

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2113 of 1990

Date of Decision:- 22.01.2015.

Mahipal

.....Appellant

Versus

Jaibir

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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. R.S. Sheoran, Advocate for the appellant.

Mr. C.P. Tiwana, Advocate for
Mr. R.S. Chahar, Advocate for
the respondent.

SHEKHER DHAWAN, J.

Present Regular Second Appeal directed against judgment and decree dated 10.08.1990, passed by learned Additional District Judge, Bhiwani, whereby, judgment and decree of the Court of First Instance dated 01.04.1989 were set aside.

Facts of the case are being recapitulated from the judgments of Courts below.

For the sake of convenience, the parties are being referred to as per their status before the Court of First Instance.

Brief facts leading to filing of present RSA that plaintiff Mahipal (minor) son of Amar Chand had filed suit for declaration to the effect that sale deed No.1058 registered on 21.11.1985 (Exhibit P-7) executed by Amar Chand (defendant No.2) is illegal, without jurisdiction, without any legal necessity and as such, not binding on the rights of the plaintiff. As per plaintiff, he is adopted son of defendant No.2 Amar Chand. He was taken in adoption vide Registered Adoption Deed dated 01.02.1983 (Exhibit P-6). The land in dispute is ancestral property. Plaintiff and defendant No.2 being son and father constitute Joint Hindu Family. Sale deed (Exhibit P-7) was without consideration, without legal necessity and in violation of the Civil Court order dated 26.07.1983. Plaintiff and defendant No.2 are *Jat* by caste and governed by customs. Plaintiff prayed that defendant No.1 be restrained from getting mutation of the land in dispute sanctioned in his favour.

Defendant No.1 contested the suit thereby taking the pleas that plaintiff has no *locus standi* to file the suit; that the suit is not properly valued for the purposes of Court fees and jurisdiction; land in question was purchased by him on payment of Rs.20,000/- and sale deed was duly executed in his favour. Defendant No.1 denied the fact that plaintiff was adopted son of defendant No.2. Defendant No.1 also denied the fact that the land in dispute was ancestral land.

Defendant No.2 Amar Chand had also taken similar stand

that sale deed (Exhibit P-7) was duly executed and the sale was for legal necessity and to meet day-to-day expenses and for purchase of medicines etc. as he was an old man. Defendant No.2 also denied the fact that plaintiff and defendant No.2 constitute Joint Hindu Family and are governed by customs and prayed that suit be dismissed.

On these facts,, trial Court settled following issues and put the parties to trial:-

1. Whether the plaintiff was validly taken in adoption by defendant No.2 and plaintiff and defendant No.2 constitute a Joint Hindu Family?
2. Whether the land in dispute is ancestral of the plaintiff and defendant No.2? OPP.
3. Whether the sale deed No.1058 dated 21.11.1985 is illegal, without consideration, without legal necessity and in violation of the order of the court dated 26.07.1983. OPP.
4. Whether the parties are governed by custom in the matters of alienation, if so what is the custom? OPP.
5. Whether defendant No.2 has incurred an amount of Rs.5,000/- to improve the land in dispute, if so to what effect? OPD.
6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.

7. Whether the suit is not maintainable in the present form? OPD.

8. Relief.

The parties led their respective evidence. Learned trial Court after considering the material and evidence available on file decided issue Nos.1 and 2 in favour of the plaintiff. Issue Nos.3 and 4 were decided in favour of the defendant. Issue Nos.5, 6 and 7 were decided against the defendant and Court of First Instance came to the conclusion that plaintiff and defendant No.2 are members of Joint Hindu Family and the land in dispute is ancestral land and same was sold by defendant No.2 to defendant No.1 without legal necessity and as such, sale deed (Exhibit P-7) was not binding on the rights of the plaintiff.

Being aggrieved of passing of said judgment and decree, defendant No.1 Jaibir preferred appeal and learned Additional District Judge, Bhiwani set aside the judgment and decree passed by the Court of First Instance and suit of plaintiff was dismissed with costs and appeal was accepted.

Plaintiff being aggrieved of passing of judgment and decree dated 10.08.1990 by learned Court of First Appeal, has preferred the present Regular Second Appeal.

At the time of admission of appeal, no substantial question of law was settled.

I have heard Sh. R.A. Sheoran, Advocate, learned

counsel for the appellant, Sh. C.P. Tiwana, Advocate, learned counsel for Sh. R.S. Chahar, Advocate, learned counsel for the respondent and gone through the record of the case file.

It is a settled proposition of law that at the time of decision of a Regular Second Appeal, if no substantial question of law settled at the time of admission of appeal, but there are substantial questions of law involved in the matter, the substantial questions of law can still be settled and the claims of the parties can be decided by way of Regular Second Appeal as the matter involves the substantial questions regarding the fact and law that whether adoption deed dated 01.02.1983 (Exhibit P-6) was validly executed and whether land in question was ancestral property or not. The following substantial questions of law are involved in the present case which require determination and decision by this Court by way of present Regular Second Appeal:-

1. Whether adoption in this case on the basis of adoption deed dated 01.02.1983 (Exhibit P-6) was valid adoption?
2. Whether the land in question is ancestral property?
3. Whether the sale deed Exhibit P-7 bearing No.1058 dated 21.11.1985 was for legal necessity or not?

Sh. R.A. Sheoran, Advocate, learned counsel for the appellant mainly took the plea that Mahipal, plaintiff was lawfully adopted by defendant No.2-Amar Chand on the basis of Registered Adoption Deed dated 01.02.1983 (Exhibit P-6) and the process of

adoption was complete. As per learned counsel for the appellant, once the process of adoption is complete, the same cannot be reversed in any way. However, Sh. C.P. Tiwana, Advocate, learned counsel appearing for Sh. R.S. Chahar, Advocate, learned counsel for the respondent took the plea that appellant is not adopted son and adoption was never implemented. Plaintiff-appellant never remained with adoptive father and as such, it was not a case of valid adoption.

As per Section 12 of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as , “The Act”), an adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date, all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. On adoption, adoptee gets transplanted in adopting family with the same rights as that of natural-born son. Adopted child becomes coparcener in Joint Hindu Family property after severing all his ties with natural family.

As per the provisions of Section 15 of “The Act”, no adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth. As per the provisions of Section 16 of the “The Act”, there is a valid presumption in favour of a registered document and

the Court shall presume that the adoption has been made in compliance with the provisions of the Act unless and until it is disproved. If at a later stage, adoption is disputed, it is for the plaintiff to prove that ceremony of giving and taking had not taken place.

Similar matter had gone before Hon'ble Gujarat High Court in case **N.R. Trivedi Vs. District Education Officer, Anand**, AIR 2004 Gujarat 53. Identical view was expressed by Hon'ble Bombay High Court in **Devgonda Raygonda Patil Vs. Shamgonda Raygonda Patil**, AIR 1992 Bombay 189. As per the law laid down by Hon'ble Supreme Court in **Basavarajappa Vs. Gurubasamma** (2005) 12 SCC 290 an adoptee gets transplanted in adopting family with the same rights as that of natural-born son. An adopted child becomes coparcener in Joint Hindu Family property after severing all his ties with natural family. Hence, in view of the law laid down by Hon'ble Supreme Court and the view expressed by Hon'ble Gujarat High Court and Hon'ble Bombay High Court in **N.R. Trivedi's** case (supra) and **Devgonda Raygonda Patil's** case (supra), adoption on the basis of registered adoption deed is a valid adoption and there is presumption of valid adoption unless rebutted by cogent evidence but that has not been done in the present case. Merely saying that adopted child i.e. the appellant in the present case never remained with the adoptive father is no ground or circumstance to deny the fact of valid adoption in favour of plaintiff-appellant. Moreso, the validity of

adoption of plaintiff/appellant was in question in civil suit No.222 of 1983 titled as Amar Chand Vs. Mahipal wherein it was held that Mahipal who is presently appellant-plaintiff in this case was validly taken in adoption by Amar Chand. The execution of the registered adoption deed dated 01.02.1983 was also proved vide judgment exhibit P-8 and decree Exhibit P-9. Even the appeal filed against said judgment and decree was dismissed vide judgment Exhibit P-11 and copy of decree sheet Exhibit P-12. While deciding civil appeal No.87-13 of 1986 the said judgment and decree passed by learned Additional District Judge, Bhiwani dated 18.04.1987 was not challenged by Amar Chand (defendant No.2). That way the matter regarding validity of adoption of plaintiff-appellant Mahipal had attained finality.

Now coming to the next point whether the land which is the subject matter of the dispute is ancestral or not? Plaintiff appellant and defendant No.2 being father and son and the property having been received by inheritance by defendant No.2 certainly constitute Joint Hindu Family Property and the findings of the Courts below are on the same lines and the same do not call for any interference.

As regards to legal necessity for execution of sale deed, Court of First Instance had rightly taken a view while deciding issue No.3 that sale deed Exhibit P-7 was without any legal necessity. Learned Court of First Instance had placed reliance upon testimony

of PW-1 Hoshiar Singh and PW-2 Ram Kumar on this point that sale deed by defendant No.2 was without any legal necessity. Learned Court of First Instance had rightly observed that in the pleadings by way of written statement filed by defendant No.1, there was no mention that what was the legal necessity with defendant No.1 so as to execute the sale deed. The pleadings by way of written statement by defendant No.2 are that the land in question was sold for purchasing medicine and for day to day medicine and for purchasing foodgrains etc. At the same time, the recital in sale deed Exhibit P-7 was that the land was being sold for purchasing any piece of land. These two objects for sale of ancestral land are quite different. Learned Court of First Instance was right in its approach while appreciating the pleadings and documentary evidence by way of sale deed Exhibit P-7 that defendant No.1 actually did not make any effort to make reasonable inquiry regarding legal necessity at the hands of defendant No.2.

Another aspect of the case that on 26.07.1983, Mahipal plaintiff-appellant had filed civil suit No.436 titled as Mahipal Vs. Amar Chand for seeking injunction to restrain defendant Amar Chand from alienating the land in dispute without legal necessity. Civil Court passed order dated 26.07.1983 itself thereby restraining defendant Amar Chand from alienating the land in dispute. Still the same land was sold by defendant No.2 on 14.11.1984 despite specific order passed by Civil Court. Learned court of First Instance was justified in

making the observation that there cannot be any valid presumption that defendant No.1 had no knowledge regarding injunction order of the Court especially when corresponding entry of injunction was recorded in the proceeding book of *Chak Bandi*. More significant fact is that defendant No.1 as well as defendant No.2 are residents of the same village. The cumulative effect of all these facts established that defendant No.1 was having knowledge of passing of order of Civil Court thereby restraining defendant No.2 from alienating the land in dispute to anybody and defendant No.1 having not made any reasonable enquiry that land was being sold by defendant No.2 without any legal necessity.

Identical view was held by this Court in **Tara Chand Vs. Vidya Sagar** 2014 (2) PLR 158 that burden is on the purchaser to establish that he had made bona fide inquiry.

As per para No.242 of Mulla's Hindu Law 21st Edition 2010, page 383, it is stated that where the manager of a joint Hindu family sells or mortgages joint family property, the purchaser or mortgagee is bound to inquire into the necessity for the sale or mortgage, and the burden lies on the purchaser or mortgagee to prove either that there was a legal necessity in fact, or that he made proper and bona fide enquiry as to the existence of such necessity.

Defendant No.2 had no legal necessity to alienate the suit land. In fact, the circumstances suggest that the adoptive father and plaintiff appellant were having differences of opinion after taking

plaintiff-appellant in adoption and with the only object to defeat the rights of adopted child, defendant No.2 alienated the disputed property without any legal necessity in favour of defendant No.1. Learned Court of First Appeal came to a different conclusion but the same are without any basis. Learned Court of First Appeal simply took the plea that it is normal practice in the rural area that at the time of disposing of the land, generally, the petition writer records the legal necessity according to their own notions without inquiring into honestly from the vendor and due to this fact, this discrepancy has cropped up. If he had been questioned by the petition writer or even by the Sub-Registrar, he would have deposed the correct fact. However, these observations have no legal basis especially in light of the fact that defendant No.2 had taken divergent pleas at different stages. It is settled proposition of law that parties cannot wriggle out of the pleadings. There is a valid presumption in favour of recital in the sale deed itself. Merely saying that it is a normal practice that petition writer records the ground of legal necessity of their own does not sound to the reasoning and at least it is not a basis to come to a different finding in complete contrast to the recitals in the sale deed.

In view of the above discussion, the present appeal filed by the plaintiff-appellant is accepted and the judgment and decree of Court of First Appeal dated 10.08.1990 passed by learned Additional District Judge, Bhiwani are set aside and the judgment and decree dated 01.04.1989 passed by learned Additional Senior Sub-Judge,

Bhiwani stands affirmed and suit of the plaintiff and decreed that sale deed No.1058 registered on 21.11.1985 in favour of defendant No.1 is illegal and not binding on the rights of the plaintiff and, accordingly, suit of plaintiff decreed against the defendant.

(SHEKHER DHAWAN)
JUDGE

January 22, 2015.

sandeep sethi