

**IN THE HIGH COURT OF PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

**CR No.3850 of 2014 (O&M)
Date of decision: 09.02.2015**

Charanjit Kaur

....Petitioner

Versus

Hardam Singh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. R.V.S.Chugh, Advocate for the petitioner.

Mr. B.S.Makkar, Advocate for respondent No.1.

Rakesh Kumar Jain, J. (Oral)

C.M. No.13631-CII of 2014

For the reasons mentioned in the application, the same is allowed and Annexure P-6 is taken on record, subject to all just exceptions.

C.R. No.3850 of 2014

The present petition is filed against the order dated 7.05.2014, dismissing the application filed under Order 7 Rule 11 of the C.P.C.

In short, one Kalu Singh @ Kala Singh had four sons and two daughters, namely, Arjan Singh, Chanan Singh, Kapura Singh @ Sapura Singh, Sarwan Singh and two daughters namely Kaki Kaur and

Vindo Kaur. The plaintiff is the son of Chanan Singh who died on 15.10.1978, whereas Kapura Singh @ Sapura Singh, who was unmarried and issueless, died on 08.09.1993. In the suit filed by Hardam Singh son of Chanan Singh, declaration has been sought that he is owner in possession of 7/900 share out of 79 kanals 2 marla situated in the area of village Tandian, Tehsil Sardulgarh, District Mansa, on the basis of inheritance of Kapura Singh @ Sapura Singh being his nephew and the mutation of inheritance of Kapura Singh bearing No.3774 dated 27.07.2012, in the name of defendant No.2, on the basis of adoption deed No.18 dated 17.08.1982, is illegal, the sale deed in favour of defendant No.1 vide Wasika No.1547 dated 24.08.2012, is illegal and also prayed for permanent injunction to restrain defendant No.1 from taking forcible possession of the suit land from the plaintiff and from alienating any part of it in any manner.

Defendant No.1/purchaser, filed an application under Order 7 Rule 11 of the CPC, for rejection of the plaint on the ground that the plaintiff has no cause of action. It is further submitted that respondent No.2 is not the adopted son of Kapura Singh and had no right to sell the suit property to defendant No.1, the plaintiff has no right to challenge the said adoption and sale deed because the suit property had never devolved upon him in view of Sections 8 and 9 of the Hindu Succession Act, 1956 (hereinafter referred to as the 'Act').

It is argued by learned counsel for the petitioner that since father of the plaintiff, namely, Chanan Singh pre-deceased Kapura Singh, therefore, at the time of death of Kapura Singh, who allegedly

died intestate, his entire property devolved upon his surviving brothers and sisters in terms of Sections 8 and 9 of the Act. It is further submitted by learned counsel for the petitioner that as per Section 8 of the Act, the property of a male Hindu dying intestate, devolves firstly, upon the heirs, being the relatives specified in class I of the Schedule; Secondly, if there is no heir of class I then upon the heirs, being the relatives specified in class II of the Schedule; since in this case, there is no relative of the deceased Kapura Singh of class I heir, the heirs of Class-II would take his property in accordance with Section 9 of the Act which provides that those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

The plaintiff being the nephew of Kapura Singh @ Sapura falls in the entry IV of class-II where as Kapura Singh left behind four brothers and two sisters, also legal heirs of Class-II of entry II, therefore, at the most the entire property of Kapura Singh would devolve upon his surviving sisters and brothers as per the aforesaid succession. In this regard he has relied upon judgments of this Court in the case of **Nachhattar Singh and another Vs. Jangir Singh and others, 2005 (2) PLR 212 and Desha and others Vs. Randhir Singh and others 1997 (2) CurLJ 418** and has also relied upon a judgment of Hon'ble Supreme Court in the case of **Alka Gupta Vs. Narender Kumar Gupta 2010 (4) Civil Court Cases 905**, in which it has been held that the plaint can be rejected under Order 7 Rule 11 of the CPC if it does not disclose a cause of action.

On the other hand, counsel for the respondents has argued that consequent sale deed by the adopted son is an act of fraud and has rightly been challenged by the plaintiff being members of the family of Kapura. Be that as it may, the moot point involved in the case is as to whether the plaintiff has a right to challenge the adoption as well as the sale being a nephew.

As I have already given the facts herein-in-above, which are not disputed by counsel for the respondents, it is clear that the plaintiff being the nephew of deceased Kapura Singh has no right to file the suit as he has not inherited any property left by him, much less the share to the extent of 7/900 on the analogy that the said share belong to his father Chanan Singh because Chanan Singh pre deceased Kapura Singh, therefore, succession of Kapura was taken by other brothers or sisters who were there at that time and hence, the present suit filed by the plaintiff is without any cause of action and is not maintainable. Consequently, the learned trial Court has committed a patent error of law.

Keeping in view the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 07.05.2014 is hereby set aside.

February 09, 2015
Manoj Bhutani

(Rakesh Kumar Jain)
Judge