

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

SAO No.8 of 2013(O&M)

Date of Decision- 4 September, 2015

Shavitiri and others

... Appellants

Versus

Ram Niwas and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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. Ashwani Bakshi, Advocate
for the appellants.

Mr. Sudhir Hooda, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

1. Plaintiffs-appellants have assailed the order dated 20.12.2012 passed by Learned District Judge, Rohtak, vide which application under order 41 Rule 27 preferred by the defendant-respondent has been accepted and the case has been remanded back to the trial Court with a direction to provide opportunity to the defendant-respondent to prove the original adoption deed and Will dated 08.08.1991, copy of Complaint dated 21.12.2009 and Criminal Revision No.15 dated 23.03.2010. Liberty has also been given to the plaintiffs to rebut the evidence of the defendant before the trial Court. Chander Bhan, Rameshwar and Uday Singh were

three brothers. They were owners in possession of ½ share of the land measuring 46 kanals 17 marlas and 120 kanals 13 marlas situated in the revenue estate of village Madina Korsan, Tehsil Meham, District Rohtak in equal shares. Rameshwar died issueless in the year 1989. His share was inherited by his wife Phool Kaur. On 07.01.1997 Phool Kaur also died intestate, leaving behind no issue, therefore, her share in the land was succeeded by the sons of Chander Bhan and Uday Singh. Plaintiffs Rajbir and Parkash are sons of Chander Bhan. Third plaintiff Suresh (deceased) was son of Uday Singh. Suresh has been succeeded by his widow Anita, daughter Sonia and son Deepak. Ram Niwas is second son of Uday Singh and Nanhi is widow of Uday Singh.

2. A suit for declaration with consequential relief of permanent injunction was filed by the plaintiffs against Ram Niwas seeking declaration that adoption deed and Will dated 08.08.1991 allegedly executed by Smt. Phool Kaur in favour of Ram Niwas are illegal, null and void and not binding on the rights of the plaintiffs. Plaintiffs claimed themselves to be owners in possession of the suit land to the extent of their shares. Permanent injunction was also sought restraining the defendants from alienating the suit land.

3. Ram Niwas has claimed the entire property on the basis of adoption deed. He also claimed the property on the basis of Will. Before the trial Court original Will and adoption deed were not produced and trial Court after necessary pleadings framed the following issues:-

1. Whether the alleged adoption deed dated 08.08.1991 allegedly executed by Smt. Phool Kaur are liable to be declared illegal and null and void as prayed for? OPP
 2. Whether the plaintiffs have become owner in possession of the suit land as prayed for? OPP
 3. Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP
 4. Whether the suit of the plaintiffs is not maintainable? OPD
 5. Whether the plaintiffs have suppressed the material facts from the Court as alleged? OPD
 6. Whether the suit is time barred? OPD
 7. Relief.
4. Apparently, there was no issue regarding Will but since the parties knew the case of each other, therefore, trial Court deliberated upon the evidence and ultimately decreed the suit on the ground that execution of adoption deed and Will is not proved on record.
5. The defendant placed reliance upon the photocopy of the document which was held not sufficient to prove the execution. The age of the defendant was found to be above 15 years and therefore, in view of Sections 6 and 10 of Hindu Adoption and Maintenance Act, a person above 15 years of age who was married could not have been adopted. Since the document could

not be proved by means of primary evidence, nor the same could be proved by way of secondary evidence, therefore the execution of document could not be proved in terms of Section 68 of the Evidence Act. The requirement of Section 63 of the Indian Succession Act was also not pleaded. Trial Court decreed the suit, thereby, granting decree of declaration to the effect that adoption deed and Will dated 08.08.1991 are liable to be set aside. Parties to the suit along with legal heirs of Chander Bhan and Uday Singh are held entitled to inherit a share each in the estate left by Phool Kaur on the basis of natural succession. Defendant Ram Niwas filed appeal before the District Judge, Rohtak. Along with appeal an application under Order 41 Rule 27 CPC was also filed. Appellate Court accepted the application for additional evidence under Order 41 Rule 27 CPC and remanded the case back to the trial Court for fresh decision after giving opportunities to both the parties in the context of adoption deed and will dated 08.08.1991. Plaintiffs-appellants have assailed the order passed by District Judge, Rohtak dated 20.12.2012 in this appeal.

6. Learned counsel for the appellants has assailed the decision on the primary issue that application under Order 41 Rule 27 CPC could not have been allowed by the Appellate Court.

7. I have considered the arguments of both the sides.

8. One of the requirement of Order 41 Rule 27 CPC is that if the Court requires any document to be produced or any witness to be examined to enable it to pronounce the judgment or for any other substantial cause, it may allow such evidence or

document to be produced or witness to be examined. The appellate Court has the power to allow additional evidence not only if it requires such evidence “to enable it to pronounce judgment”, but also for “any other substantial cause”. There may well be cases where even though the Court finds that it is able to pronounce judgment on the state of record as it is and so it cannot strictly say that it requires additional evidence to enable it to pronounce judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. The view expressed by the Hon’ble Supreme Court in **AIR 1963 S.C. 1526 K. Venkataramiah Vs. A. Seetharama Reddy and others** has been consistently followed by the Courts. So far as application under Order 41 Rule 27 CPC is concerned, this Court does not find any ambiguity in acceptance thereof by the lower appellate Court.

9. While accepting the application under Order 41 Rule 27 CPC, the lower appellate Court has remanded the entire case back to the trial Court for fresh decision after giving opportunities to the parties to lead evidence on adoption deed and Will dated 08.08.1991. Apparently, the appeal has been allowed by accepting the application for additional evidence and the matter has been remanded back to the trial Court in toto. Now question arises when application for additional evidence is to be allowed by lower appellate Court, there will be two options before it. The lower appellate Court may record evidence itself or it may direct the trial Court to do so. Therefore, the issue was only with regard to

subject matter of additional evidence for which evidence was to be collected either by lower appellate Court or by the trial Court. The order of remand of the suit as a whole could be only in terms of Order 41 Rule 23 and Order 41 Rule 23-A.

10. I have considered the submissions of the appellants and find substance in it. Since the remand has been ordered on the basis of acceptance of the application for additional evidence, therefore, to that extent report from the trial Court could have been asked for under Order 41 Rule 25 CPC. The remand of the suit in toto in considered opinion of this Court is not warranted.

11. I am squarely fortified in my view on the basis of observations made by the Apex Court in **(2009) 8 S.C.C.231 H.P. Vedavyasachar Vs. Shivashankara**. In view of aforesaid, I set aside the order dated 20.12.2011 passed by District Judge, Rohtak and remand this case back to the Court of District Judge, Rohtak. Now District Judge, Rohtak would pass appropriate order with regard to two options available to the appellate Court in the context of remand on the basis of additional evidence i.e. either to record evidence itself or to summon report from the trial Court on the issue.

12. Both the parties are directed to appear before the Court of District Judge, Rohtak on 30.09.2015.

13. Order be communicated.

(RAJ MOHAN SINGH)

JUDGE

4, September, 2015

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