

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.671 of 1988 (O&M)
Date of Decision: 18.11.2015**

Kharak Singh (through LR's)

. . . . Appellant

VS.

Nand Singh & Ors.

. . . . Respondents

CORAM: HONBLE MR.JUSTICE SURYA KANT

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. AS Gill, Advocate for the appellant
None for the respondents

SURYA KANT J. (ORAL)

(1). This Regular Second Appeal is at the instance of plaintiff whose suit for possession for the land measuring 23 kanal 13 marla situated within the revenue estate of village Kotla Shamashpur, Tehsil Samrala, District Ludhiana fully described in the headnote of the suit was dismissed by the Civil Court, Samrala vide judgement and decree dated 08.10.1985 and so was the first appeal dismissed vide judgement and decree dated 21.11.1987 by the Additional District Judge, Ludhiana.

(2). The afore-mentioned suit was filed by the appellant in the first instance against his three brothers, namely, Nand Singh, Rattan Singh, Surjit Singh, two sisters, Smt. Rachpal Kaur and Gurdev Kaur as well as Santokh Singh and Gurmukh who were brothers of his father Naginder Singh @ Joginder Singh. Subsequently, Gurdev Singh and

Rachpal Kaur were given up on the plea that the suit property was ancestral coparcenary property and they were not necessary parties.

(3). The appellant averred that the property in dispute was owned by his father Naginder Singh @ Joginder Singh and he was entitled to 1/6th share measuring 38 kanal 16 ½ marla and that his father Naginder Singh neither executed any Will dated 25.01.1974 in favour of his brothers (defendants No.1 to 3) nor he was competent to Will away the ancestral property.

(4). The suit was contested by the appellant's brothers, *inter alia*, on the ground that the same was time barred and that the plaintiff had no *locus standi*. They further averred that the appellant had been adopted by late Majja Singh s/o Hamir Singh of Kakrala Khurd and this fact was duly admitted by the appellant in various judicial proceedings. He was thus estopped by his act and conduct from instituting the present suit after remaining silent from 1974 to 1981 though knowing fully that the suit land was in possession of the contesting defendants.

(5). The parties went on trial and the following issues were framed:-

1. *"Whether the plaintiff is entitled to the possession of the suit land? OPP*
2. *Whether Naginder Singh alias Joginder Singh deceased had executed a valid will dated 25.1.74 in favour of defendants Nos.1 to 3? OPD*
3. *Whether the suit is bad for mis-joinder of parties? OPD*

4. *Whether the plaintiff is barred from filing this suit by his act and conduct? OPP*

4-A. *Whether the property in dispute is joint Hindu Family ancestral Coparcenary property, if so its effect? OPP*

4-B *Whether the plaintiff has no locus standi to file the suit in view of preliminary object No.1? OPP*

5. *Relief.”*

(6). Both the Courts have concurrently held that the appellant is the adopted son of Majja Singh and was thus not entitled to succeed to the estate of his natural father. On this very premise, the appellant's *locus standi* to file the instant suit has also been doubted. Issue No.2 was decided against defendant-respondents and the Will propounded by them has been declared invalid. Issue No.4 as to whether the plaintiff is estopped from filing suit by his act and conduct was also decided against him.

(7). Resultantly, the suit as well as the first appeal were dismissed.

(8). Though some of the respondents are yet to appear to whom fresh notices were issued. Similarly, the office report suggests that respondent No.10 could not be served for want of correct address, respondent No.11 has refused to accept notice while the fate of notices sent to other respondents is not known.

(9). Since the appeal can be decided on merits even without the presence of respondents, it does not appear necessary to await for their service.

(10). Learned counsel for the appellant submits that LR's of appellant, who were brought on record, are also not coming forward to instruct him or contest this appeal. However, in all fairness, he has argued the appeal with best of his ability.

(11). The core question that arises for consideration is whether appellant is the adopted son of Majja Singh, and if so, has he got *locus standi* to seek any share in the ancestral property of his natural father?

(12). The above-stated question in my considered view, has to be answered against the appellant for more than one reason. It has come on record that Majja Singh was great maternal father of the appellant. The mutation (Ex.P11) clearly establishes that the appellant had a dispute in respect of the estate of Majja Singh with the latter's collaterals. A settlement was struck with the rival claimant Deva Singh and as a result, $\frac{1}{2}$ share in the land of Majja Singh was transferred to the appellant by way of gift deed. The mutation (Ex.P12) was duly sanctioned in his favour. Thereafter also, the appellant continued to litigate as adopted son of Majja Singh and for that purpose he filed civil suit along Bachint Kaur (grand daughter of Majja Singh). The suit was dismissed by trial court vide judgement and decree (Ex.P20 & P21) dated 18.02.1964 but with a categorical finding on Issue No.1 that the appellant is the adopted son of Majja Singh. The matter was taken up in

first appeal and then in 2nd appeal before this Court where the parties entered into a compromise, according to which the appellant got another parcel of land measuring 12 ½ bighas out of the land originally owned by his adopted father Majja Singh. These facts are discernible from the judgement (Ex.D5) passed by this Court in second appeal.

(13). Further the natural father of the appellant Naginder Singh died on 26.01.1974. The entire estate came to the possession of appellant's brothers, namely, defendants No.1 to 3. The appellant remained silent for more than 7 ½ years till he filed the present suit on 10.10.1981. The appellant was thus estopped by his act and conduct from filing the suit which was time barred also. The courts below have rightly held that the appellant is adopted son of Majja Singh and as a necessary corollary, he is not entitled to succeed to the estate of his natural father Naginder Singh. Even if the Will propounded by the defendant-respondents was not valid, yet the appellant is not entitled to succeed to the estate of his natural father. Similarly, the acquiescence and long silence for a period of 7½ years has rightly prompted the Courts below to decide Issue No.4 against the appellant.

(14). No case is made out to interfere with the judgements and decrees passed by the Courts below.

(15). Dismissed.

18.11.2015
vishal shonkar

(Surya Kant)
Judge