



2025:AHC-LKO:57788-DB

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 316 of 2025

Arun And Another

.....Appellant(s)

Versus

State Of U.P. Thru. Its Prin. Secy. Home Deptt. Of
Home Affairs Govt. Sectt. Lko. And 7 Others

.....Respondent(s)

Counsel for Appellant(s)	: Prateek Tewari, Praveen Kumar Tewari
Counsel for Respondent(s)	: C.S.C., Shashank Shukla

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE PRASHANT KUMAR, J.**

1. Heard.

2. This is a special appeal challenging an order dated 11.08.2025 passed by learned Single Judge in HABC writ petition bearing No.177/2025 [Ayesha through her mother Ragini and Anr. vs. State of U.P. & Ors.]. The petition was filed by respondent no.6 through her natural guardians and respondent nos.7 and 8. Learned Single Judge has allowed the claim of natural guardians i.e. opposite party no.s 7 and 8 to custody of opposite party no.6 and has rejected the stand of appellants herein on the ground that alleged adoption deed which is a notarized one is not registered whereas the law requires it to be registered.

3. Learned counsel for the appellant has relied upon a judgment dated 05.05.2014 passed in special appeal no.236 of 2014 [Sanjay Kumar 3238 (S/S) of 2014 vs. State of U.P. & Ors.] to contend that in that case Section 16 of the Hindu Adoptions and Maintenance Act, 1956 (in short 'the Act, 1956') as applicable in the State of U.P. was considered and it was held that compassionate appointment could not have denied prima facie merely on the ground that adoption deed was not registered one. According to the Co-ordinate Bench, U.P. amendment provides that additional evidence under the Indian Evidence Act, 1872 shall be admissible to defend any unregistered

adoption deed. This is the only argument advanced for challenging the judgment of learned Single Judge.

"16. Presumption as to registered documents relating to adoption- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

4. As per the above quoted Section 16 of the Act, 1956, if the adoption deed is registered then it raises a presumption about validity of the adoption. However, this provision was amended for its application in the State of U.P. by U.P. Civil Laws (Reforms and Amendments) Act, 1976 (hereinafter referred as 'the Amending Act of 1976'). The statement of objects and reasons (paragraph-5) for introducing the said Amending Act of 1976 discloses the intent and object for bringing about the amendment, inter alia, in Section 16 of the Act, 1956 which reads as under:-

"5. A deed of adoption of a child, a sale deed of immovable property of the value below Rs. 100 and an agreement to sell immovable property, are not required compulsorily to be registered at present. Playing upon the element of chance involved in oral evidence, fictitious ante-dated deeds of such nature are set up with view to usurp the property of a rightful transferee or legatee, and on the other hand genuine transactions of these categories are challenged. Suitable amendments are proposed in the Transfer of Property Act, 1882, The Registration Act, 1908, and the Hindu Adoption and Maintenance Act 1956 to make compulsory the registration of the adoption deeds, all agreements to sell immovable property and all transfers of immovable property irrespective of the value or consideration."

5. Accordingly, Section 16 of the Act, 1956 was amended by Section 35 of the Amending Act of 1976 for its application in the State of U.P. in the following terms:-

"Uttar Pradesh- Renumber Section 16 as sub-section (1) thereof and after sub-section (1) as so renumbered, insert the following sub-section (2) namely:--

"(2) In case of an adoption made on or after the 1st day of January, 1977 no court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child

in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force:

Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872."

6. To facilitate the aforesaid, by Section 32 of the Amending Act of 1976, as was proposed in the objects and reasons, Section 17 of the Registration Act, 1908 (hereinafter referred to as 'the Act, 1908') was amended by inserting clause (f) to Section 17(1) of the Act, 1908 and interalia amending sub-Section (3) of Section 17 for its application in the State of U.P. Section 17 (1) containing clause (f) and sub-Section (3) of Section 17 read as under:-

"17. Documents of which registration is compulsory.--(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:--,

.....

(f) any other instrument required by any law for the time being in force, to be registered,

(2)....

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a Will [and an instrument recording adoption of a child executed after the first day of January, 1977] shall also be registered"

7. A conjoint reading of the amended Section 16(2) of the Act, 1956 as applicable in the State of U.P. and Section 17 (1)(f) and (3) of the Act, 1908 as applicable in the State of U.P. makes it clear that after 01.01.1977, any adoption in the State of U.P. can take place only by way of a registered deed and not otherwise.

8. There is no exception to the aforesaid said statutory requirements. There is nothing in the provision whether under sub-Section (1) or sub-Section (2) as applicable in the State of U.P. of Section 16 of the Act, 1956 or the Act,

1908 which could lend itself to even a remote suggestion that an unregistered deed could be relied upon to claim adoption as is being claimed herein. The judgment relied by learned counsel for the appellant was rendered in a case of compassionate appointment where a succession certificate had already been issued to the appellant-petitioner and he had also been paid post-retiral dues. As regards the other observations, with respect, we have perused the provision itself and do not find any such stipulation therein. As the alleged adoption deed is a notarized deed and not a registered deed in accordance with law, therefore, no benefit could accrue at least before a writ court in favour of the appellant. The proviso to sub-Section (2) of Section 16 of the Act, 1956 as applicable in the State of U.P. merely provides that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872. Now, secondary evidence would be admissible only when the primary evidence existed but was not available for any reason. Here, it is not the case of the appellants that there was an adoption deed duly registered which is not available, therefore, there is secondary evidence. The case of the appellants in the very first instance is that there was only a notarized adoption deed, therefore, the proviso also does not help the appellants.

9. The appeal lacks merits and it is accordingly, **dismissed**.

(Prashant Kumar,J.) (Rajan Roy,J.)

September 19, 2025

Shanu/-