

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

RSA No.2187 of 1990 (O&M)

Date of decision : 22.09.2016

Banwari Lal (deceased) through his LRs

... Appellant

Versus

Smt. Girni Devi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the appellant.

Mr. Sanjay Mittal, Advocate
for the respondents.

AMIT RAWAL, J. (ORAL)

C.M. No.4983-C of 2015

There is application filed at the instance of the appellants wherein it is submitted that disbursement of the amount of compensation deposited by the Government of Haryana after conducting the survey on account of damage of crop due to hailstorm be made to them.

Mr. Mittal states that he would not have any objection, in case the aforementioned amount of compensation is released in favour of the appellants. This Court vide order dated 15.05.2015 had stayed disbursement of the same.

In view of the aforementioned, the order dated 15.05.2015 is vacated and the appellants shall be at liberty to withdrawal of the aforementioned compensation in accordance with law.

The application stands disposed of.

RSA No.2187 of 1990

The appellant-plaintiff is aggrieved of the dismissal of the suit, whereby he sought a declaration that he is adopted son of Ramji Lal.

Mr. Ajay Jain, learned counsel appearing on behalf of the appellant-plaintiff submits that both the Courts below have not only misread and misconstrued the oral and documentary evidence i.e. mutation (Ex.PF) and registered Adoption Deed dated 28.09.1951 (Ex.PW-5/A), wherein it has been proved that the appellant-plaintiff was adopted by Ramji Lal, who was none-else, but the brother of his natural father, namely, Jai Dayal. His natural father, namely, Jai Dayal died and the mutation qua his estate was effected amongst only one son and daughter as he was excluded, which itself shows that he was adopted. The Courts below have erroneously relied upon the documentary evidence i.e. Ration Card and Service Book, wherein, the parentage of appellant-plaintiff is of the natural father. There is no reference to the mutation (Ex.PF) of his natural father in favour of his natural brother and sister. Though the mutation bearing No.726 dated 27.08.1980 of the entire property, earlier was entered in favour of the plaintiff, but certain objections at the instance of Bhagwana were taken and the Assistant Collector 1st Grade, Narnaul vide order dated 26.03.1980 entered the mutation qua the entire property, half share in favour of the defendant No.1 and other half in favour of the plaintiff, but vide judgment and decree, he has been held not to be adopted son and therefore, defendants had become owner of the entire property, thus, urges this Court for setting aside the judgment and decree under challenge.

Per contra, Mr. Sanjay Mittal, learned counsel appearing on behalf of the respondents-defendants submits that no doubt, the adoption

deed is of the year 1951 prior to the promulgation of the Hindu Adoptions and Maintenance Act, 1956, the provisions would not apply, but the provisions of Section 7 had not been complied with, in essence, their natural parents did not participate in the adoption ceremony. The adoption deed had not been proved through the testimony of the attesting witnesses, thus, it remained unproved, rightly so, the Courts below have discarded the aforementioned plea. There is no illegality and perversity. The appellant-plaintiff is in possession of the entire property under the garb of the interim order granted by this Court. Even there is an order of use and occupation charges, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the Courts below have abdicated in not referring to the documentary evidence i.e. mutation (Ex.PF) effected in favour of the natural brother and sister of the appellant-plaintiff on demise of his natural father, namely, Jai Dayal. Even the adoption deed dated 28.09.1951 (Ex.PW-5/A) has been proved through the testimony of the scribe-PW-5. In case of death of attesting witness, it is sufficient requirement of law in view of the *ratio decidendi* culled out by the Hon'ble Supreme Court in “**Ved Mitra Verma V/s Dharma Deo Verma**” 2014 (15) **SCC 578**. For the sake of brevity, paragraph No.11 of the judgment cited supra reads thus:-

“11. The attesting witnesses having died, the Sub-Registrar, who had registered the Will was examined as PW-3. He was examined on commission and in response to the questions posed to him, particularly, question no.2, he had set out the circumstances in which the attesting witnesses as well as the Testator had signed on the

document. This part of the evidence has been elaborately considered by the High Court to record its satisfaction that the execution of the Will has been proved on the basis of the evidence of the Sub-Registrar i.e. PW-3. Having considered the aforesaid aspect of the matter, we are of the view that the satisfaction recorded by the High Court does not suffer from any apparent infirmity or fundamental error which would require correction in the exercise of our jurisdiction under Article 136 of the Constitution of India. All the alleged suspicious circumstances surrounding the execution of the Will being capable of being understood in the manner indicated above and the requirement of Section 69 of the Indian Evidence Act, 1872 having been satisfied by the evidence of PW-3, we find that in the present case, the findings and conclusions recorded by the High Court would not call for any interference. Consequently and for the reasons aforesaid, we dismiss the appeal leaving the parties to bear their own costs.”

In my view the Courts below ought not to have discarded the registered document and taken into consideration the Ration Card and the Service Book. The registered documents always carry a presumption of truth, thus, the finding in my view, is not only erroneous, much less, fallacious.

The aforementioned document has been proved through the testimony of scribe. In my view, the registered document carries more weight than other documents i.e. service book and ration card. Ex.PF is copy of the mutation whereby on demise of the natural father of the appellant, his estate had been mutated in favour of his other two natural heirs. This itself is a clincher to show that he had no interest in estate of his natural father and actually he was adopted son and was being taken care by

the adopted father, thus, it is held appellant-plaintiff would have half share.

At this stage, Mr. Sanjay Mittal submits that the entire property is 56 kanals 10 marlas and half share of the same should be 28 kanals 5 marlas. Mr. Jain, submits that they are two heirs and along with appellant there is another co-sharer Ram Niwas. In case, any application for partition of the property under Section 111 of the Punjab Land Revenue Act is filed, he will not object the partition proceedings and this Court can always fix time line for adjudication of the aforementioned proceedings.

I am in agreement of the consensus arrived at between the parties and of the view that on filing of the application for partition by the respondents within a period of four weeks on receipt of the certified copy of the order with advance copy to the appellant-plaintiff, the plaintiff shall file written statement within a period of two weeks thereafter and the Revenue Court may serve the appellant-plaintiff/witnesses through dasti service and other modes and shall decide the partition proceedings within a period of four months.

Mr. Jain, on instructions from his client, namely Karan Singh, successor-in-interest of Banwari Lal undertakes not to challenge this order.

The second appeal is disposed of as above.

22.09.2016
yogesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned ☒ Yes/ No

Whether Reportable ☒ Yes/ No