

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3674 of 2012 (O&M)
Date of Decision.28.08.2015

Mukand Kaur

.....Appellant

Versus

Dalbara Singh and others

.....Respondents

Present: Mr.F.S. Virk, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The plaintiff filed the suit for declaration that the decrees obtained by the 1st defendant on 2.10.1996 and 21.11.1998 are fraudulent and for a declaration that she was the owner of the property along with the proforma defendants who are her sisters. The action had a contest entered by the 1st defendant. The 1st defendant was the decree holder in the decrees which were sought to be assailed on the ground that his claim as an adopted son of Surjit Kaur was not true and that the purported settlement under the terms of which a decree was passed in favour of the 1st defendant could not operate, since she has no pre-existing interest in the property. The suit was filed by the plaintiff as a sister of Gurdev Singh who died in the year 1994. The other defendants apart from the 1st defendant, were other brothers of Gurdev Singh.

2. It was an admitted case that after Gurdev Singh died and his

right in the property had survived to his widow Surjit Kaur. Surjit Kaur had during her life time suffered two decrees; one on 02.10.1996 in the suit filed in C.S. No.993 of 1996 and another on 21.11.1998 in the suit in C.S. No.534 of 1998. One was for declaration that he (the 1st defendant herein) was the adopted son. Another was for a prayer that the property belongs to him by virtue of the settlement between the adoptive mother and himself.

3. If the 1st defendant was the adopted son, then nothing survived for the plaintiff, for, she could not treat herself as heir of brother and if there was an adoption established then the property of Surjit Kaur who was the widow of Gurdev Singh would have gone only to the 1st defendant. The trial Court found that although there was evidence of the natural mother Mukhtiar Kaur that she had given her son in adoption to Surjit Kaur, the trial Court did not believe the same on account of the fact that in the revenue entries, the 1st defendant was still being shown as the son of Tehal Singh who was the natural father. The Court, however, held that the 1st defendant was the nephew of Surjit Kaur and there was enough law to support a family settlement under the terms of which a person could willingly allow for the properties to be handed over to person whom she had confidence. The Court referred to certain decisions that laid down that family settlement did not require any registration. The plaintiff's suit was, therefore, dismissed.

4. In the appeal filed by the plaintiff against the dismissal, the Appellate Court reversed the finding regarding the adoption also by making reference to the fact that the plaintiff's brothers had themselves initiated action for partition in respect of the estate left behind by

Chanda Singh and the 1st defendant had also been referred to as one of the parties and the brothers had specifically stated that the 1st defendant was the adopted son of Gurdev Singh. Plaintiff's brothers who were willing to admit to the status of the 1st defendant as the adopted son of their brother cannot have an independent argument that there was no adoption. In this case, the persons who would have been seriously prejudiced were brothers and if they had also admitted to the status of the adoption, I do not think that the lower Appellate Court was in any way wrong in granting the 1st defendant such status. Not merely that, even the natural mother had given evidence in Court that she had given her son in adoption to Surjit Kaur, her sister. The Appellate Court also explained that it was immaterial that in some of the revenue entries, the 1st defendant had been shown to be son of Tehal Singh and explained it that in the previous records relating to his own holdings, he had been shown as the son of Tehal Singh which was continued. Based on the evidence given by the biological mother of the 1st defendant as well as the admission of the plaintiff's brothers in partition proceedings that 1st defendant was the adopted son, the Appellate Court reversed the finding of the trial Court regarding the status of the 1st defendant as the adopted son and proceeded to hold that the plaintiff could not any longer be heir by law to Gurdev Singh, if there was an adopted son to him. I find that the Appellate Court has rendered the correct finding and there could be no scope for interference.

5. The point of law which the learned counsel was trying to advance was that the 1st defendant had not even preferred appeal against the adverse findings and therefore, there could not have been

reversal of such finding by the Appellate Court. The argument is erroneous, for, if the ultimate result of the suit is one of the dismissal, the defendant need not be compelled to file an appeal against the decree of dismissal. He is entitled to support the judgment of dismissal and still point to any particular finding rendered on an issue as not correct. That is what has been done in this case. Even apart from such power vested with the Court to modify a finding of the lower Court, Order 41 Rule 43 CPC makes possible a reversal of finding even in favour of person who had not preferred an appeal in the interest of justice. The Court had adequate evidence on the basis of which it could reverse the finding regarding the status of the 1st defendant as the adopted son.

6. I find the dismissal of the trial was on adequate and appropriate grounds and it is a meritless second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 28, 2015
Pankaj*