

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

RSA No.6015 of 2015 (O&M)

Date of decision: December 8, 2015

Janak Raj

...Appellant

Versus

Jeeto

...Respondent

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?**

Present: Mr. Ajay Pal Singh Rehan, Advocate,
for the appellant.

K. KANNAN, J. (Oral)

CM No. 15040 C of 2015

For the reasons stated in the application, delay in filing the
appeal is condoned.

Main case

1. The suit for injunction was brought on a plea that the 1st defendant, who was plaintiff's paternal uncle's widow had adopted the plaintiff when her husband was alive and when he was infant and he had been residing in the house in the portion marked ABCD, which admittedly belonged to the plaintiff's maternal uncle Ami Chand whom he described as his adopted father. The defendant denied the adoption, denied also that the plaintiff was allowed to be in possession of one room as per the family arrangement.

2. At the trial, the plaintiff filed ration card which showed the plaintiff's father as Ami Chand and the voter's identity card which also described him as the son of Ami Chand. The 1st defendant denied that the plaintiff was ever adopted. The Court found that the plaintiff had not proved his ownership of the property and, therefore, the action for injunction cannot succeed.

3. In the second appeal, it is contended by the learned counsel that his possession was admitted and consequently in a suit for bare relief of injunction there could be no denial for the relief and it was quite unnecessary for the court to enter upon the issue of title or ownership.

4. The proposition advanced that in a suit for injunction title would always be irrelevant is too wide a proposition to be accepted. It depends on the facts and circumstances of each case. If the plaintiff is in lawful possession under an arrangement, which is an admitted fact, such as when the plaintiff is a lessee or licensee, then the relief of injunction on the admitted status as such licensor or licensee will be sufficient to justify an

action for injunction against the lessor or licensor, as the case may be. However, if the person in possession is not the owner and the plea of arrangement is denied by the defendant, unless the arrangement admitting the possession of the plaintiff is established, the relief of injunction itself will fail by the different application of principle that injunction cannot be maintained against the true owner. In this case, the ownership of the property in Ami Chand is admitted. The 1st defendant's status as a legal heir of Ami Chand is also admitted. If the plaintiff seeks for injunction claiming to be adopted son and makes plea for arrangement and failed to prove the arrangement or the adoption, then injunction action is bound to fail.

5. In a situation where the defendant has denied the plaintiff's status as adopted son and when there was no issue framed, whether the plaintiff is adopted son or not, the plaintiff could have amended the plaint or he could have sought for an adjudication about his status and adduced appropriate proof to retain the possession of the shop. After all, Section 34 of the Specific Relief Act makes possible a declaratory action whenever a person has a particular legal character, which is denied by the defendant and parties seek for a declaration of such character to entitle the person to certain benefits. The plaintiff has not adopted any such course and was content with seeking a relief for bare injunction by pleading a family arrangement which was failed to be proved.

6. I will make no intervention of the decision of the courts below, for, the 1st defendant was admittedly the owner and the plaintiff was seeking for relief of injunction against the true owner without pleading for

determination of his legal character as adopted son. The decrees declining injunction are maintained and the second appeal is dismissed. However, the plaintiff will be at liberty to institute his own suit for declaration that he is adopted son and if he is able to prove such status or appropriate evidence after framing specific issues his own right to the property including a right for joint possession of the house could be considered independently and if such suit were to be filed, dismissal of this second appeal and the judgments of the courts below will not come in the way.

7. The second appeal is dismissed with the above observations.

December 8, 2015
prem

(K.KANNAN)
JUDGE