

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

R.S.A. No.1272 of 2010 (O&M)

Date of decision: 18.01.2016

Amrik Singh and ors.

...Appellants

Versus

Ajaib Singh and ors.

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Manish Kumar, Advocate for the appellants.

Mr. K. S. Bassi, Advocate for the respondents.

Jitendra Chauhan, J.

CM No.11177-C of 2010

This is an application under Order 22 Rule 10 read with Section 151 CPC for impleading applicant-Fateh Singh son of Jagir Singh as appellant in the above noted appeal.

It is alleged that appellant Amrik Singh entered into an agreement to sell dated 26.12.2007 with respect to the property in dispute. The applicant has already filed a suit for specific performance, which is pending in the Civil Court, Patiala.

Heard.

The applicant has not brought any agreement to sell dated 26.12.2007 on record. Even if there is any alleged agreement, that is hit by lis-pendis. The suit regarding validity of adoption of proposed vendor, Amrik Singh was filed in 2002, which was decided on 18.02.2008. The applicant did not file any such application before the learned trial Court where the suit was pending. He is not claiming himself to be the bonafide purchaser, neither he could do so. It may be a sham transaction, which has no effect on the rights of the decree holder-plaintiffs or legal representatives of the deceased, Amritpal Kaur. The applicant has no right to sue this appeal. So this application is dismissed.

Main Case

This regular second appeal is directed against the judgment and decree dated 11.02.2010, passed by the learned Additional District Judge (FTC), Patiala, (for short, the 'first Appellate Court') whereby, the appeal filed by the plaintiff-respondents, against the judgment and decree dated 18.02.2008, passed by the learned Additional Civil Judge, Sr. Divn., Patiala, (for short, the 'trial Court') wherein, the suit filed by plaintiff-respondents for declaration and permanent injunction restraining the defendants from alienating the property in question in any manner was dismissed, has been allowed.

The brief facts of the case are reads as under:-

“Admitted facts are that Gurcharan Singh and Darshan Kaur are father and mother, respectively of Amrik Singh, since convicted and sentenced in murder case of Smt. Amritpal Kaur, widow of Amar Singh. It is alleged that deceased Amritpal Kaur adopted Amrik Singh vide adoption-deed dated 22.06.2000. The adoption-deed is being challenged by the brothers and sisters of deceased Amritpal Kaur.”

The learned Trial Court on the pleadings of the parties framed the following issues:-

- “1. Whether the adoption deed dated 22.06.2000 is illegal, null and void and is liable to be set aside? OPP.
2. Whether the mutation No.18, sanctioned on the basis of adoption deed dated 22.06.2000, is illegal, null and void and is liable to be set aside? OPP.
3. Whether the plaintiffs are entitled to declaration as prayed for? OPP.
4. Whether the plaintiffs are entitled to permanent injunction, as prayed for? OPD.
5. Whether the plaintiffs have no locus standi to file the present suit? OPD.
6. Whether the suit is not maintainable? OPD.
7. Whether the suit is bad for mis-joinder and

non-joinder of necessary parties? OPD.

8. Relief.”

The learned trial Court decided issues Nos.1 to 4 against the plaintiffs, while issue No.6 was decided in favour of the defendants. In para No.17, the learned trial Court held as under:-

“As such, from the aforesaid discussion, it emerges that the plaintiffs have failed to prove that adoption deed was liable to be set aside being null and void. The plaintiffs are strangers and are not competent persons to challenge the adoption-deed in question in the presence of legal heirs of Smt. Amritpal Kaur xx xx xx”

While deciding issue No.5, it has been held that the plaintiffs have no locus standi to file the instant suit. Under issue No.6, it has been held that Tejpal Kaur and Bachan Kaur were also necessary parties in the instant suit and suit was liable to be hit by Order I Rule 9 CPC. Under Issue No.8-Relief, the suit of the plaintiffs was dismissed with costs, whereas the counter claim of Amrik Singh was allowed and the plaintiffs were restrained from forcibly entering the house etc. owned by the deceased, Amritpal Kaur, except in due course of law.

Aggrieved against the judgment and decree dated 18.02.2008, the plaintiffs filed civil appeal, wherein the learned first appellate Court held that the adoption deed in favour of Amrik Singh allegedly executed by Amritpal Kaur deceased, is null and void.

Thus, the findings on issues Nos.1 to 4 were held not sustainable in the eyes of laws. It was held that the plaintiffs have locus standi to file the present suit. Resultantly, the appeal was accepted, the findings on issues Nos.1 to 4 were reversed.

This regular second appeal, has been filed by Amrik Singh and others challenging the judgment of reversal of judgment of learned first appellate Court.

The learned counsel for the appellants-defendants contends that the respondents-plaintiffs being the brothers and sisters of the deceased Amritpal Kaur, are not entitled to inherit her property, as the property which a female Hindu inherits from her husband can be inherited only by the legal heirs of her husband. Furthermore, the respondents-plaintiffs have no locus standi to challenge the adoption deed as the same can only be challenged by the parents of the adopted child or the adopted parents or by the child who has been given in adoption. The learned first appellate Court has wrongly held that the appellant No.1-Amrik Singh is not entitled to inherit the property of deceased Amritpal Kaur since the factum of her murder by appellant No.1-Amrik Singh has been proved on file. However, the learned trial Court has categorically held that the judgment of the criminal court is not binding on the civil court. He further states that customs of the society of the parties allow taking

or giving in adoption even a married child so the adoptions of a child who is more than 15 years of age falls within the ambit of such custom. During her life time, the deceased did not object to the adoption. Therefore, the learned first appellate Court has erroneously reversed the findings of the learned trial Court on issues No.1 to 4 and passed the impugned judgment and decree, which is liable to be set aside.

On the other hand, the learned counsel for the respondents-plaintiffs states that appellant No.1 is not entitled to the property of deceased Amritpal Kaur on the basis of adoption deed as he was more than 18 years of age at the time of the adoption, which is duly proved by the date of birth certificate issued by Additional Registrar, Birth and Death, District Sangrur. Further, in the application for passport, appellant No.1 had mentioned his date of birth as 05.05.1980 and for seeking admission in Yateem Khanna as well as B. N. Khalsa School gave another wrong date of birth i.e. 05.05.1982. Thus, it is clearly reflected that the appellant No.1 was more than 15 years of age at the time of adoption deed. Even in the adoption deed, earlier, the age was written as 17 and thereafter '7' was altered to '5' to facilitate the execution of adoption deed. It is admitted fact that any person who is convicted and sentenced in the offence of murder is debarred from succeeding the estate of the

person murdered and it is duly proved from the judgment dated 16.04.2004 Ex.P1 that the appellant No.1 has murdered his adopted mother, Amritpal Kaur. Thus, it is contended that the plaintiffs being the only legal heirs of deceased are entitled to inherit her property.

I have heard the learned counsel for the parties and carefully gone through the entire record on file.

While passing the impugned judgment and decree, the learned first appellate Court, considered all the oral and documentary evidence on record. Firstly, Ex.P1, the judgment passed by the Court of learned Additional Sessions Judge, Patiala, whereby the appellants-defendants were convicted under Section 420, 302, 467 of the Indian Penal Code, duly proves the conviction and murder of the deceased, Amritpal Kaur against appellant No.1. Therefore, he could not inherit the property left by the deceased. Secondly, Ex.P2, adoption deed, reflects the age of appellant No.1-Amrik Singh as 17 years, which after cutting has been changed to 15 years, which suggests that appellant No.1 earlier typed the correct age and later on changed it as per the requirement of law for adoption. Thirdly, Ex.P3, birth certificate of appellant No.1 depicts his date of birth as 20.03.1982, whereas, Ex.P18, passport, shows his date of birth as 05.05.1980. Lastly, the school admission certificate and withdrawal register mentioning name of his father as appellant No.2-Gurcharan

Singh and name of his mother as appellant No.3-Darshan Kaur depicts his date of birth as 05.05.1982.

Accordingly, the learned first appellate Court has rightly held that appellant No.1-Amrik Singh has given wrong date of birth at the time of adoption and later on murdered her. As such he is disinherited from succession to the estate of Amritpal Kaur as per the Hindu Succession Act. Being the brother and sister of the deceased, Amritpal Kaur, the plaintiffs (the respondents herein) have got the right to protect her estate. As far as the custom or usage is concerned, which allows for the adoptions of a child aged above 15 years of age, the same has not been proved on record by leading any cogent evidence.

On consideration, this Court finds that the contentions have no merit as these only relate to the appreciation of evidence. No evidence has been shown which have been ignored from consideration, nor there is any misreading of evidence. These are pure findings of fact. No question of law, much less substantial question of law arises in the present appeal. Hence, no interference is called for. So, in this regular second appeal, it is held that adoption-deed dated 22.06.2000 is illegal, null and void, and the mutation sanctioned regarding the estate of the deceased, Amritpal Kaur on the basis of alleged adoption deed is also illegal and liable to be set

aside. It is further held that the property left by the deceased, Amritpal Kaur shall devolve upon the legal heirs of the deceased as per the provision of the Hindu Succession Act and the schedule attached therewith. It is held that Amrik Singh and his parents are disqualified from inheriting the estate of deceased being murderers. The counter claim of Amrik Singh is also deemed to be dismissed. This RSA is dismissed without costs.

18.01.2016

ashok

(JITENDRA CHAUHAN)
JUDGE