

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

RSA No. 4452 of 2015 (O&M)

Date of decision: 11.12.2015

Jasbir

... Appellant

versus

Smt. Bhateri and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mahavir Sandhu, Advocate for the appellant.

K.Kannan, J.

The suit was a challenge to the sale said to have been effected by one Hari Ram on 22.12.2006 and registered posthumously by his wife as a representative of the executant. The sale was with reference to the property of Hari Ram who had died on 24.12.2006. The plaintiff was the son of Hari Ram's brother Balkishan, born on 20.09.1989 and was alleged to have been given in adoption to Hari Ram on 10.06.2003. Hari Ram and his wife Kela did not have issue and, therefore, Hari Ram took the plaintiff in adoption with the customary religious ceremonies having been performed at the time of adoption.

The plaintiff had other objections about the sale as well, that the sale was made to the sister through Kela without any consideration. Hari Ram himself was not in sound disposing state and the recitals were all fabricated without his knowledge of the recitals.

Even before taking whether the plaintiff could challenge the sale which had been made during the lifetime of Hari Ram, the most crucial issue would be whether the plaintiff had proved the adoption. At the trial, the plaintiff gave no proof, except a copy for the application of ration card said to have been given by Hari Ram treating the plaintiff as a member of his family and describing him as an adopted son. The evidence given was of PW-4 Rajesh said to be a

resident of the Village, who stated Balkishan was the natural biological father and he gave the plaintiff in adoption to Hari Ram and he was a witness to the incident. The Court found the evidence to be inadequate to prove adoption and dismissed the suit. In appeal, the plaintiff sought to produce additional evidence and the Appellate Court confirmed the same.

An application under Order 7 Rule 14 CPC had been filed, referring to the documents which include the response elicited under RTI from the office of the Food and Supplies that Hari Ram had applied for issuance of a ration card under his thumb impression stating plaintiff as his adopted son. Voter identity card is also filed as additional evidence describing him as the son of Hari Ram.

The additional evidence which are now produced, even if proved could be corroborative of how Hari Ram was said to have treated him and cannot by themselves prove the adoption. The reception of additional evidence for proof of fact at the High Court must be under very strict circumstances when the plaintiff did not know about the availability of the records at the time of trial or they were not available at the time or could not have been made available at that time. None of these circumstances exists. Indeed when he was attempting to produce a copy of the letter given to the Food & Supplies Department and the Court did not allow the document to be brought as an exhibit and had merely received it on its file, the plaintiff must have known that without proof of the document by summoning the original from the office or securing any credible evidence by any person who received the application from Hari Ram, the alleged admission of Hari Ram that he treated the plaintiff as his adopted son could not have been possible. There is no justification for non-production of the original or giving appropriate evidence to prove the letter/application said to have been given by Hari Ram to the Food & Supplies Department.

The evidence regarding adoption itself has been too skeletal and could hardly convince the Court for proof of status which had an

important bearing to secure the right to immovable property. The natural parents Balkishan and his wife had not been examined nor was any reason given as to why they were not examined. PW-4 who gave evidence about the adoption made no reference to presence of natural mother or the presence of adoptive mother Kela at the ceremony of adoption. They are crucial for the giving and taking of adoption of both parents as a necessary ingredient of proof of adoption.

If there was no evidence as regards the same, then the case of adoption that was required to be established cannot be taken as established. The Court were justified in such a situation that the plaintiff had failed to prove the adoption. I will find no reason to modify such a finding.

The issue of whether the plaintiff could have even challenged the sale when he had not proved his status as adoptive son cannot survive, for, the only person who could have challenged the sale by Hari Ram must be the widow who during her lifetime had filed a written statement affirming the sale. Kela died during the pendency of the suit and the plaintiff's own right have not been established. There was no scope for securing any relief for the plaintiff.

The decisions of the Court below are affirmed and the regular second appeal is dismissed.

(K.KANNAN)
JUDGE

11.12.2015
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