

**Title Suit No. 01/2019**

**03.03.2020:**

Learned advocate for both the sides are present.

Heard both the sides on the preliminary issue regarding maintainability of the suit before this Court.

During hearing, learned counsel for the plaintiff has submitted that under the provisions of Guardianship and Wards Act. under the provision of Adoption Regulations, the matter relating to guardianship /adoption are to be decided by the District Judge as the Principal Civil Judge of the district. On the other hand, learned counsel for the defendants has submitted that this Court has no jurisdiction.

The present suit has been filed by the plaintiff challenging the adoption deed executed by the defendant no. 1 in favour of defendant no. 2 by giving her son in adoption under the provisions of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred as HAMA). It is alleged in the plaint that on 17<sup>th</sup> day of his birth, the son of the defendant no. 1 was given in adoption to the plaintiff by observing all the formalities as required under the HAMA and the subsequent adoption of the said son by the defendant no. 1 to defendant no. 2 is illegal. Under the above fact, the instant suit was filed for cancellation of the adoption deed executed by defendant no. 1 in favour of defendant no. 2.

The opposite parties have submitted written statement and while denying the averments of the plaint also taken the plea of non-maintainability of the suit before this Court.

On going through the various provisions of the Hindu Adoption and Maintenance Act, 1956, it appears that nothing has been provided regarding jurisdiction of a particular Court in the event of challenge to legality of adoption under HAMA.

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From the fact as pleaded, it appears that the dispute is purely civil in nature regarding validity of adoption deed and as such, Section 34 of the Specific Relief Act r/w section 9 of the CPC will be applicable to decide the jurisdiction of the Civil Court. Law is well settled that where specific jurisdiction has not been provided, the Court of lowest jurisdiction to entertain a civil suit basing on valuation of the suit shall.

In this case, the plaintiff has paid court fee of Rs. 58/- only without mentioning the value of the reliefs claimed. The Court of Munsiff being the Court of lowest jurisdiction is the competent Court for trying the present dispute. As such, I am of the opinion that the suit is not maintainable before this Court and it should have been filed before the Court of learned Munsiff. Accordingly, I answer the issue in negative and against the plaintiff.

At this stage, learned counsel for the petitioner has filed a separate petition vide No. 100/2020, under Order VII Rule 10A(2) of the CPC by stating that as the Court has decided regarding trial of the suit by the Court of learned Munsiff and as both the parties have appeared before this Court and defendant has filed their written statements, the case record may kindly be transferred to the Court of competent jurisdiction i.e. the Court of learned Munsiff by notifying such transfer to both the sides as provided under Order VII Rule 10A(2) of the CPC.

Normally in case of deciding that suit is filed before wrong forum, the plaint should have been returned to the plaintiff for filing before the proper Court. But as the defendant has appeared, filed his written statement, returning of the plaint may raise complications in return of the written statement as submitted by the defendant.

Considering above, I am of the opinion that if the case is transferred to the Court of competent jurisdiction i.e. Munsiff No. 1, Morigaon, which is under the administrative control of this Court by using power under Section 24 CPC r/w Section 151 CPC, it will be beneficial to

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both the sides and save their time and also the formality of return of the plaint etc. etc. could be avoided. As such, let the entire case record be transferred along with all the documents, order sheets etc. to be placed before the learned Munsiff No. 1, Morigaon for disposal from the stage of SBPH. Needless to say, learned Munsiff No. 1, Morigaon shall renumber the case as per said courts serial.

Both the parties are directed to appear before the Court of learned Munsiff No. 1, Morigaon on 30.03.2020 for further instruction.

Fixed 30.03.2020 for appearance before the Court of learned Munsiff No. 1, Morigaon.

Civil Assistant to take steps.

The case stand disposed on transfer.

Judge  
Assam

District  
Morigaon,