

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.8129 of 2016 (O&M)
Date of decision:02.12.2016

Jaspreet Singh

... Petitioner

Vs.

Jarnail Kaur (deceased through LRs) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Yowan Sharma, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order dated 22.11.2016, whereby, an application moved by defendant No.7 for producing the registered adoption deed dated 19.05.2003 in a suit challenging the adoption of defendant No.7 by defendant No.1, has been allowed.

Mr. Yowan Sharma, learned counsel for the petitioner-plaintiff submits that nomenclature used in the application, i.e., under provisions of Order 18 Rule 17 CPC do not deal with the additional evidence and only prescribes the Court to re-examine/recall the witness, thus, the application should have been dismissed at threshold. There is a categorical admission of DW2 - natural parent of defendant No.7 that there was no adoption deed, therefore, the application was nothing but wholly misconceived and an after thought, therefore, could not have been allowed.

Regarding applicability of the provisions of Order 18 Rule 17

CPC, he has referred to the judgment of the Hon'ble Supreme Court rendered in **Vadiraj Naggappa Vernekar (D) through LRs vs. Sharad Chand Prabhakar Gogate 2009(2) RCR (Civil) 508** and on similar lines, following various other judgments of this Court and as well as of Delhi High Court:-

- 1. Surinder Kaur vs. Karanbir Singh 2004(3) RCR (Civil) 161;**
- 2. Surjit Kaur and another vs. Pritam Singh and others 2004(1) RCR (Civil) 402;**
- 3. Jai Bhagwan vs. Lajwanti and another 1978 PLJ 276**
- 4. Arun Dhawan and another vs. Lokesh Dhawan passed in CO.A(SB) 50 of 2013 pronounced on 05.12.2014. of Delhi High Court.**

He further submits that once there is a categoric admission of DW2 feigning ignorance of the adoption deed, the application ought not to have been allowed. The prayer was only to produce the document but the Court had granted liberty to prove the same, thus, order is liable to be set aside. All these factors have not been noticed by the Court below, much less reasons assigned are lacking any cogent reasons and thus, urges this Court for dismissal of the application, much less setting aside of the impugned order.

I have heard learned counsel for the petitioner and appraised the paper book and of the view that non-mentioning of the wrong provisions

of law would not be fatal to adjudication of the application. Our Court, as per the amendment caused in Order XVIII Rule 2 CPC adopted the amendment caused by Madras High Court granting jurisdiction to the Court for the reasons to be recorded in writing to direct any party to examine any witnesses at any stage.

For the sake of brevity, the relevant High Court amendment of Madras adopted by Punjab reads as under:-

“Madras – In Order XVIII, Rule 2, at the end, insert the following Explanation namely:–

Explanation - Nothing in this rule shall affect the jurisdiction of the Court for reasons to be recorded in writing to direct any party to examine any witnesses at any stage.”

Punjab – In Order XVIII, in rule 2, insert the Explanation as in Madras as Explanation I and after the so renumbered Explanation, inter the following Explanation, namely:-

Explanation 2 - The expression “witness” in Explanation I shall include any party as his own witness.” (w.e.f.9.6.1942).”

Thus, the argument of Mr. Sharma, on this premise is hereby repelled.

As regards the reasons, the Court below has assigned the reason that it would help the Court in adjudication of the case as pith and substance of the suit is challenging the adoption deed. In my view, the Court below was very circumspect in not referring to the merits of the case by relying upon the cross-examination of DW2 as it would have been fatal to the

respective stands of the parties. For deciding the miscellaneous application, the Court should be very wary in not touching the merits of the case. Liberty has been granted to lead evidence, in accordance with law. The petitioner-plaintiff would also have right to cross-examine the witnesses to prove the adoption deed.

Mr. Sharma has also relied upon the death certificate but has not been able to bring into notice of this Court, whether the death certificate is part and parcel of the trial Court record or proved, in accordance with law, therefore, I would not comment upon the death certificate as it would affect the merits of the case.

In view of the aforementioned observations, no ground is made out for interference in the impugned order. Accordingly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

December 02, 2016
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No