondent No.3-Sub-Registrar, Udaipur and calculated the difference of the stamp duty amounting to Rs.37,59,100/- along with the interest @ 12% on the same from 22.03.2016 amounting to Rs.14,43,494/- and also imposed a penalty of Rs.14,43,494/-. It was further stated in the impugned order that as per the special exemption scheme introduced vide notification No.F.2(6)FD/Tax/2014 pt.115 dated 14.09.2018, rebate of interest and penalty can be availed by the petitioner upto 31.12.2018 and in case, the petitioner failed to avail the benefit of the above scheme, the petitioner will be liable for interest and penalty @ 12% from the date of execution.

7. In pursuance of the impugned order dated 19.11.2018, a demand notice dated 26.11.2018 (Annexure-9) was issued by the respondent No.3-Sub-Registrar, Udaipur whereby a demand of Rs.45,10,920/- has been raised against the petitioner by further mentioning in it that if the petitioner failed to deposit the aforesaid demand till 31.12.2018, then, the same will be recovered by attaching the movable and immovable properties of the petitioner.

8. Being aggrieved of the impugned order dated 19.11.2018 (Annexure-8), passed by the respondent No.2-Collector (Stamps), Udaipur and by impugned notice dated 26.11.2018 (Annexure-9) passed by respondent No.3-Sub-Registrar, Udaipur, the petitioner has preferred the present writ petition.

9. The learned counsel for the Respondent-State while raising preliminary objection submitted that the petitioners had statutory





and efficacious alternate remedy available under Section 65 (1) of the Rajasthan Stamps Act, 1998.

10. Learned counsel Mr. Muktesh Maheshwari, representing the petitioner submitted that:-

(A) It is a settled principle of legislative laws as well as the principle of customary laws as the rights which get curtailed with adoption are only the property right in the property of the natural/ biological parents and the natural blood line never can never be eclipsed and neither be vanished even when a person is adopted by someone else.

(B) As per the settled provisions of law, neither there is any condition, nor there is any restriction with regard to the claim or benefit with regard to the gift deed to any member of the family (in the present case, brother), therefore, the petitioner was rightly extended the benefit in the stamp duty on the gift deed and respondent No.2-Collector (Stamps), without considering the said fact, passed the impugned order dated 19.11.2018 (Annexure-8).

(C) The objection raised by the audit team which led to the reference was that the property in question was not a self acquired property of Shri Shanti Lal Singhvi, however, fact of the matter is that the said property is a self acquired property of Shri Shanti Lal Singhvi and the proceedings which were initiated before the respondent No.2, were completely deviated from the objections and the order dated 19.11.2018 was passed on a completely different footing.

(D) Even if the impugned stamp duty is due on the same document, then too, levy of surcharge and additional charges of stamp duty is absolutely uncalled, arbitrary and illegal. The stamp





duty was calculated at the rates prescribed under the law assessed by the respondent authorities and the said document was duly accepted by the respondent No.3 after being fully satisfied as is evident from the stamp report dated 22.03.2016 (Annexure-3) and when an audit objection was raised by the respondent Department, proceedings with regard to the deficiency in stamp duty were initiated by the respondent No.2 and recovery was made in pursuance of the same by penalizing the petitioner.

(E) The matter was pending adjudication before the respondent No.2-Collector (Stamps) for a period of one and half years, therefore, there was a delay on part of the authority not on part of the petitioner and the petitioner is not liable to any such stamp duty and if is liable of any stamp duty, no surcharge or any additional charge or interest can be imposed upon the petitioner.

(F) In support of his contentions, learned counsel for the petitioner relied upon the judgment passed by Hon'ble the Madras High Court in the case of **Viveknarendran Vs. Unknown** decided on 20.07.2020, reported in **2020(6) MLJ 390**, where, Hon'ble the Madras High Court, allowed the Original Petition filed by the petitioner.

(G) Learned counsel for the petitioner also placed reliance upon the judgments passed by this Court to prove his case. The said judgments are as below:-

- (1) **SBCWP No.4402/2013 (Ashiana Amar Developers Vs. State of Rajasthan & Ors.)** Decided on 02.12.2016.
- (2) **SBCWP No.10415/2015 (M/s Om Metals Infra Projects Lts. Vs. The State of Rajasthan & Ors.)** Decided on 19.09.2017.





(3) **SBCWP No.6289/2018** (M/s. Varka Lucky Savings Scheme Company Vs. State of Rajasthan & Ors.) Decided on 09.05.2018.

(H) Learned counsel for the petitioner also placed reliance upon the judgment passed by Hon'ble the Apex Court in the case of **Kalindi Damodar Garde (D) by Lrs Vs. Manohar Laxman Kulkarni (D) by Lrs & Ors.** Decided on 07.02.2020, reported in **Civil Appeal No.6642-6643 of 2010**. Relevant portion of which is reproduced hereinbelow:-

"21. In view of the provisions of the Act which do not make any distinction between the son born to a father prior or after adoption of his father and that there is no provision which bars the natural born son to inherit the property of his natural father, therefore, the High Court has rightly upheld the rights of the sons of Laxman. In fact, in the Full Bench judgment of Bombay High Court in **Martand Jiwajee Patil**, it has been held that the natural father retains the right to give in adoption his son born before his own adoption. Therefore, if he has a right to give his son in adoption, such son has a right to inherit property by virtue of being an agnate. There was a full blood relationship between the three sons and the daughter who was born after adoption. All the children of Laxman are entitled to inherit the property of their natural father and mother in accordance with the provisions of the Act as succession has opened after the death of Laxman in 1987 and subsequently the mother in the year 1992.

22. In view thereof, we do not find any error in the judgment of the learned Single Bench of the Bombay High Court. Accordingly, the appeals are dismissed."

(I) Learned counsel for the petitioner, thus, urged, that the writ petition may kindly be allowed and the impugned orders dated



19.11.2018 (Annexure-8) passed by respondent No.2-Collector (Stamps), Udaipur and the order dated 26.11.2018 passed by respondent No.3-Sub-Registrar, Udaipur, may be quashed and set aside qua the petitioner.

11. Per contra, learned counsel Ms. Akshiti Singhvi, representing the respondents-Department, vehemently and fervently opposed the submissions advanced by the petitioner's counsel and submitted that:-

(A) The stamp duty has been charged as per law as the stamp duty was payable on the gift deed which was executed in favour of other relatives, by the 'Donor'-Shanti Lal Singhvi who became the adopted son of Shri Kanahya Lal Singhvi and in favour of 'Donne'-Sunil Singhvi (petitioner), after the adoption, so, the relation of Sunil Singhvi (petitioner) and Shanti Lal Singhvi, Respondent No. 4, does not remain as real brothers and the stamp duty was rightly determined and exemption is not applicable in the present matter as 'Donor' and 'Donne' does not fall within the definition of near blood relatives.

(B) As per Section 12 of Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the Act of 1956), an adopted child shall be deemed to be child of his or her adoptive father or mother for all purpose with effect from the date of adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be served and replaced by those created by the adoption in the adoptive family. It has been further clarified under Section 2(bb) of the Act of 1956 that this Act is only applicable to the people who belong to Buddhist, Jain or Sikh community, so it





is clear that the Act of 1956 is applicable in the present case at hand.

(C) After adoption, a brother loses his identity as real brother and becomes a cousin brother and before the adoption, Shanti Lal Singhvi and Sushil Singhvi were real brothers but after adoption of Shanti Lal Singhvi by Shri Kanhaya Lal Singhvi and if Shanti Lal Singhvi donates his self acquired land to his cousin brother, then, stamp duty is liable to be charged, which is duly considered by the Office of Accountant General while raising audit objection.

(D) The order dated 19.11.2018 (Annexure-8) is not a disputed order as it was passed while considering the law applicable to the facts of the case and the notice dated 26.11.2018 (Annexure-9) was issued because the stamp duty was not satisfied by the petitioner.

(E) In support of her contentions, learned counsel for the respondent-Department placed reliance upon the judgment passed by this Court which are as follows:-

(1) ***Nagendra Singh & Anr. Vs. State of Rajasthan & Ors. (SBCWP No.14541/2019).***

(2) ***Param Prasad Charitable Trust Vs. State of Rajasthan & Ors. (SBCWP No.619/2022).***

(3) ***M/s. Maharaja Enclave Vs. State of Rajasthan & Ors. (SBCWP No.10001/2018).***

(F) Learned counsel for the respondent-Department also placed reliance upon the judgment passed by Hon'ble the Division Bench of this Court in a bunch of writ petitions viz. ***State of Rajasthan & Anr. Vs. Indus Tower Ltd. & Anr. (DB Civil Spl Appeal (Writ) No.193/2019).***





(G) Learned counsel for the respondent-Department also placed reliance upon the judgments rendered by Hon'ble Apex Court in the cases of:-

(1) ***Assistant Commissioner of State Tax and Others Vs. Commercial Steel Limited*** decided on 03.09.2021 reported in ***2021 SCC Online SC 884***.

(2) ***Genpact India Private Limited Vs. Deputy Commissioner of Income Tax & Anr.*** Decided on 22.11.2019 reported in ***2019 SCC Online SC 1500***.

(H) Learned counsel for the respondent-Department, thus, urged, that the writ petition deserves to be dismissed with costs.

12. Mr. Vikas Balia, learned Senior Counsel assisted by Mr. Hemant Ballani, Advocate, appearing for private respondent No.4, submitted that:-

(a) The word 'father' is defined under Section 3(20) of the General Clauses Act, 1897, which is read as under:-

"3(20) "father", in the case of any one whose personal law permits adoption, shall include an adoptive father;"

(b) Had there been the intention to not give exemption to brother, the respondent-Department would have specifically mentioned word 'natural brother' in the exemption notification dated 06.03.2013 (Annexure-4) and thus, the petitioner has wrongly been deprived of the exemption.

(c) The contention of respondent-Department that the exemption notification is to be interpreted strictly does not find its ground because it is a beneficial legislation and beneficial legislation is to be interpreted liberally and also, that if at all the exemption notification is interpreted strictly, then the word





'brother' would include all kinds of brothers and hence, the exemption notification would apply upon the petitioner.

13. Heard learned counsels for the parties and perused the material on record as well as the judgments cited at bar.

14. This Court observes that the exemption notification dated 06.03.2013 issued by Finance Department (Tax Division), Government of Rajasthan, uses the word 'Brother' and that has to be construed strictly by using the doctrine of strict interpretation and by applying the strict interpretation, the petitioner cannot be said to be the brother of Respondent No. 4 after being given away in adoption.

15. This Court also observes that Respondent No. 4 went into adoption to one Sh. Kanhaiya Lal Singhvi and as per Section 12 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'the Act of 1956'), all the ties of the person who goes for adoption are deemed to be severed for all purposes with his natural family. Section 12 of the Act of 1956 is reproduced hereunder:

"12. Effects of adoption— An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such





property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

16. This Court further observes that it is of paramount importance to underscore the sweeping implication of Section 12 of the Act of 1956 in the present circumstances. This Court also observes that Section 12 of the Act of 1956 explicitly lays down the effects of adoption stating that all ties between the person going for adoption and his or her family of birth are severed due to adoption. This Court further observes that once the ties with natural brother stood severed as per the provisions of Section 12 and it's proviso of the Act of 1956 on the date of adoption, then private Respondent No. 4 cannot be said to be brother of the petitioner in order to avail the exemption as per the notification dated 06.03.2013 (Annexure-4).

17. This Court also observes that the fulcrum of the petitioner's claim pivots upon his qualification as a 'Brother' within the contours of the exemption notification dated 06.03.2013 (Annexure-4), but after examining the effect of the provision contained in Section 12 of the Act of 1956, the petitioner does not meet the required criteria and therefore, cannot be granted rebate as per the exemption notification dated 06.03.2013 (Annexure-4).

18. In view of the above, the present writ petition being devoid of merits is dismissed and all pending applications, if any, shall also stands dismissed.

(DR. NUPUR BHATI),J

/Devesh Thanvi/-

