

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

1. **FAO No.5361 of 2016(O&M)**

Date of decision:19.9.2016

Satnam Singh

....Appellant

VERSUS

Gurbax Singh and others

.....Respondents

2. **FAO No.5365 of 2016(O&M)**

Satnam Singh

....Appellant

VERSUS

Gurbax Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. H.S. Rakhra, Advocate for the appellant.

REKHA MITTAL, J.

By way of this order, I intend to dispose of FAO Nos.5361 and 5365 of 2016 as these involve identical questions of law and fact for adjudication. For the sake of convenience, facts are taken from FAO No.5361 of 2016.

Harsimrat Kaur @ Harsimran Kaur @ Nanki wife of Sukhdev Singh filed a petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of death of Renu Rani wife of Darshan Singh that occurred on 14.12.2014. The Motor Accident Claims Tribunal, Amritsar (in short 'the Tribunal') awarded compensation to the tune of Rs.5,03,000/- in favour of Harsimrat Kaur and claim of the

appellant that he is entitled to compensation along with Harsimrat Kaur being the adopted son of the deceased has been dismissed.

Counsel for the appellant has submitted that natural parents of the petitioner namely Dayal Singh and Joginder Kaur were killed at village Sundernagar, U.P. in 1984 riots. He was barely one year old at the time of death of his parents. Mohinder Singh, his uncle (taya) brought him to village Khalra and he was adopted by Darshan Singh and Renu Rani as they were issueless. It is vehemently argued that as the appellant is the adopted son of Darshan Singh and Renu Rani, he has wrongly been deprived of compensation qua death of Renu Rani.

Counsel has made a vain attempt to argue that even if adoption of the appellant is not proved in accordance with the provisions of the Hindu Adoptions and Maintenance Act, 1956 (in short 'the Act'), as adoption was permissible under the customary law, his adoption is to be treated as valid. Another submission made by counsel is that with regard to immovable property left behind by his adoptive parent(s), mutation qua inheritance has been sanctioned both in favour of Harsimrat Kaur and the appellant, sufficient to prove that he is the adopted son of Darshan Singh and Renu Rani and therefore, entitled to share compensation awarded qua death of Renu Rani.

I have heard counsel for the appellant, perused the paper-book particularly the award passed by the Tribunal.

Satnam Singh – appellant preferred the claim petition for himself and Harsimrat Kaur being the class-I heirs of deceased Renu Rani. The plea of the appellant is that he is the adopted son of Renu Rani (since deceased). The Tribunal, on a detailed consideration of the rival

submissions made by counsel for the parties and in the light of relevant provisions of the Act has refused to accept that the appellant was given in adoption by Mohinder Singh, his uncle to deceased Darshan Singh and Renu Rani. The Tribunal has taken note of the provisions of Section 9(4) and 11(vi) of the Act to negate plea of the appellant qua adoption by the deceased.

Section 9(4) of the Act provides for a situation where both the parents of the child are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the Court to any person including the guardian himself.

As per the case set up by the appellant, he was given in adoption by Mohinder Singh (his taya) to Darshan Singh and Renu Rani. The appellant failed to produce any evidence oral or documentary that Mohinder Singh (his taya) obtained any permission from the Court for giving him in adoption to Darshan Singh and Renu Rani. The Tribunal has further noticed that the appellant has not produced any evidence from which it can be inferred that he was actually given in adoption by Mohinder Singh to Darshan Singh and Renu Rani. Counsel for the appellant has failed to point out any materials on record to assail correctness of the findings recorded in para 49 of the award.

In this view of the matter, no error much less illegality can be found in the findings of the Tribunal that the appellant has failed to prove his adoption, in accordance with law.

This brings the Court to the plea with regard to adoption of the appellant under customary law. The Hindu Adoptions and Maintenance Act, 1956 came into force in December, 1956. Section 4 of the Act deals with over-riding effect of Act. A relevant extract therefrom reads as follows:-

“4. Overriding effect of Act- Save as otherwise expressly provided in this Act,-

- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.”

Section 5 of the Act provides for adoptions to be regulated by Chapter II of the Act. Sub Section (1) of Section 5, relevant in the present context, reads thus:-

“5. Adoptions to be regulated by this Chapter- (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.”

A conjoint reading of Section 4 and 5 of the Act extracted hereinbefore would make it evident that after commencement of the Act w.e.f. 21.12.1956, no adoption can be made by or to a Hindu except in accordance with the provisions contained in Chapter II and any adoption made in contravention of the said provisions shall be void. That being so, plea of the appellant in this regard can neither be entertained much less accepted that he was adopted under customary law. Even otherwise, any

person claiming any right under a customary law has to plead and prove that any such custom was in existence and prevalent in the family of the appellant as well as family of Darshan Singh and Renu Rani permitting adoption under customary law. In absence of the appellant raising any such factual dispute before the Tribunal, no such plea of the appellant otherwise invites consideration.

So far as the sanction of mutation qua inheritance to the estate of alleged adoptive parents, no such material was produced before the Tribunal. This apart, sanction of mutation in favour of the appellant would not be sufficient to establish his plea qua his adoption by Darshan Singh and Renu Rani. I would hasten to add that mutation neither creates nor extinguishes titled to immovable property. Analysed from any angle, the appellant has no case worth consideration to point out any infirmity much less perversity in the findings recorded by the Court below that would call for intervention.

For the foregoing reasons, the appeals fail and are accordingly dismissed in limine.

SEPTEMBER 19, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no