

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

**Regular Second Appeal No.4740 of 2012 (O&M)**

Date of decision: **17.09.2015**

Balwant Singh and another

... Appellants

versus

Smt. Prabha Sharma and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Ms. Jytika, Advocate,  
for Ms. Deepali Puri, Advocate,  
for the appellants.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

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**K.Kannan, J.**

**CM Nos.13195-96-C of 2012**

For the reasons stated in the applications, delay in re-filing and filing the appeal is condoned.

Applications stand disposed of.

**Regular Second Appeal No.4740 of 2012**

1. The representatives of the plaintiff are the appellants before this court. The suit had been filed in respect of the estate of one Jag Vasaya for declaration of title in relation to immovable properties situated at Salem Tabri, Tehsil and District Ludhiana and

for a declaration that the mutation No.2375 dated 30.01.1993 was null and void, illegal and arbitrary. There was further prayer that the succession certificate issued in favour of the 1<sup>st</sup> defendant in relation to some outstandings due to the deceased Jag Vasaya was the result of fraud and misrepresentation and hence, did not affect the rights of the plaintiff. The plaintiff's contention was rested on a Will said to have been executed on 21.10.1980 by Jag Vasaya in his favour bequeathing all the properties. Jag Vasaya died on 24.05.1981 and the contention was that the defendant was not in any way connected with Jag Vasaya but she was holding out as though she was his adopted daughter.

2. The principal defence which was entered by the 1<sup>st</sup> defendant through her power of attorney was that Jag Vasaya was a resident at the place now in Pakistan and at the time of partition, he had come to India along with his wife, having adopted the defendant as his daughter. Her further contention was that she had been living with Jag Vasaya and after his death, mutation was effected in her name in the year 1982, since when she has been in possession of all the properties left behind and the defendant had also obtained a succession certificate in relation to some other outstandings that were recoverable by Jag Vasaya.

3. At the trial, plaintiff examined the witnesses that were connected to the Will. It was brought out at the time of trial that the

plaintiff was a Jat by caste and also a Nihang. It was unnatural that Jag Vasaya could have made a disposition of all his properties in favour of the plaintiffs transcending barriers of caste. The trial court also found that several unnatural circumstances and suspicions as shrouding the Will. Considering the fact whether the 1<sup>st</sup> defendant was the adopted daughter, the trial court reasoned that the adoption prior to the Hindu Adoption and Maintenance Act did not make possible an adoption of a daughter and that further, the 1<sup>st</sup> defendant herself was not examined. The court also found that the mutation in favour of the defendant which was originally made in the year 1982 was later confirmed only in the year 1993 and hence, this suit was not barred by time. However finding that the Will propounded by the plaintiff was not true and he was not otherwise a heir at law to the deceased Jag Vasaya, proceeded to dismiss the suit.

4. In appeal, there had been elaborate consideration of the all the relevant facts and particularly the contentions raised by the plaintiff-appellant as to why the Will could not be upheld. The appellate court found several circumstances as to why the Will could not have been true: (i) there had been delayed publicity to the Will alleged to have been executed in the year 1980 but came to light for the first time only in the year 1995; (ii) The mutation had actually been effected even in the year 1982 when a confirmation was made in the year 1993. The plaintiff ought to have known that soon after

the death of Jag Vasaya, the property had been mutated in the name of the 1<sup>st</sup> defendant and if there was indeed a Will in favour of the plaintiff, he must have taken immediate action; (ii) Jag Vasaya was a Brahmin and the plaintiff was a Sikh Nihang. Although there was no bar against a person to make a Will in favour of any other person transcending caste, there was nothing particularly intimate between the deceased and the plaintiff that was brought out in evidence to make such an unusual disposition; (iv) The plaintiff had brought about delayed mutation only just prior to the institution of suit and that also in the name of himself and his wife. The explanation given by him that the revenue authorities had wrongly made the mutation could not be accepted, for, if the Will had been shown for the basis of carrying out the mutation, such a mistake could never have happened; (v) The funeral obsequies had not been performed by the plaintiff, which would have been the case if he had been chosen by the deceased Jag Vasaya as his successor; (vi) The plaintiff had not caused the production of the register of the scribe which would have definitely noted the execution of the Will at the relevant time, if it had been true; (vii) The draft of the Will which is said to have been made was not produced and there was no evidence that it had been destroyed and (viii) The Will had not been registered, although not compulsorily registrable. There was no reason why the testator did not think of making such an authentic form of registration for giving

effect to a bequest which was fairly large.

5. The lower appellate court also considered the fact of whether the adoption could be true and reiterated the reasoning adopted by the trial court and disbelieved the adoption. However, it observed that after the death of Jag Vasaya, the 1<sup>st</sup> defendant had obtained the mutation of revenue entries even in the year 1982 although the confirmation came later but it was sufficient notice for the plaintiff to take immediate action. He could not have challenged the mutation belatedly after 12 years. The court, therefore, modified the finding of the trial court and held that the suit was also barred by limitation.

6. I find the consideration of all the relevant facts touching upon the Will and the contention regarding whether the defendant could be the adoptive daughter have been properly done. They are essentially factual and there is no proposition of law that could be advanced in favour of the appellants to make possible a reversal of the decisions of the courts below.

7. There is no merit in the second appeal and it is dismissed.

**(K.KANNAN)**  
**JUDGE**

**17.09.2015**  
sanjeev