

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.795 of 2016

Date of Decision.04.02.2016

Shivdev Pal Kaur and another

.....Petitioners

Vs.

Updesh Kaur and others

.....Respondents

Present: Mr. Jatinder Singla, Advocate
for the petitioners.

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?

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K. KANNAN J. (ORAL)

1. The second wife and son of Amrit Preet Singh claimed a right to the property of the estate of her husband under a Will said to have been executed on 14.02.2012. He has died subsequently on 01.09.2012. The defendants are respectively the mother claiming as a heir but for the Will and a daughter born to Amrit Preet Singh through the first petitioner and a daughter born to Amrit Preet Singh through the first wife. The said daughter was stated by the petitioner to have been taken in adoption by the 2nd husband Bhagwant Singh when the first wife divorced Amrit Preet Singh and married Bhagwant Singh. The petitioner would rely on a petition filed for divorce by mutual consent by the 3^d defendant-daughter where she has described herself as the daughter of Bhagwant Singh. It is also the contention that the Will is true and the Courts below have wrongly made observations about the proceedings in mutation before the Revenue Authorities where the authorities have

allowed for mutation to take place as per natural succession and discarded the Will. According to him, the Civil Court alone will have jurisdiction to decide on the validity of the Will and observations made by the Revenue Authorities ought not to have been acted upon by the Courts below.

2. At the stage of relief of injunction sought by the plaintiffs, the Court will be concerned about the prima facie nature of the case. If the mutation has taken effect as on natural succession and the authorities were convinced at least for the purpose of recording the entries that there was a Will, it was fair enough that the decision is not final but it cannot be stated that the Revenue Authorities could not have made any observation about the Will while allowing for entries to be made as per the natural succession. Even a statement made by the daughter of the 1st wife in a matrimonial proceeding describing herself as the daughter of 2nd husband of her mother ought not to be taken as proof of any adoption. It was not necessary in such a proceeding to describe oneself beyond the marital status and if a step daughter states that she is the daughter also, it could be explained at the time of evidence or she could herself admit to her status as gone in adoption. If there is no admission made directly to the plaintiff then a statement in matrimonial proceedings cannot be relied as securing a prima facie case by the plaintiffs.

3. The counsel for the petitioners states that subsequent to the suit, the mother has sold the property to the brother of the deceased-son Amrit Preet Singh and the attempt will be by the purchaser to take possession of the property and disturb the plaintiffs' possession.

4. For the purpose of consideration of interim injunction, the Courts below were required to examine the prima facie case and they were justified under the circumstances where the Will was put to challenge and when the revenue entries have been mutated on the basis of natural succession that they could not obtain an order of injunction against persons who would be otherwise co-owners at law.

5. I will make no intervention with the orders passed by the Courts below. The revision petition is dismissed.

(K. KANNAN)
JUDGE

February 04, 2016
Pankaj*