

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

1. RSA-159-2002

...Respondent

...Respondent

...Respondent

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jhanji, Advocate
for the appellant (in both the appeals) and
for the petitioner (in both the COCPs).

Mr. Rajesh Bhateja, Advocate
for the respondent (in both the appeals and petitions).

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?

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two appeals bearing RSA No.159 of 2002 & RSA No.161 of 2002 and two COCPs bearing COCP No.85 of 2004 & COCP No.576 of 2004.

The facts are taken from the appeal bearing RSA No.159 of 2002.

The appellant Jagir Kaur (deceased) instituted a suit bearing No.757 of 1991 for possession claiming 5/12th share in respect of land measuring 289 kanals 1 marla on the ground that the respondent-Jarnail Singh, on the basis of the judgment and decree dated 15.01.1991, had taken a forcible possession. Jarnail Singh also instituted a civil suit bearing No.665 dated 17.12.1992 seeking permanent injunction against Jagir Kaur from interfering into peaceful possession on the basis of the aforementioned decree. The trial Court vide order dated 14.11.1992 consolidated both the suits and held that evidence led in civil suit No.757 of 1991 shall be read in the other case.

The appellant Jagir Kaur in support of her averments, appeared herself and examined PW-2 Dharampal, PW3 R.K. Goyal, PW-4 J.S. Kussa and also hand-writing Expert Anil Kumar Gupta as PW-5 whose report has been proved on record as Ex.PW5/A. Jarnail Singh contested the aforementioned suit by taking a stand in the written statement that he is adopted son of Jagir Kaur wife of Hardial Singh and had been living with them since his childhood. In support of his evidence, he examined DW 12 Vaid Varinder Singh and DW 13 Bhag Singh, to show that certain ceremonies of the adoption were performed in their presence. Since, the appellant Jagir Kaur had challenged the consent decree aforementioned i.e. 15.01.1991, the defendants in support of their defence examined Navdeep Gupta as DW10 whose report is Ex.DW10/A. The trial Court on the basis of the oral and documentary evidence relied upon the report of Expert Anil Kumar Gupta PW5 and discarded the report of Ex.DW10/A of Navdeep Gupta and decreed the suit. It is pertinent to mention that the standard and disputed thumb impressions of Jagir Kaur were also referred to the Fingerprint Bureau at Phillour, but it did not give any specific report viz-a-via the genuinity of the thumb impressions, thus, the Court was left with no option but to lay focus on the aforementioned report. The suit filed by Jarnail Singh was dismissed.

Aggrieved against the aforementioned judgment and

decree, Jarnail Singh filed two appeals and both the appeals have been allowed and the judgment and decree of the trial Court has been reversed. It is in these circumstances, two appeals have been filed. During the pendency, an application bearing No.11789-C of 2008 was filed under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure (hereinafter called 'CPC') for impleading the LRs of the appellant Jagir Kaur namely Gulwant Singh, Mandir Singh and Balwinder Singh. On the basis of the unregistered Will dated 27.06.2008, this Court vide order dated 07.01.2009 allowed the application subject to all just exceptions. The order reads thus:

"CM No.11788-89 of 2008

in

RSA No.161 of 2002

*Present: Mr. Sapan Dhir, Advocate
for the appellant.*

*Civil Miscellaneous application for impleading the LRs
of appellant Jagir Kaur, is allowed subject to all just
exceptions.*

*Office to make necessary corrections in the memo of
parties.*

-sd-

07.01.2009

*(Rakesh Kumar Garg)
Judge"*

Mr. Amit Jhanji, learned counsel appearing on behalf of the appellant submits that the respondent-defendant did not

examine any relative/family member as natural parents to prove the factum of alleged adoption. The judgment and decree under challenge was obtained by playing fraud and misrepresentation. Jagir Kaur had never signed any vakalatnama or written statement in the aforementioned proceedings which resulted into passing of the judgment and decree, vide which the property belonging to her, had been transferred in favour of Jarnail Singh. The Lower Appellate Court has committed the illegality and perversity in setting aside the well-reasoned judgment and decree of the trial Court. The lower Appellate Court has further discarded the report Ex.PW5/A of Anil Kumar Gupta, hand-writing Expert, heavily relied upon the report Ex.DW10/A of Navdeep Gupta DW10, who, in his cross-examination admitted that he did not examine thumb impressions Q2 and Q4 as the report was incomplete and, therefore, could not have been taken into consideration. The provisions of Section 50 of the Indian Evidence Act have not been complied with, thus, submits that the following substantial questions of law arises for determination of this Court:-

1. Whether the judgment and decree dated 15.01.1991 suffers from fraud and misrepresentation or not?
2. Whether judgment and decree of the lower Appellate Court suffers from illegality and perversity or not?

Mr. Rajesh Bhateja, learned counsel appearing on behalf

of the respondent submits that the allowing of the application for impleading the LRs of Jagir Kaur is subject to all just exceptions, could not clothe the present appellants, as LRs of Jagir Kaur. The Will is unregistered, even though, there is no reply to the aforementioned application, yet the veracity and genuinity of the Will can be decided by holding an inquiry as envisaged under Order 22 Rule 5 CPC. The Will does not prescribe any relation of the beneficiary with deceased Jagir Kaur. On merits, he submits that Jagir Kaur in her cross-examination admitted that she had put her thumb impressions on the vakalatnama and the written statement. The witness PW-2 Dharampal, in her cross-examination also stated that some lady appeared and disclosed her name as Jagir Kaur and appended her thumb impressions on the vakalatnama. Jarnail Singh is a collateral being nephew of the Jagir Kaur wife of Hardial Singh, as Hardial Singh and Gurdial Singh were the brothers and another sister Ranjit Kaur was married to Gurdail Singh. Both the sisters were issueless and Ranjit Kaur also transferred her share in favour of Jarnail Singh by way of a Will. Non-examination of natural parents would not be fatal, inasmuch as that the plaintiff has failed to prove the ingredients of Order 6 Rule 4 CPC and thus, prays that there is no illegality and perversity in the judgment and decree of the lower Appellate Court.

I have heard the learned counsel for the parties and appraised the paper book.

I am of the view the appeal deserves to be dismissed for

the following reasons:

The ingredients of Order 6 Rule 4 CPC are conspicuously absent. It has not been explained in suit under which compelling circumstances, the Jagir Kaur was made to append her thumb impressions on the vakalatnama and the written statement. Had there been any truth, Jagir Kaur would not have remained silent ought to have submitted a complaint to the police for the registration of the FIR against the Jarnail Singh. Will dated 27.06.2008 sought to be relied upon by the present applicants claiming themselves to be the legal representatives of the Jagir Kaur, does not disclose any relation with her. Even otherwise, the Will is unregistered. The appellant shall be at liberty to seek the declaration viz-a-viz any independent proceedings, in accordance with law. It has been proved on record that the defendant Jarnail Singh and the plaintiff Jagir Kaur had a common residence, thus constitute family and the status of the adopted child was accepted/recognized. Voter Card and Ration Card Ex.D4 and D5 clearly shows that Jarnail Singh was residing at the residential house of Jagir Kaur. There is no rebuttal, to the documentary evidence on record, to belie the aforementioned evidence. Once, a person who invokes the jurisdiction of the Civil Court, seeking setting aside of the judgment and decree alleged to have been suffered is required to lead direct and cogent evidence prove the ingredients of the Order 6 Rule 4 CPC.

Keeping in view the aforementioned facts, the judgment

and decree of the lower Appellate Court is affirmed and the substantial questions of law are answered in favour of the respondent-defendant and against the appellant-plaintiff.

The applicants/appellant shall be at liberty to seek the declaration viz-a-viz the Will sought to be relied upon in respect of the application filed under Order 22 Rule 3 CPC, in independent proceedings.

Accordingly, the both the appeals are dismissed.

As regards the COCFs, since, the appeals have been dismissed, no ground is made out for alleged willful disobedience of the interim order. Even otherwise, it has been stated at bar by Mr. Rajesh Bhateja, Advocate that the property has not been sold as it is still shown in joint khata.

Accordingly, both the petitions are also dismissed.

03.02.2016
yogesh

**(AMIT RAWAL)
JUDGE**