

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 20th, 2015

1. R.S.A.No.3551 of 2014 (O&M)

Nirmal Singh & another

...Appellants

Versus

Jasbir Kaur & others

...Respondents

2. R.S.A.No.4833 of 2014 (O&M)

Nirmal Singh & another

...Appellants

Versus

Jasbir Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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.Vikas Bahl, Senior Advocate with
Mr.Arjun Kundra, Advocate,
Ms.Vibha Tewari, Advocate,
for the appellants (in RSA No.3551 of 2014)

Mr.Arun Jain, Senior Advocate with
Mr.Santosh Sharma, Advocate,
for the appellants (in RSA No.4833 of 2014)

Mr.J.S.Toor, Advocate,
for the caveator.

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeal

Nos.3551 of 2014 (Nirmal Singh & another Versus Jasbir Kaur & others)
and 4833 of 2014 (Nirmal Singh & another Versus Jasbir Kaur & others).

As the common question of law and fact is involved in both the appeals, for adjudication of the dispute between the parties to the lis, the facts are being taken from RSA No.3551 of 2014.

It would be relevant to give preface of the matter, which has arisen in the aforementioned two Regular Second Appeals.

Both the aforementioned Regular Second Appeals, at the instance of defendant Nos.2 and 3, are against the judgment and decree of the trial Court. The plaintiff and as well as defendant Nos.2 and 3 preferred two appeals before the Lower Appellate Court, whereas the appeal of plaintiff-respondent No.1 has been disposed of and that of the appellant-defendant Nos.2 and 3 has been dismissed.

Jasbir Kaur widow of Sarwan Singh filed a civil suit bearing No.382 dated 16.3.2002 against Manpreet Singh, Nirmal Singh, Harbans Kaur, Gurpreet Singh, Pritam Singh and Gurdial Singh seeking declaration to the effect that she is co-owner in joint possession to the extent of share of her deceased husband Sarwan Singh in respect of land measuring 82K-6M out of the total land measuring 191K-12M as described in the plaint, as per jamabandi for the year 1998-99, situated within the revenue estate of Village Ghungrali, Hadbast No.233, Tehsil Khanna, District Ludhiana and also sought relief of perpetual injunction restraining defendant No.2 from alienating, creating any sort of charge over the suit property on behalf of and for defendant No.1, being guardian, and from interfering in her possession over the property shown in red colour in the site plan, on the premise that the parties were Jat Sikhs and are governed by Hindu Law. In

the year 1989, the plaintiff was married to Sarwan Singh according to Sikh rites and ceremonies. However, out of this wedlock, no issue was born. It was further stated that plaintiff and Sarwan Singh had been residing and cohabiting with each other as husband and wife at United States of America and defendant No.2 is none else but real brother of husband of the plaintiff and defendant No.3 is wife of defendant No.2. It had been stated that the husband of the plaintiff was owner of land measuring 82K-6M out of total land measuring 191K-12M. Unfortunately, he died on 6.5.2001 in U.S.A. His last rites were also performed in the U.S.A. It was further averred that defendant No.2 Nirmal Singh was interested in settling Manpreet Singh-defendant No.1 abroad and in this regard, a document purporting to be adoption deed was prepared, though there was no intention of the defendants to give and take defendant No.1 in adoption. It was further stated that the defendants have set up a Will dated 15.4.1999 of Sarwan Singh, wherein it has been shown that he died in India. When she visited India on 11.9.2001, she came to know about the aforementioned Will and as well as the fact that defendant No.2 had got the land, left by her husband, mutated in his name vide mutation No.4619 and in an undue haste wanted to dispose of the property.

The said suit was contested by defendant No.1 by filing written statement, wherein it was vehemently stated that defendant No.1 Manpreet Singh was adopted son of late Shri Sarwan Singh and plaintiff and, therefore, he is no more son of Nirmal Singh and Harbans Kaur-defendant Nos.2 and 3. It was also stated that Sarwan Singh, out of his free will, without any coercion and pressure, in his sound disposing mind and with free consent executed a registered Will, *ibid*, in favour of Manpreet Singh. Not

only this, even the natural parents-defendant Nos.2 and 3 on 23.5.1999 gave their son to defendant No.1 in adoption to Sarwan Singh and the plaintiff. The said adoption had taken place as per the prescribed procedure, i.e., in accordance with the provisions of the Hindu Adoptions and Maintenance Act and even the deed of adoption dated 27.5.1999 was also executed and, thus, the entire estate of Sarwan Singh devolved upon defendant No.1 on the basis of Will dated 15.4.1999.

Defendant Nos.2 to 4 filed a separate written statement and took identical stand as defendant No.1 had taken by stating that defendant No.1 is the adopted son of plaintiff and her husband late Shri Sarwan Singh. Sarwan Singh had two brothers, namely, Amar Singh and Nirmal Singh and his relations with Amar Singh were bitter and, therefore, they were not on speaking terms. Since the parties were at variance, the learned trial Court framed as many as five issues, including issue of relief. For the sake of brevity, the issues are extracted herein below:-

“1. Whether the plaintiff is entitled to declaration as prayed for? OPP

2. Whether the plaintiff is entitled to injunction as prayed for? OPP

3. Whether the suit is not maintainable as alleged? OPD

4. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD

4A. Whether the Defendant No.1 is adopted son of deceased Sarwan Singh? OPD

4B. Whether deceased Sarwan Singh executed Will dated 15.04.1999 in favour of the Defendant No.1? OPD.

5. Relief

The respondent-plaintiff, in support of her case, examined as many as seven witnesses, whereas the defendant-appellants examined six witnesses and thereafter closed the evidence.

Issues Nos.4-A and 4-B were framed on the basis of the specific pleadings as to whether defendant No.1 is adopted son of deceased Sarwan Singh and Sarwan Singh executed a Will, *ibid*, in favour of defendant No.1. The appellant-defendants, in support of their defence, examined the attesting witness of the Will, i.e., DW-1 Pritam Singh, who made a statement in accordance with the provisions of Section 63(c) of the Indian Succession Act. The Will was also witnessed by another attesting witness Karnail Singh, who, as per the statement of DW-1 Pritam Singh, also signed the Will in the presence of Sarwan Singh and that of the scribe and even the photograph of Sarwan Singh was pasted on the Will and scribe also made entry of the Will in his register. The signatures of Sarwan Singh were also proved through the testimony of Documents and Handwriting Expert Dr.Inderjit Singh (DW-4). Registration of the Will was also proved through the testimony of DW-6 Jasbir Singh Walia, Naib Tehsildar. As per the contents of the Will, there is no mention of the wife of the testator, namely, Jasbir Kaur, respondent-plaintiff. The trial Court held that the Will was validly and genuinely executed by deceased Sarwan Singh, whereby his entire estate, i.e., land measuring 82K-6M had been bequeathed in favour of defendant No.1-Manpreet Singh. Similarly, the defendants proved the due execution and registration of the adoption deed dated 27.5.1999 while rendering the finding on issue No.4-A in favour of the defendants and against the respondent-plaintiff. However, for the sake of brevity, the finding given by the trial Court on issue No.4-A is extracted herein below:-

“43. After hearing the rival submissions of the counsels appearing on behalf of the parties and examining the evidence on record, I am of the view that the Defendants have been able to prove due execution of the adoption deed dated 27.5.1999 Ex.D4. More so, the plaintiff too does not deny the execution of the adoption deed in question, though, she has also stated that the adoption deed in question was merely a paper transaction and it was never acted upon. However, this court finds this contention meritless. Besides the isolated deposition of the plaintiff (PW-1) that the adoption in question was a mere paper transaction, there is no other evidence on record supporting this plea. On the other hand, Pritam Singh DW-1, attesting witness, has unequivocally deposed to the effect that Manpreet Singh was given and taken in adoption by the natural parents and the adoptive parents. The prescribed ceremonies took place at the time of adoption. Furthermore, Section 16 of the Hindu Adoptions and Maintenance Act, 1956, prescribes that whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and it signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

44. In the present case, in the considered opinion of this Court, the plaintiff has adduced no credible and cogent evidence on record to disprove the statutory presumption envisaged under Section 16 of the Act.

45. For the foregoing reasons, this Court is of the view that Manpreet Singh-Defendant No.1 is the adoptive son of Late Sh.Sarwan Singh and of the plaintiff. The issue under disposal is decided

accordingly.”

The laws of nature are not predictable. Unfortunately, Manpreet Singh died on 18.8.2009, i.e., during the pendency of the suit. After the death of Manpreet Singh, the natural mother Harbans Kaur came forward with a prayer for impleading her as legal representative. However, the said application was dismissed by the trial Court. The said order was assailed by Harbans Kaur by filing a civil revision and this Court, vide order dated 21.1.2011, allowed the revision by holding that whatever stand had been taken in the written statement filed by Manpreet Singh would remain unchanged. Thus, in essence, the impleadment of Harbans Kaur as legal representative of deceased Manpreet Singh was only for the purpose of representing his estate during the pendency of the lis.

The trial Court, accordingly, on the basis of the evidence brought on record by the defendants to the lis, dismissed the suit by holding that Sarwan Singh had validly executed the Will dated 15.4.1999, much less, the adoption deed dated 23.5.1999.

Since the respondent-plaintiff was aggrieved against the judgment and decree of the trial Court, she preferred an appeal bearing No.17 dated 26.3.2012 (Jasbir Kaur & another Versus Nirmal Singh & others). Two other appeals were also filed, i.e., Appeal No.23 dated 27.3.2012, titled as Manpreet Singh (now deceased) through legal representative Harbans Kaur Versus Smt.Jasbir Kaur and Appeal No.24 of even date, titled as Nirmal Singh and Harbans Kaur Versus Jasbir Kaur. In the appeals, respondent-plaintiff, according to the appellant-defendants, took a somersault and moved an application under Order 6 Rule 17 CPC seeking amendment in the suit by adding para 7-A to the effect that the plaintiff admitted the

adoption deed of the Will, ibid, being the legal and valid document. The appellants herein, i.e., Nirmal Singh and Harbans Kaur filed the appeal by impugning the findings rendered by the trial Court on issue No.4-A, i.e., with regard to the adoption of Manpreet Singh, on the premise that the trial Court had erroneously rendered a finding on issue No.4-A holding the adoption deed to be valid and genuine, whereas, according to the natural parents, the adoption deed was only a camouflage with a purpose to send Manpreet Singh to U.S.A. and Manpreet Singh never went to U.S.A. and he stayed in India and studied in the school and in the record of the school against column of parentage, name of natural parents had been written instead of adoptive parents.

The Lower Appellate Court, vide judgment and decree dated 17.2.2014, dismissed the aforementioned two appeals, i.e., Appeal No.23 dated 27.3.2012, titled as Manpreet Singh (now deceased) through legal representative Harbans Kaur Versus Smt.Jasbir Kaur and Appeal No.24 of even date titled as Nirmal Singh and Harbans Kaur Versus Jasbir Kaur, whereas appeal No.17, titled as Jasbir Kaur and Manpreet Singh, adopted son of Sarwan Singh, through mother and legal representative Jasbir Kaur Versus Nirmal Singh and others, was disposed of by holding that Jasbir Kaur has been held to be adopted mother of Manpreet Singh and the succession to the estate of Manpreet Singh would be governed by Section 12 of the Hindu Adoptions and Maintenance Act, 1956. However, the Lower Appellate Court declined the prayer of Jasbir Kaur for seeking amendment in the plaint by incorporating para 7-A.

It is against the aforementioned judgment and decree of the Lower Appellate Court, the aforementioned two appeals, as noticed above, have

been filed.

Mr.Vikas Bahl, learned Senior Counsel appearing on behalf of the appellants-defendant Nos.2 and 3 in RSA No.3551 of 2014, in support of his grounds of appeal, raised the following submissions:-

a) Throughout during the pendency of the suit, not only the pleadings but even on the basis of the documentary evidence brought on record by the plaintiff, the stand of the plaintiff shows that Manpreet Singh was never adopted by Sarwan Singh and Jasbir Kaur as Manpreet Singh did not visit the U.S.A. and as per his school certificates, against the column of parentage, name of natural parents had been written and not that of the adopted parents and, therefore, the trial Court as well as the Lower Appellate Court have committed illegality and perversity by rendering the findings and upholding the finding on issue No.4-A in favour of the appellant-defendants and against the respondent-plaintiff;

b) Jasbir Kaur in her evidence also alleged that the adoption deed was only a paper transaction and was never acted upon and there was no intention of the parties to give and take defendant No.1 Manpreet Singh in adoption. In support of the aforementioned submission, he also referred to Ex.P5, i.e., certificate issued by the Principal of the school in which the name of the father of defendant No.1 had been mentioned as Nirmal Singh and not Sarwan Singh;

c) While reading out the cross-examination of the respondent-plaintiff, the counsel submitted that Jasbir Kaur

admitted that Manpreet Singh had been in possession of the property in dispute;

d) In order to prove that there was no adoption, the counsel referred to the testimony of PW-6 Anil Sharma, Clerk working in Green Grove Public School, who had brought the summoned record to show that in the record of the school, Manpreet Singh (since deceased) was shown to be son of Nirmal Singh and further PW-2 Radhey Shyam, Superintendent of A.S.Senior Secondary School, Khanna, who had brought the admission register to show that Manpreet Singh got the admission in 11th class on 9.7.2004 and passed 12th class in the year 2006 and in all the records, the father and mother name had been shown as Nirmal Singh and Harbans Kaur;

e) The counsel, however, referred to the provisions of Section 11(vi) of the Hindu Adoptions and Maintenance Act, 1956 to contend that the condition of valid adoption had not been followed. For the sake of brevity, sub-section (vi) of Section 11 of the Act is extracted herein below:-

“11. Other conditions for a valid adoption. In every adoption, the following conditions must be complied with:-

(i) to (v)

xxx

xxx

xxx

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer

the child from the family of its birth [or in the case of an abandoned child or child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of *datta homam* shall not be essential to the validity of adoption.

In support of the aforementioned legal submission, he also referred to the cross-examination of Nirmal Singh extracted in the grounds of appeal, who, according to him, unequivocally stated that the ceremonies regarding the adoption actually had not taken place and the adoption deed was only a paper transaction. The documents of adoption were prepared only with the intention to send Manpreet Singh abroad. He also further referred to Ex.PW2/1 and Ex.PW2/2, i.e., the register and character certificate produced by the respondent-plaintiff, wherein also, under the column of father and mother, name of Nirmal Singh and Harbans Kaur has been shown as father and mother of Manpreet Singh. He further submitted that the Lower Appellate Court has committed an illegality and perversity by disposing of the appeal of Jasbir Kaur despite dismissing the application under Order 6 Rule 17 CPC, whereby the amendment in the plaint was sought by giving the effects of adoption as per Section 12 of 1956 Act. For the sake of brevity, Section 12 of the 1956 Act is extracted herein below:-

“12. Effects of adoption.-An adopted child shall be deemed to be the child of his or her adoptive father or

mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

f) The counsel further submitted that the trial Court could not have granted the relief to the respondent-plaintiff, particularly when respondent-plaintiff's application under Order 6 Rule 17 CPC seeking to incorporate para 7-A in the plaint by admitting the Will and adoption, has been rejected;

g) The trial Court was bound to give the findings on all the issues framed and even also when any of the issues was not pressed, the reasoning qua the same be also referred and incorporated in the judgment.

h) He further stated that the perverse finding of the Courts

below is also a pure question of law, which can be raised for the first time even in the second appeal;

i) In support of his submissions, Mr.Bahl has also relied upon the following case law to contend that in the absence of essential ceremonies as prescribed in the Act, the adoption cannot be said to be a valid one and as well as the fact that the plaintiff did not seek any prayer for possession of the property, though it has come on record that the possession of the suit property was with Manpreet Singh and the plaintiff only claimed a joint possession:-

- 1) Dhanno wd/o Balbir Singh v. Tuhi Ram (Died) repled. by his LRs., 1996(2) PLR 276;
- 2) Ved Pal Singh vs. Bhalla Ram and others, 1973 PLR 232;
- 3) Siddu Venkappa Devadiga vs. Smt.Rangu S.Devadiga and others, 1977 AIR (SC) 890;
- 4) Mohinder Singh and others vs. Lachhman Singh and others, 2014(1) CivCC 296;
- 5) Dr.Shehla Burney and others vs. Syed Ali Mossa Raza (Dead) by Lrs. and others, 2011(6) SCC 529;
- 6) Rakesh Kumar Jain and Ors. vs. District Red Cross Branch/Society and Ors., 2011(5) R.C.R.(Civil) 896;
- 7) Devi Lal vs. Shokaran and Another, 2011(5) R.C.R. (Civil) 615;
- 8) Mohinder Singh vs. Shamsheer Singh, 2010(2) R.C.R. (civil) 505;
- 9) Mehar Chand Das vs. Lal Babu Siddique and others, 2007 (14) SCC 253;
- 10) Ram Saran and another vs. Smt.Ganga Devi, 1972 AIR (SC) 2685;
- 11) Smt.Harjit Grewal and others vs. Dr.Vinod Kumar Batra and others, 2010(5) R.C.R.(Civil) 340;

- 12) Mukesh Chander Suri vs. Ranjit Singh, 2008(2) ICC 527;
- 13) Dhoom Singh vs. Baisakhi Ram, 1997(1) R.C.R. (Civil) 147;
- 14) Gurnam Kaur vs. Charanjit Kaur & Anr., 2009(2) PLR 522;
- 15) Harash Vardhan vs. Union of India, 2006(2) R.C.R. (Civil) 447;
- 16) Molar and others vs. Smt.Santo and others, 1968 PLR 510;
- 17) Gurjant Singh Major and others vs. Surjit Singh and others, 2004(3) PLR 469;
- 18) Punjab Urban Development Authority and others vs. Dashmesh Educational Society (Regd.) and others, 2005(3) R.C.R.(Civil) 245;
- 19) Mohd.Laiquiddin & Anr. vs. Kamala Devi Misra (Dead) by L.Rs & Ors., 2010(2) SCC 407; and
- 20) Prataprai N.Kothari vs. John Braganza, 1999(2) CivCC 568.

Mr.Arun Jain, learned Senior Counsel appearing on behalf of the appellants in RSA No.4833 of 2014, though adopted the submissions made by Mr.Vikas Bahl, learned Senior Counsel, but supplemented the following submissions:-

- a) The Lower Appellate Court did not have any jurisdiction to give effect to adoption as per Section 12 of the Act, for, the plea of Jasbir Kaur seeking amendment of the plaint had been declined;
- b) No relief of possession of the land has been sought.

In RSA No.3551 of 2014, Mr.J.S.Toor, Advocate filed a caveat, who was also called upon to address the Court and he submitted that the judgment and decree is based on the appreciation of oral and documentary

evidence. The challenge to the findings rendered by the trial Court on issue No.4-A at the behest of natural parents Nirmal Singh and Harbans Kaur is only an act of greed. He further submits that the ceremonies of adoption as enshrined under sub-section (vi) of Section 11 of the Hindu Adoptions and Maintenance Act have been performed, which have been unequivocally admitted by Manpreet Singh, who appeared as DW-3 on 3.10.2008 as he had become major. He further states that no substantial question of law is involved in the present appeals, much less, there is no illegality and perversity in the findings rendered by the Lower Appellate court, much less of the trial Court and prays that the appeals be dismissed.

I have heard the learned counsel for the parties and appraised the judgments and decrees of the Courts below and also perused the record with their assistance and am of the view that the appeals are liable to be dismissed on the following reasons:-

The filing of appeal by defendant Nos.2 and 3 against the findings rendered by the trial Court on issue No.4-A is an act of Volte-Faced. No body is immortal in this natural world. It is a matter of co-incidence that Manpreet Singh died during the pendency of the suit. Assuming for argument sake, though not admitted, Manpreet Singh had not died, there would not have been an occasion for the natural parents, i.e., Nirmal Singh and Harbans Kaur to impugn the findings on issue No.4-A, as Sarwan Singh had already bequeathed his share in the property, i.e., 82K-6M in favour of Manpreet Singh. It is a well known verse “the man tells lie but documents do not”. While defending the suit filed by the respondent-plaintiff, the defendants with all vehemence brought on record umpteen number of evidence, both oral and documentary to show that Manpreet Singh was

validly adopted. The onus to prove adoption was also on the defendants and not on the plaintiff and defendants by leading the evidence invited the findings in their favour. The defendants cannot now be permitted to refer and adopt the statement and as well as documentary evidence brought on record by the respondent-plaintiff and make an attempt that adoption was only a paper transaction as no ceremonies as per the provisions of sub-section (vi) of Section 11 of the Act performed or no ceremony of giving and taking has taken place. However, such assertion is totally contrary to the statement of Manpreet Singh, who, in his affidavit filed in the shape of examination-in-chief, stated as under:-

“Sh.Nirmal Singh and Harbans Kaur agreed to give me in adoption to Sarwan Singh and the plaintiff on 23-5-99 Sarwan Singh and plaintiff legally and validly adopted me from Nirmal Singh and his wife. Nirmal Singh and Harbans Kaur gave me in adoption to Sarwan Singh and the plaintiff on 23-5-99 by performance of necessary religious ceremonies. Sh.Nirmal Singh and Harbans Kaur voluntarily put me into the lap of my adopting parents with clear intention to give me in adoption. Similarly adoptive parents accepted me as their adopted son from the natural parents. Photographs were taken regarding the said ceremony of adoption on 23-5-99. The adoption ceremonies were performed on 23-5-99 at the residence of Nirmal Singh in presence of natural parents, adoptive parents, in my presence and in presence of some guests including Pritam DW-1. An ardas was performed in Gurudwara Sahib by Sarwan Singh, plaintiff, Harbans Kaur and Nirmal Singh and me. The recitation of Hymns from holy Guru Granth Sahib were made by the 'granthi'. Prayers were offered by Sarwan Singh, plaintiff, by taking me in their lap. Sarwan Singh and the plaintiff had declared me as their

son on that occasion. A celebration was also organised on that occasion at the residence of Nirmal Singh. In this manner I was legally adopted by Sarwan Singh and the plaintiff on 23-5-99. I was transplanted in their family and was uprooted from the family of Harbans Kaur and Nirmal Singh.

3. That on 27-5-99 an adoption deed was executed by Sarwan Singh, plaintiff, Harbans Kaur and Nirmal Singh in presence of Mastan Singh document-writer and in the presence of witnesses Pritam Singh and Karnail Singh Lamberdar. The said adoption-deed was got registered from Sub-Registrar Khanna. The original Adoption-deed is exhibit D-4.

4. That since the time of adoption, I have been the adopted son of Sarwan Singh and plaintiff. The 'Will' executed by Sarwan Singh mentioned above is exhibited D-1. The photographs from exhibit D-11 to exhibit D-24 were taken at the time of function of my adoption.

5. That Sarwan Singh and plaintiff could not take me to America due to procedural problems, rules and regulations.

6. That I have been the exclusive owner in possession of the property in dispute. After the death of Sarwan Singh his entire properties devolved upon me on the basis of the above-said 'Will'. The plaintiff though knew fully well about the above-said 'Will' and adoption, started changing her mind after the death of Sarwan Singh under the influence of her parental relatives and under the impulse of greed. Before the death of Sarwan Singh she never denied my status as her son or my rights. Mutation No.4619 was rightly sanctioned in my favour on the basis of the above-said 'Will'. The plaintiff is not having any right, title or interest of any type in the property in dispute. The

defendants never played any fraud either on the plaintiff or upon Sarwan Singh. The plaintiff is not in possession of the property in dispute.”

From the perusal of the above statement, it is manifest that the entire ceremonies, as per the provisions aforementioned, were performed and, therefore, the appellants cannot be permitted to approbate and reprobate in the same breath. Even the factum of performance of ceremonies has also been admitted by Nirmal Singh appellant in the affidavit filed in the shape of examination-in-chief. The relevant portion of his statement is extracted herein below:-

“Sarwan Singh executed a valid registered ‘Will’ dated 15-4-99 in favour of defendant No.1 in his sound disposing mind and without any coercion and out of her own volition. The said ‘Will’ was so executed by Sarwan Singh that he bequeathed his entire movable and properties to the defendant No.1. The plaintiff was also having knowledge about the execution of the said ‘Will’ by Sarwan Singh and she never objected to the same because at the time she also treated defendant No.1 like her own son. Thereafter Sarwan Singh and the plaintiff expressed their wish to me and my wife to take defendant No.1 in adoption, we the natural parents agreed to give defendant No.1 in adoption to Sarwan Singh and the plaintiff. On 23-5-99 Sarwan Singh and plaintiff legally and validly adopted Manpreet Singh from me and my wife. We gave our son Manpreet Singh in adoption to Sarwan Singh and the plaintiff on 23-5-99 by performance of necessary religious ceremonies. We the natural parents voluntarily put defendant No.1 into the lap of adopting parents with clear intention to give defendant No.1 in adoption. Similarly adoptive parents accepted defendant No.1 as their adopted son

from the natural parents. Photographs were taken regarding the said ceremony of adoption on 23-5-99. The adoption ceremonies were performed on 23-5-99 at my residence in presence of natural parents, defendant No.1, adoptive parents and some guests including Pritam Singh DW-1. An 'Ardas' was performed in Gurdwara Sahib by Sarwan Singh, plaintiff, Harbans Kaur, Manpreet Singh and me. The recitation of hymns from holy 'Guru Granth Sahib' were made by granthi. Prayer were offered by Sarwan Singh and Jasbir Kaur by taking Manpreet Singh in their lap. Sarwan Singh and the plaintiff had declared defendant No.1 as their son on that occasion. A celebration was also organised on that occasion at my residence. In this manner defendant No.1 was legally adopted by Sarwan Singh and plaintiff on 23-5-99. He was transplanted in their family and was uprooted from my family.

3. That on 27-5-99 on adoption-deed was executed by Sarwan Singh, plaintiff, Harbans Kaur and I in the presence of Mastan Singh document-writer and in the presence of witnesses Pritam Singh and Karnail Singh Namberdar. The adoption-deed was got typed by Mastan Singh document-writer at the instance of Sarwan Singh, plaintiff, Harbans Kaur and me which was read over and explained by the document-writer to all of us. All of us admitted the contents of adoption-deed as correct. Sarwan Singh and plaintiff put their respective signatures upon the adoption-deed after admitting the same to be correct and in their sound disposing mind in our presence. I and my wife also put our signatures upon the same after admitting its contents to be correct. Karnail Singh Lamberdar and Pritam Singh DW-1 put their signatures as witnesses. This adoption-deed was entered by the document-writer in his register where also all of the above-said parents

had put their signatures. Photographs of Sarwan Singh, Jasvir Singh, Harbans Kaur and my photographs were pasted on the adoption-deed which were signed by respective persons. Thereafter this adoption-deed was presented to the Sub-Registrar Khanna for registration where all the above-said persons admitted the contents of the same to be correct. Manpreet Singh was also present at the time of execution and registration of the adoption-deed. Sub-Registrar Khanna registered the adoption-deed. Sub-Registrar Khanna registered the adoption-deed. All the above-said persons and witnesses put signatures upon the endorsement of registration made by Sub-Registrar upon the adoption-deed after admitting the same to be correct. I have seen the original adoption-deed today in the court- which is exhibit D-4. Signatures of Sarwan Singh which I identify are exhibit D-6. Signatures of Jasvir Kaur plaintiff are exhibit D-7. I am fully acquainted with the signatures of Sarwan Singh and Jasvir Kaur because I have been seeing them writing and signing. I also identify my own signatures and signatures of my wife upon the adoption-deed.

4. That since the time of adoption, defendant No.1 has been adopted son of Sarwan Singh and the plaintiff. The 'Will' executed by Sarwan Singh mentioned above is exhibit D-1. Signatures of Sarwan Singh upon the said 'Will' are exhibit D-2. The photographs from exhibit D-11 to exhibit D-24 were taken at the time of the function of adoption of the defendant No.1.”

Thus, the judgments cited in support of the aforementioned contention that where the ceremonies were not performed and the adoption has been held to be not valid, would not be applicable in the facts and circumstances of the case, though there is no dispute to the ratio decidendi

laid down by incorporating the provisions of Section 11 of the Act.

Since Manpreet Singh died during the pendency of the suit, i.e., on 18.8.2009, nothing prevented the appellants to seek the amendment in the written statement and withdraw/modify/amend the plea of adoption of Manpreet Singh. The appellants took the risk and invited the impugned judgment and decree against them. Thus, in essence, the appellants had been owning the adoption deed during the pendency of the suit, but after the death of Manpreet Singh have, as already observed, taken a complete somersault by challenging the findings of the trial Court on issue No.4-A.

In fact, the appeal of the appellant-defendants was not maintainable as there was no judgment and decree against them as the suit of the respondent-plaintiff was dismissed. The appellant-defendants were pinched only on account of the fact when Manpreet Singh, during the integrum, had died and allege that since adoption had been already upheld, much less, and as per the Will, the entire estate of Manpreet Singh would now devolve upon respondent Jasbir Kaur, who has been held to be adopted mother of Manpreet Singh.

The trial Court, after examining the oral and documentary evidence, brush-aside the documentary evidence, i.e., the record of the school, much less, admission of Manpreet Singh in class eleven and held that Manpreet Singh was validly adopted by Jasbir Kaur and Sarwan Singh. The appellant-defendants have not only led evidence qua the registration of the adoption deed but also the photographs Ex.D11 to Ex.D24 regarding the performance of ritual and ceremony of adoption of Manpreet Singh by Jasbir Kaur and Sarwan Singh and, thus, in view of such evidence having been brought on record, the appellants are estopped from changing the stand

by assailing the findings of the trial Court on issue No.4-A.

Since Jasbir Kaur by virtue of findings returned by the trial Court on issue No.4-A had become the adopted mother of Manpreet Singh, assuming she had not filed the appeal, even then she would have been entitled to succeed to the estate of Manpreet Singh in view of the Will executed by Sarwan Singh in favour of Manpreet Singh and Manpreet Singh being her adopted son and the estate of Manpreet Singh would have devolved upon her being the Class-I heir. In other words, it is the adopted mother who would succeed to the estate acquired by Manpreet Singh, i.e., the adopted son after his adoption. The findings rendered by the Lower Appellate Court by affirming the finding of the trial Court and declaring Jasbir Kaur to be adopted mother is in consonance with the provisions of Order 41 Rule 32 CPC.

The act of the appellants in challenging the adoption is not only an aberrative but repugnant, much less, preposterous. The contention that Manpreet Singh did not visit U.S.A. would not disprove the adoption as there could have been many reasons, which would have led to Manpreet Singh not to go to U.S.A., may be on account of some procedure or rules required for immigration and in such events would not give occasion to believe that Manpreet Singh was not adopted by Jasbir Kaur and Sarwan Singh, particularly in view of the fact that there has been a registered adoption deed and the ceremony for giving and taking Manpreet Singh in lap was performed.

The observations of the Lower Appellate Court in paragraph 32 of the impugned judgment by granting relief to Jasbir Kaur is in consonance with the provisions of Order 41 Rule 33 CPC. For the sake of brevity, para

32 of the impugned judgment is reproduced herein below:-

“Since the adoption of Manpreet Singh by plaintiff Jasbir Kaur and Sarwan Singh has been held to be legal adoption by learned trial Court and since the natural parents of Manpreet Singh and Manpreet Singh himself, during his life time had admitted the factum of adoption of Manpreet Singh by Sarwan Singh and Jasbir Kaur, by virtue of Section 12 of the Hindu Adoption and Maintenance Act, 1956, in normal circumstances, it is adoptive mother, who would succeed to the estate acquired by Manpreet Singh, adoptive son, after his adoption.”

The law on the exercise of powers by the Appellate Court by invoking the provisions of Order 41 Rule 33 CPC is no longer Res Integra. The object of the rule is an enabling provision authorizing the Appellate Court where its decision interferes with, modifies or extends the decision of the lower Court to give effect to that decision by interfering, if necessary, even with the right and liability of those who have even not appealed from the decision of the trial Court. In essence, the Appellate Court is of the view that any decree which ought to have been passed in law, was in fact not passed by the Court below, it may pass or make such further or other decree or order as the justice of the case may required. Reference is invited to the decision of the Hon'ble Supreme Court in **Koksingh v. Smt.Deokabai**, AIR 1976 SC 634. The aforementioned proposition of law, which is still holding the field, has not been upset by the Hon'ble Supreme Court and has been rather reiterated in various other judgments. Reference is invited to **Nazeer Ahmed v. State Bank of Mysore & Ors.**, 2007(11) SCC 75. Therefore, there cannot be any fault with the observations given by the Lower Appellate Court in paragraph 32 of the judgment (extracted supra)

challenged in the aforementioned Regular Second Appeals.

Both the Courts below have rendered a finding of fact and law, after appreciating the oral and documentary evidence. There is no substantial question of law involved for adjudication of the appeals.

In view of the observations made above, there is no substance in the appeals.

Accordingly, the appeals are dismissed.

There shall be no order as to costs.

February 20th, 2015
ramesh

(AMIT RAWAL)
JUDGE