

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 15.11.2010.

+ FAO 77/2005

HARISH CHAND Appellant
Through: Mrs. Kamlesh Mahajan, Adv.

versus

SRI NATH Respondent
Through: Mr.C.M. Gopal, Adv.

FAO 115/2005

KANTI Appellant
Through: Mrs. Kamlesh Mahajan, Adv.

versus

SRI NATH Respondent
Through: Mr.C.M. Gopal, Adv.

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

: **MOOL CHAND GARG,J.(Oral)**

1. These two appeals arise out of a common order dated 07.02.2005 passed by the learned Additional District Judge whereby the ADJ has dismissed M.P.C.No.38/2001 filed by Smt. Kanti and M.P.C.No.39/2001 filed by Sh.Harish Chand who claim to be adopted daughter and son of Late Sh. Munna Lal for revocation of the probate granted in favour of the respondent vide order dated 06.01.1995 in relation to a will executed by Late Sh. Munna Lal whereby the deceased bequeathed the property No.F-69, Shastri Park, Shahdara, Delhi.

2. In M.P.C.No.39/2001, Sh. Harish Chand who is real brother of Smt. Kanti (application of MPC No.38/2001) set up a different case by stating that he came to know about the fraud and perjury committed by the respondent from Smt. Kanti only on 23.09.1997. He took the stand

that Smt. Kanti had lodged a false claim alleging herself to be an adopted daughter of the deceased Munna Lal. In fact, she was never given in adoption by Sh. Ganga Ram nor taken by Sh. Munna Lal. He sang in tune with his sister Smt. Kanti when he stated that the respondent had forged the Will dated 20.10.1992 on the basis of which administration was ordered to be granted to him. Sh. Harish Chand averred that he had, in fact, been taken in adoption by Munna Lal when Sh. Harish Chand was aged only 7 years. He was always treated as a son by Sh. Munna Lal. Both had love and affection for each other. The last rites of the deceased Sh. Munna Lal were performed by Sh. Harish Chand as per his wish as he was the son of the deceased. Harish Chand tried to build up a case that the respondent used to visit deceased Sh. Munna Lal as he was also a resident of the same locality, who had taken some loan from Sh. Munna Lal on the assurance to return the same. On repeated demands by the deceased for return of the loan, the respondent got annoyed and threatened to teach him a lesson. The respondent left the vicinity long ago prior to the death of Sh. Munna Lal and conspired to forge the Will.

3. Both the petitions were contested by the respondent who denied that Smt. Kanti was the adopted daughter of Munna Lal or that Harish Chand was ever adopted by Sh. Munna Lal. Regarding Smt. Kanti, it was stated by the respondent that she was a daughter of Sh. Ganga Ram, who was a tenant of Sh. Munna Lal in the property mentioned above. The respondent also disputed that the deceased Munna Lal had any sisters by the names of Sharda and Bimla or any brother by the name of Hari Chand. The respondent stated that had Kanti been adopted by Sh. Munna Lal this fact must have been disclosed to her by his father Ganga Ram. On the other hand, Ganga Ram had himself moved an application for grant of succession certificate which was dismissed by the Court of Sh. R.K. Jain, Administrative Sub Judge. In the said petition, no mention was made of the brother or sisters of the deceased Munna Lal. It was pleaded that the respondent was the only person close to the deceased Munna Lal and had served him throughout his life. The Will was executed by Sh. Munna Lal out of love and affection for the respondent. The respondent, thus, denied that the

Will dated 20.10.1992 propounded by him was forged in collusion with the attesting witnesses.

4. As far as Harish Chand is concerned while denying that he was the adopted son of Late Sh. Munna Lal, the respondent asserted that he was the son of Sh. Ganga Ram, who was a tenant in a portion of the abovementioned property and Sh. Munna Lal had to file a suit for injunction against said Ganga Ram when Ganga Ram wanted to raise illegal construction in the tenancy premises. The said civil suit was dismissed as withdrawn on the statement of Ganga Ram that he will not raise any construction in the premises. Later on, Sh. Ganga Ram raised some construction in the tenancy premises whereupon deceased Munna Lal made a complaint to the police and filed a contempt application against Ganga Ram. The said contempt application was dismissed after the death of Munna Lal.

5. The learned ADJ on the basis of the pleadings of the parties framed following issues:

“1. Whether the letters of administration granted vide order dated 6.1.95 are liable to be revoked for the reasons as stated in the application?

2. Relief.”

6. Before the learned ADJ evidence was led by parties. Sh. Harish Chand examined Sh. Anand Kataria, LDC from Food and Civil Supplies department of Government of Delhi to prove that Sh. Ganga Ram and Sh. Munna Lal were residing together in House No.F-69, Shastri Park, Shahdara, Delhi. He proved photocopy of ration card Ex.OW1/1 dated 27.8.90, wherein name of Shri Ganga Ram and Sh. Munna Lal alongwith children of Sh. Ganga Ram were mentioned. OW2 Anil Mahendru, Sr. Personal Manager from Godrey & Boyce Manufacturing Co. Ltd., was examined to prove the nomination form Ex.OW2/1 made by Shri. Munna Lal in favour of Smt. Kanti, who was against his father in respect of property No.F-69, Shashtri Park, Shahdara, Delhi, as Sh. Munna Lal had got annoyed with his father in connection with some altercation between the two. At the same time, appellant denied the suggestion that Sh. Ganga Ram was a tenant under Sh. Munna Lal. He also showed his ignorance if his father had given undertaking in the

civil suit whereupon the civil suit was withdrawn by Sh. Munna Lal. He had no knowledge if any complaint was lodged by Sh. Munna Lal on 16.10.1992 against his father.

7. The other appellant, Kanti appeared as OW4. Her testimony in her examination-in-chief that she was adopted by Sh. Munna Lal while she was 13 years of age is at variance with her case in the petition for revocation, wherein she had stated that she was adopted at her birth. Sh. Harish Chand also examined Sh. Balwant Rai as OW5 to prove the factum of adoption of Sh. Harish Chand by Sh. Munna Lal.

8. Learned Additional District Judge after hearing the parties and examining the evidence has found that none of the petitioners could substantiate their plea that they are either the adopted son or the adopted daughter of Late Sh. Munna Lal. The discussion of the learned ADJ in this regard starts from para-19 and which is reproduced for the sake of reference:

19. First of all, I shall take the case of Smt. Kanti, who was the first to file the appellant for revocation. In her application, she set up a case that she was adopted by Sh. Munna Lal at the time of her birth. No evidence of giving and taking in adoption has been produced by the appellant Smt. Kanti. Father of Smt. Kanti is alive. He was the best court, an inference has to be drawn against applicant Kanti. The adopted daughter of Munna Lal or her father's name was mentioned as Munna Lal at any place. The applicant is heavily relying upon the Declaration and Nomination Form under the Company's Gratuity Scheme Ex. OW2/1. This document, however, goes against applicant Smt. Kanti. A perusal of the Form would show that this declaration was made on 18.2.80. Shri Ganga Ram was described as brother in the column of relationship of guardian with the employee and applicant Smt. Kanti was described as a niece; her age was mentioned at that time of her birth as was the case of applicant in the application, she would have been described as a daughter and not as a niece. It appears that it was on account of this document that applicant Smt. Kanti tried to change her stand and stated in her examination as OW4 that she was adopted at the age of 13 years. As stated above, applicants have placed on record a ration card Ex. OW1/1, which was issued in the year 1990 where her father name has been mentioned as Ganga Ram.

9. The analysis of the evidence by the learned ADJ establishes that the plea taken by Smt. Kanti as the adopted daughter of Munna Lal is without any basis.

10. As regards the case of Sh. Harish Chand, the learned ADJ also analyzed the evidence which was led by Sh. Harish Chand to establish that he had interest in the property left by Late Sh. Munna Lal and that he was the adopted son of Sh. Munna Lal. Analyzing the evidence which came on record, the learned ADJ observed that:

“20. Now coming to the case of the applicant Sh. Harish Chand, he stated that during his cross examination that he was living with Sh. Munna Lal after adoption. He, however, could not say if he started going to the school before his adoption or after his adoption. In any case, it is admitted that Sh. Harish Chand has not produced any record from the school that his father's name was Shri Munna Lal nor any explanation has been given as to why the father's name was not got changed even if applicant Sh. Harish Chand had been adopted after he had been admitted in the school. I would again refer to the ration card Ex. OW1/1, where the age of applicant Harish Chand is mentioned as 20 years and his father's name has been mentioned as Ganga Ram. If Harish Chand had really been adopted by Sh. Munna Lal at least at the time of making this ration card his father's time would have been mentioned as Munna Lal and not Ganga Ram. Similarly, there is an electoral card Ex. OW3/1 issued on 12.10.1992 i.e. just before the death of Sh. Munna Lal. In this document again the father's name of Sh. Harish Chand has been mentioned as Ganga Ram and age of Sh. Harish Chand has been mentioned as 28 years. In fact, the ration card and electoral card were produced by applicants in order to show the closeness of applicant and their father that Sh. Munna Lal to the extent that they were residing as one family. However, these documents would go against applicant Sh. Harish Chand to the extent that the father's name of applicant has been mentioned as Ganga Ram. Not only this, when applicant filed this application for revocation in September, 1997 he described himself as Harish Chand, son of Shri Ganga Ram. When he entered the witness box as OW3 on 26.02.2003, he again mentioned his father's name as Ganga Ram. Though applicant Shri Harish Chand has examined Shri Balwant Rai as OW5, who has deposed in his affidavit Ex.OW5/1 that Shri Harish Chand was taken in adoption when Shri Harish Chand was aged about seven years, I am, however, not inclined to place much reliance on the testimony of this witness in view of the consistent documentary evidence on record to show that applicant Shri Harish Chand was the son of Shri Ganga Ram.”

11. It may also be observed here that name of Sh. Balwant Rai has not been mentioned by the appellant Harish Chand in his pleadings as a person who witnessed the adoption ceremony. He was produced as a

witness for the first time without there being any pleading in this regard and, therefore, the learned ADJ rightly rejected the claim of Sh. Harish Chand as the adopted son of Sh. Munna Lal.

12. It has been further observed by the learned ADJ that:

“21. It is also proved on record rather it is admitted by applicant Shri Harish Chand that Shri Munna Lal had filed eviction proceedings against his father in respect of property No. F-69, Shastri Park, Shahdara, Delhi. It is also proved on record that a suit for injunction was also filed by late Shri Munna Lal against Shri Ganga Ram and a contempt application was also filed against Shri Ganga Ram when he had violated the orders of the Court. It was, therefore, evidence that Shri Ganga Ram was admitted as owner of property No. F069, Shastri Park, Shadara, Delhi, but at the same time applicant Shri Harish Chand as OW2 denied the suggestion that Shri Ganga Ram was a tenant under Shri Munna Lal. Though the record of the eviction proceedings of the civil suit has not been produced by the non-applicant, yet it is apparent that if Shri Ganga Ram would have been the owner of property No. F-69, Shastri Park, Shahdara, Delhi, there was no need for Ganga Ram to have given any statement in the civil suit and there was no occasion to file any contempt application against him by Shri Munna Lal. It has also come on record that initially Shri Ganga Ram had filed an application for grant of succession certificate, wherein he had impleaded Shri Gajraj Singh, husband of Smt. Kanti and one Shri Ram Babu as a near relation of the deceased. Shri Ganga Ram wanted the succession certificate on the ground that he was cousin of deceased Shri Munna Lal and was entitled to succeed to the property left by the deceased under law. The applicant Shri Harish Chand or for that matter applicant Smt. Kanti never wanted transfer of House No. F-69, Shastri Park, Shahdara, Delhi to them nor sought any succession certificate in respect of assets left by the deceased in spite of the fact that Shri Munna Lal died way back on 8.12.92 and the application for revocation was moved by Smt. Kanti on 12.3.96 and by applicant Shri Harish Chand only on 3.10.97. What can be inferred from the record is that Shri Ganga Ram, Smt. Kanti and Shri Harish Chand, who are father, daughter and son respectively were in league with each other and were taking proceedings to suit them in order to grab the property belonging to Shri Munna Lal. Applicant Smt. Kanti has failed to prove that she was the adopted daughter and applicant Shri Harish Chand has failed to establish that he was the adopted son of Shri Munna Lal. They have failed to show any locus standi for revocation of the administration granted in favour of the non-applicant Shri Sri Nath vide order dated 6.1.1995 on the basis of the Will dated 20.10.92. Issue No.1 is decided accordingly against applicant.”

13. In view of the aforesaid evidence which has come on record and which goes to establish that the appellants are imposters and have nothing to do with the testator and simply want to grab the property of Late Sh. Munna Lal by taking false pleas that they are the adopted daughter and adopted son of Late Sh. Munna Lal which case set up by them has fallen to the ground. Thus, there is no merit in the appeals which are accordingly dismissed with no orders as to costs.

14. TCR, if received, be sent back along with a copy of this order.

MOOL CHAND GARG,J

NOVEMBER 15, 2010

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