



GAHC010137972018



2023:GAU-AS:11069

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./97/2018

ON THE DEATH OF BAJRANGLAL MODI HIS LEGAL HEIR SMT PREM LOTA
MODI
W/O LATE BAJRANGLAL MODI RESIDENT OF TITABOR CHARALI, P.S.
TITABOR, DIST. JORHAT-785630

2: SRI SURAJ KUMAR MODI
S/O LT BAJRANGLAL MODI
RESIDENT OF TITABOR CHARALI
P.S. TITABOR
DIST. JORHAT-78563

VERSUS

SRI RAJ KUMAR MODI AND 3 ORS
S/O LATE SUNDARMAL MODI, R/O TITABOR CHAR ALI, P.S. TITABOR,
JORHAT.

2:SRI SHOK KUMAR MODI
S/O LATE SUNDARMAL MODI
R/O TITABOR CHAR ALI
P.S. TITABOR
JORHAT.

3:SRI SUSHIL KUMAR MODI
S/O LATE SUNDARMAL MODI
R/O TITABOR CHAR ALI
P.S. TITABOR
JORHAT.

4:BIJAY KUMAR MODI
S/O LATE MANNALAL MODI A R/O TITABOR CHAR ALI
P.S. TITABOR
JORHAT



**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

For the Petitioners : Mr. D. K. Mishra, Sr. Advocate,
: Mr. B. Prasad, Advocate

For the Respondents : Mr. G. N. Sahewalla, Sr. Advocate
: Mr. A. Sahewalla, Advocate

Date of Hearing : **20.01.2026**
Date of Judgment : **05.05.2026**

JUDGMENT & ORDER

- 1.** Heard Mr. D. K. Mishra, the learned Senior Counsel, assisted by Mr. B. Prasad, the learned counsel for the review petitioner. Also heard Mr. G. N. Sahewalla, the learned Senior Counsel, assisted by Mr. A. Sahewalla, the learned counsel for the respondents.
- 2.** This review petition has been filed under Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, 1908 by the respondents, seeking review of the Judgment & Order dated 22.02.2018 passed by this Court (*Hon'ble Mr. Justice P. K. Deka, since retired*) in RSA No. 73/2013.
- 3.** By the aforesaid judgment, the Regular Second Appeal filed by the appellants/defendants against the Judgment and Decree dated 12.12.2012, passed by the learned Civil Judge, Jorhat, in Title Appeal No. 2/2011, was allowed and the judgment and decree passed by the First Appellate Court were set aside, resulting in the dismissal of the suit.



4. The facts relevant for consideration of the instant review application, in brief, are that the original review petitioner, namely, Bajranglal Modi (since deceased), had filed a title suit, being T.S. No. 15/2008, before the Court of the learned Munsiff No. 1, Jorhat, for declaration, eviction and recovery of khas possession in respect of a plot of land measuring about 1.5 kathas covered by Dag No. 1422 of Periodic Patta No. 169 of Titabor Town in Amguri Kharikatia Mouza. The review petitioner (since deceased) claimed himself to be the adopted son of late Meghraj Modi. His natural father was late Sundarlal Modi. The present respondents are also the natural-born sons of late Sundarlal Modi, though respondent No. 4 was taken in adoption by late Mannalal Modi, who was a brother of late Sundarlal Modi.

5. After the death of Meghraj Modi, the original review petitioner, namely, Bajranglal Modi, inherited his property. Late Bajranglal Modi decided to install and run a stone crusher in a part of the land covered by Dag No. 1422 under Periodic Patta No. 169 of Titabor Town in Amguri Kharikatia Mouza. The defendant Nos. 1, 2 and 3 obstructed Late Bajranglal Modi from installing the said stone crusher. Consequently, Late Bajranglal Modi had to file a title suit against the respondents before the Court of the learned Munsiff No. 1, Jorhat, which was registered as Title Suit No. 15/2008.

6. The defendants contested the suit by filing a joint written statement, wherein various defences were taken by them. However, their main contention was that the adoption of Bajranglal Modi by Late Meghraj Modi was void *ab initio*. It was contended that on 02.09.1971, when the deed of adoption bearing No. 541 dated 02.09.1971 was executed by Late Meghraj Modi, the age of Bajranglal Modi was 17 years, which, according to the Hindu Adoption and



Maintenance Act, 1956, was more than the prescribed age of 15 years for an adoption to be regarded as valid.

7. On the basis of the pleadings of the parties, the trial court framed seven issues. Out of which, the issue No. 3, which is relevant to the present review petition, was "*Whether the adoption of the plaintiff by Meghraj Modi is valid?*" Ultimately, by Judgment dated 18.12.2010, the Court of the learned Munsiff No. 1 decreed the suit filed by the original review petitioner, Late Bajranglal Modi. In the aforesaid judgment, the trial court came to the finding that the plaintiff, Bajranglal Modi, had not completed 15 years of age on the date of adoption.

8. Being aggrieved by the judgment of the trial court, the present respondents preferred an appeal before the Court of the learned Civil Judge (Senior Division), Jorhat, which was registered as Title Appeal No. 2/2011. However, by Judgment and Decree dated 12.12.2012, the Court of the learned Civil Judge, Jorhat, dismissed the appeal preferred by the respondents and upheld the judgment of the trial court.

9. Being aggrieved by the judgment of the First Appellate Court, the present respondents preferred a Regular Second Appeal before this Court, which was registered as RSA No. 73/2013. The said Regular Second Appeal was admitted on 08.04.2013 by this Court after formulating two substantial questions of law. Later on, on 17.03.2016, another substantial question of law was formulated.

10. The first substantial question of law, which was formulated by this court



was as follows:

“Whether the learned courts below erred in accepting the Exhibit 1 certificate for the purpose of the age of the adopted boy, which is contrary to the declaration made by the father in registered adoption deed and as such respondent/plaintiff failed the discharge burden regarding valid adoption?”

11. This Court, by Judgment dated 22.02.2018 passed in RSA No. 73/2013, allowed the Regular Second Appeal by answering the first substantial question of law in the affirmative. The second substantial question of law was found to be not relevant for the purpose of the aforesaid Regular Second Appeal. Whereas, the third substantial question of law was also answered in the affirmative in favour of the appellants/defendants.

12. Being aggrieved by the aforesaid judgment passed in Regular Second Appeal No. 73/2013, Late Bajranglal Modi, the original plaintiff, preferred the instant review petition. During the pendency of the review petition, the original review petitioner, namely, Bajranglal Modi, expired, and his legal heirs, namely, Smt. Prem Lata Modi (wife) and Sri Suraj Kumar Modi (son), were substituted in his place.

13. Thereafter, by Judgment dated 05.10.2023, a Co-ordinate Bench of this Court (*Hon'ble Mr. Justice P. J. Saikia*) dismissed the review petition. Being aggrieved by the said dismissal, the legal heirs of the original review petitioner, namely, Smt. Prem Lata Modi and Sri Suraj Kumar Modi, approached the Supreme Court of India and preferred a Special Leave Petition, which was



registered as SLP (C) No. 25652–25653 of 2024. By its order dated 15.10.2024, passed in the aforesaid SLP, the Supreme Court of India set aside the judgment passed by the Co-ordinate Bench of this Court in the instant review petition and directed this Court to reconsider the review application on merits.

14. Mr. D. K. Mishra, the learned Senior Counsel for the review petitioners, has submitted that the Regular Second Appeal filed by the respondents was allowed by this Court mainly on the ground that, in the deed of adoption (Exhibit-2), the age of the original review petitioner, namely, Bajranglal Modi, was mentioned as 17 years, as stated by none other than his natural father, Late Sundarlal Modi.

15. He further submits that, in the judgment passed by this Court in RSA No. 73/2013, this Court also declined to rely on the HSLC certificate issued by the Board of Secondary Education to the original review petitioner, wherein his age was shown as 18 years and 2 months as on 01.03.1975. The said certificate was exhibited as Exhibit-1. However, in the judgment for which the review is sought, this Court declined to rely on Exhibit-1 and was of the opinion that the plaintiff ought to have adduced evidence supporting the fact of his age prior to 02.09.1971.

16. The learned Senior Counsel for the review petitioners has submitted that the review petitioner, as plaintiff, had examined the Principal of MRSHS (*Mihiram Saikia High School, Titabor*), as PW-3, where the original review petitioner, Bajranglal Modi, had studied and from where he appeared in the High School Leaving Certificate Examination in the year 1975. The learned Senior Counsel further submitted that the original review petitioner had requested the



Principal of MRSHS Jorhat, to bring along the admission register pertaining to the admission of Bajranglal Modi; however, the same was not produced by PW-3, as the said register could not be traced out from the records of the school, at that point of time.

17. The learned Senior Counsel for the review petitioners submits that the review petitioner had exercised due diligence, inasmuch as, although he had requested PW-3 to bring the admission register, the said witness could not trace out the same at that point of time. He further submits that since the said register was not under the control of the present petitioner, hence, despite due diligence, it could not be produced before the trial court.

18. The learned Senior Counsel submits that, after the delivery of the judgment in RSA No. 73/2013, the original review petitioner again approached the Principal of Mihiram Saikia High School, Titabor, Jorhat as well as the Principal of Titabor Town Government Junior Basic School, Jorhat, where he had completed his primary schooling, and applied for certificates indicating his age at the time of admission.

19. Thereafter, a fresh search was conducted, and on 23.08.2019, the original review petitioner was informed by the Headmaster of Titabor Town Government Junior Basic School about the tracing of the school admission register containing the name and age of the petitioner. It was informed that his age on the date of admission in the school, i.e., 01.05.1962, was only 5 years. The said school also furnished him with a copy of the transfer/leaving certificate along with a certified copy of the school admission register on 22.03.2019.



20. The learned Senior Counsel for the review petitioners submits that the new documents which have been traced out, namely, the school admission register of Titabor Town Government Junior Basic School, Jorhat, for the year 1962, as well as the transfer certificate issued by the said school, have a direct bearing on the crucial issue regarding the age of the original review petitioner on the date of execution of the adoption deed by Late Meghraj Modi. Since the said documents were not traceable during the trial proceedings, they are required to be taken on record by reviewing the Judgment dated 22.02.2018 passed in RSA No. 73/2013.

21. The learned Senior Counsel for the review petitioners also submits that the Supreme Court of India, while setting aside the Judgment dated 05.10.2023 passed in the instant review petition by a Co-ordinate Bench of this Court on an earlier occasion, observed that:

“In the review, the deceased/appellant – Bajranglal has admittedly produced the original School Admission Register dealing with his age, which was declared by his father. The high court was not correct in dismissing the review application filed, enclosing the said document. We are not willing to go in the admissibility, relevance and proof of the said documents and it is for High Court to consider the same. Perhaps, we would only indicate the High Court can very well call for the findings of the trial court on the aforesaid aspects and based upon the same, it can decide the appeal. Suffice, it to state, the scope of the Review under the Code of Civil Procedure is much wider if one consider Section 114 read with order 47 Rule 1 of the Code together”



22. The learned Senior Counsel for the review petitioners submits that, in view of the observations made by the Apex Court, the instant review application may be allowed and the review petitioners may be permitted to bring the newly traced out documents, as mentioned above, on record. He further submits that, in such an event, the matter may have to be remanded back to the First Appellate Court for recording the evidence to be adduced by both sides with regard to the said newly traced out documents. In support of his submissions, the learned Senior Counsel for the review petitioners has relied upon the judgment of this Court in the case of “***Braja Behari Roy Vs. Chitta Ranjan Chakravarty and Ors.***” reported in “***AIR 1968 Gau 19***”.

23. On the other hand, Mr. G. N. Sahewalla, the learned Senior Counsel for the respondents has submitted that the instant review petition is liable to be dismissed. He submits that there is a lack of due diligence on the part of the review petitioners in seeking to bring the primary school certificate as well as the admission register of the said school on record at this stage. He submits that the petitioner only adduced the evidence of PW-3, who is the Headmaster of the high school from where the petitioner appeared in the HSLC examination; however, he did not take steps to produce any evidence regarding his age from the primary school, namely, Titabor Town Government Junior Basic School, where the petitioner claims to have pursued his primary education.

24. The learned Senior Counsel for the respondents further submits that the petitioner could have examined relevant witnesses from the said school and could have produced relevant documentary evidence, if any, before the trial court while adducing evidence in the title suit. However, the same was not done, which itself shows the lack of due diligence on the part of the review



petitioners. He submits that review of the judgment passed in RSA No. 73/2013 can be allowed only upon discovery of new and important documents which could not have been produced, even after exercise of due diligence by the review petitioners, during the pendency of the suit or even during the pendency of the first appeal and the second appeal.

25. The learned Senior Counsel for the respondents further submits that the primary school admission register, which the review petitioners now seek to bring on record, is full of discrepancies, indicating that the same is not a genuine document. He submits that, in the primary school register, the age of the original review petitioner is shown as 5 years at the time of admission to the said school, whereas the age of his brother, Raj Kumar Modi, is shown as 4 years, indicating a gap of only 1 year between them. However, he submits that the actual age gap between the brothers is about 4 years.

26. He also submits that the age gap between some of the other students, who are siblings—as shown in the admission register, namely, the children of Ashish Ranjan Ray and those of Dwarka Prasad—is very less (as less as six months in one case), which defies logic. He submits that this, indicates that the admission register, sought to be brought on record, is not genuine.

27. The learned senior counsel for the respondents submits that the, the word "due diligence", used in order 47, Rule 1 of the Code of Civil Procedure, 1908, places a heavy onus on the party who seeks a review. He submits that though an element of flexibility is given to any evidence or matter on its discovery, it has to be one which was not available to the court earlier and it could not have been produced despite due diligence.



28. He submits that, in the instant case, the admission register of the primary school sought to be produced by the review petitioner could also have been produced during the trial had the review petitioner exercised due diligence. He further submits that the evidence sought to be introduced by invoking review jurisdiction must be of unimpeachable quality. However, in the instant case, due to the discrepancies apparent on a mere perusal of the admission register sought to be introduced by the petitioner, the same cannot be regarded as of unimpeachable quality.

29. The learned senior counsel for the respondents submits that, during the pendency of the trial, no effort was made by the original review petitioner to produce the admission register from the primary school where he had studied. Hence, this case is not fit for invoking review jurisdiction under Order 47, Rule 1 of the Code of Civil Procedure, 1908.

30. He further submits that, apart from the fact that the original review petitioner was 17 years of age when the adoption deed was executed, no consent of the natural mother was obtained for giving the original review petitioner in adoption, as required under Section 9 of the Hindu Adoptions and Maintenance Act, 1956. Therefore, on that ground also, the adoption of the original review petitioner is invalid, and consequently, the review petition is not maintainable.

31. In support of his submissions, the learned senior counsel for the petitioner has cited following rulings.

i. “*Raja Satrunji -Vs- Md. Azmat Azim Khan*” reported in **(1971) 2 SCC 200.**



- ii.** “*Avinash Hansraj Gajbhiye -Vs- Official Liquidator, V. Pharma (P) Ltd.*” reported in **(2006) 2 SCC 615.**
- iii.** “*Renu Devi Kucheria (Oswal) & Anr. -Vs- Triveni Devi Tiwari & Ors.*” reported in **(2018) 2 GLR 403.**
- iv.** “*Hriday Kanta Koyal -Vs- Jogesh Chandra Mandal & Anr.*” reported in **AIR (1959) Cal 150.**
- v.** “*Ramaswami Padayachi -Vs- Shanmugha Padayachi.*” reported in **(1959) 2 MLJ 201.**
- vi.** “*Shanmugam Serval -Vs- P. Periyakaruppan Servai.*” reported in **AIR 1996 Mad. 411.**
- vii.** “*State of West Bengal -Vs- Kamal Sengupta*” reported in **(2008) 8 SCC 612.**
- viii.** “*Inderchand Jain (Dead) Through Lrs. -Vs- Motilal (Dead) Through Lrs.*” reported in **(2009) 14 SCC 663.**
- ix.** “*Sivakami & Ors. -Vs- State of Tamil Nadu & Others*” reported in **(2018) 4 SCC 587.**
- x.** “*Sasi (Dead) Through Legal Representative -Vs- Aravindakshan Nair & Ors.*” reported in **(2017) 4 SCC 692.**
- xi.** “*State of Telengana & Ors. -Vs- Md. Abdul Qasim*” reported in **(2024) 6 SCC 461.**

32. I have considered the submissions made by learned senior counsel for both sides and have gone through the materials on record. I have also gone through the rulings cited by them in support of their respective submissions.

33. The judgment under review, i.e., the judgment dated 22/02/2018



passed in RSA No. 73/2013, whereby the said regular second appeal filed by the respondents was allowed mainly on the ground that it was held therein that the First Appellate Court, while concurring with the findings of the trial court, had misread the evidence on record inasmuch as the age of the original review petitioner prior to 1971 had not been established.

34. It was of the view that the age of the plaintiff/respondent had been stated by his natural father as 17 years in Exhibit-2 itself, and as such, the age mentioned in the Exhibit-1 certificate was not found to be reliable by the Court while passing the judgment under review. The present review application has been filed by the original review petitioner mainly on the ground that the school admission register of Titabor Government Junior Basic School for the year 1962, as well as the transfer/leaving certificate issued by the said school, could not be produced by the original review petitioner during the trial proceedings despite the exercise of due diligence. It is submitted that these documents have now been traced out and have a bearing on the vital issue regarding the age of the review petitioner.

35. The statutory provisions governing the power of a Civil Court to exercise review jurisdiction are contained in Section 114 of the Code of Civil Procedure, as well as in Order 47, Rule 1 of the Code of Civil Procedure, 1908. For the sake of convenience, the same are quoted herein below:

*"114. **Review.** Subject as aforesaid, any person considering himself aggrieved-*

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,



(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

Order 47 Rule 1 CPC, 1908:

"1. Application for review of judgment. (1) *Any person considering himself aggrieved-*

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason desires to obtain a review of the decree passed or order made, against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some



other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation. The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.]"

36. Though, the learned senior counsel for the respondents has raised the plea of want of due diligence on the part of the review petitioner in discovering the school admission register of the Titabor Town Government Junior Basic School, Jorhat, and although this Court, on an earlier occasion, by its judgment and order dated 05.10.2023 passed in the instant review petition, dismissed the review petition mainly on the ground that the review petitioner had failed to exercise due diligence.

37. However, the Apex Court, by its order dated 15/10/2024 passed in the Special Leave Petition Nos. 25652–25653 of 2024, allowed the said SLP, by setting aside the judgment dated 05/10/2023 passed by this Court in the instant review application and remanded the matter to this Court for reconsideration of the review petition on merits in accordance with law.

38. Since, the review application was earlier dismissed, by this court mainly on the ground that the petitioners failed to exercise due diligence prior to the discovery of the documents sought to be introduced by the review petitioner, and since the Apex Court has held that this Court was not correct in dismissing the review application on that ground, the question as to whether there was



due diligence on the part of the review petitioner or not has already been decided by the Apex Court and, in the considered opinion of this Court, the said question is not open for reconsideration by this court.

39. This court is of considered opinion that since the judgment under review has unsettled the concurrent findings of the trial court as well as the First Appellate Court with regard to the age of the original review petitioner on the date of execution of the adoption deed as well as the question regarding validity of the adoption of the original review petitioner, the documents sought to be introduced by the review petitioner, namely, the original school admission register of the Titabor Town Government Junior Basic School, Jorhat, i.e., the primary school where the original review petitioner had his primary education, is an important piece of evidence which may throw light on the age of the original review petitioner on the date of his adoption by late Meghraj Modi.

40. This Court is also of the considered opinion that, merely because the age gap between some of the students, who are stated to be siblings, and whose names appears in the original school admission register of the Titabor Town Government Junior Basic School, Jorhat, appears to be unusually less, no conclusion as to the veracity or genuineness of the said documents can be arrived at this stage, in the absence of the documents being brought on record and subjected to cross-examination. As observed by the Apex Court, the question of admissibility, reliability, and proof of the aforesaid documents is left open to be considered by this Court at an appropriate stage.

41. It also appears that, to bring the said document on record, the Regular Second Appeal No.73/2013 has to be restored so that the review petitioner may



file appropriate application (*under Order 41, Rule 27 of the Code of Civil Procedure, 1908*) for allowing the adducing of additional evidence at appellate stage. The said application again may have to be considered on its own merit.

42. This court is of considered opinion that, the original school admission register, wherein, the age of the original review petitioner at the time of his admission in primary school has been stated, is an important document, having a bearing on the question of the age of the original review petitioner on the date of his adoption by Late Meghraj Modi.

43. The said document was earlier not before either the trial court or the First Appellate Court or before this court at second appellate stage. As such, this court is of considered opinion that the discovery of new and important matter, that is, the original school admission register of the primary school where the review petitioner did his primary schooling is a valid ground for review of the judgment passed in RSA No. 73/2013.

44. As regards the issue that the consent of the natural mother of the original respondent was not obtained by his natural father while giving the original review petitioner in adoption. As the said question was not considered in the judgment under review, the said issue shall also remain open for consideration by this Court while reconsidering Regular Second Appeal No. 73/2013 in light of the discussions made in the foregoing paragraphs.

45. For the reasons stated hereinabove, this review petition is allowed. The judgment dated 22/02/2018, passed in RSA No. 73/2013 is hereby vacated and RSA No. 73/2013 is restored.



46. Registry is directed to list the connected Regular Second Appeal after two weeks on a date to be fixed by it for hearing.

JUDGE

Comparing Assistant