

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

CWP No.17589 of 2015
Date of Decision: 19.09.2015

Karan Singh

. . . .Petitioner

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Brijender Kaushik, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The brief facts of the case are that one Baru Ram, owner of 32 kanals of land, had two sons, namely, Karan Singh and Gurdev Singh. Gurdev Singh had a wife Tejo, a son Pradeep Kumar and a daughter Deepa Rani, whereas Karan Singh had a wife Raj Rani and a son Sultan Singh. Pradeep Kumar and Tejo died in the year 2004. It is alleged that when Deepa Rani was two years of age, she was given in adoption by Gurdev Singh and Tejo to Karan Singh and his wife Raj Rani in the year 1993. Gurdev Singh also died in the year 2007. After his death, Karan Singh claimed succession to his property. Deepa Rani (respondent No.5) moved an application to the revenue authorities, claiming her right over the property of Gurdev Singh on the basis of natural succession and a mutation No.789 was sanctioned in her favour on 21.3.2011. The order passed by the Assistant Collector, First Grade, Thanesar dated

21.3.2011 was challenged by the petitioner unsuccessfully upto the Court of Financial Commissioner.

Learned counsel for the petitioner has argued that learned Courts below have committed an error in passing the impugned order because Deepa Rani was given in adoption to Karan Singh and Raj Rani in the year 1993, therefore, she was transplanted into the family of Karan Singh (petitioner) and in the presence of Karan Singh, she could not have claimed the property of Gurdev Singh by way of natural succession. He has also referred to memorandum/adoption deed dated 14.3.2005, which is alleged to have been signed by both Karan Singh and his wife Raj Rani in presence of witness Giani Ram. It is also submitted that Karan Singh had filed a suit for declaration in the year 2010 against general public and his wife Raj Rani being a successor-in-interest of the property of his brother Gurdev Singh, which was decreed on 19.11.2010. It is also submitted that Deepa Rani had filed a suit for permanent injunction against both Karan Singh and his wife Raj Rani, which was dismissed for want of evidence. However, in the said suit, Deepa Rani alleged herself to be the owner of the property in dispute which she could not prove. It is thus submitted that once Deepa Rani was given in adoption by Gurdev Singh and Tejo to Karan Singh and Raj Rani in the year 1993, she had lost all her rights in her natural family and had acquired the rights in the property of the adopting family and thus, the order passed by the revenue authorities, sanctioning the mutation in favour of Deepa Rani, on the basis of her natural succession to the property of Gurdev Singh, being her daughter, is patently illegal and deserves to be set aside.

I have heard learned counsel for the petitioner and perused the record with his able assistance.

Insofar as the suit filed by Karan Singh in the year 2010 is concerned, it is only against the general public and his wife Raj Rani in which Deepa Rani was not made a party. Therefore, the said decree is not bind her. The suit filed by Deepa Rani is only for permanent injunction. I have seen the issues framed by the trial Court in the said suit. There was no issue framed in regard to the title over the property. Even if the said suit is dismissed for want of evidence, it would not affect the rights of Deepa Rani as she can still file a suit for declaration to establish her right over the property in dispute on the basis of succession. It is also not disputed by learned counsel for the petitioner that Deepa Rani has already filed an application for setting aside the decree dated 19.11.2010 passed in Civil Suit No.49 of 2010 filed by Karan Singh (petitioner) on the ground that Karan Singh had never become owner of the property in question as she had never been given in adoption by her parents to Karan Singh and his wife. The said application is still pending. Insofar as the question of validity of the adoption deed dated 14.3.2005 is concerned, the petitioner is claiming his right over the property of Gurdev Singh on the basis of natural succession and is denying the right of Deepa Rani to succeed naturally to the property of her father, therefore, it is for the petitioner to prove that the adoption deed is genuine. He has to file a suit to prove that Deepa Rani was given to him and his wife in adoption by Gurdev Singh and Tejo and if that suit succeeds, Deepa Rani would not get the property of her natural family and would acquire the rights in the property of the family of his adopting parents.

Thus, there is no error in the order of the Courts below wherein, it has been though held that the said adoption deed is not registered, therefore, it cannot be looked into but the fact remains that the said deed establishes a fact, which has been disputed by Deepa Rani and once the fact is disputed it can only be decided in a Court of law by leading evidence. The ball is in the court of Karan Singh to lead evidence in order to prove the factum of adoption of Deepa Rani by him and it is not for Deepa Rani to prove that she had never been adopted.

In view of the aforesaid discussion, I do not find any merit in the present petition and the same is hereby dismissed.

19.09.2015*Vivek***(RAKESH KUMAR JAIN)
JUDGE**