

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

**RSA No.3221 of 2011 (O&M)
Decided on: 03.05.2016**

Rattan Singh @ Rattan Lal

....Appellant

Versus

Abhey Singh

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Jatinder K. Kamboj, Advocate
for the appellant.

Mr. Sunil Chadha, Senior Advocate
with Ms. Swati Verma, Advocate
for the respondent.

- 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?*

REKHA MITTAL, J.

The present regular second appeal has been directed against the concurrent findings recorded by the Courts below whereby suit filed by the plaintiff/appellant was dismissed by the learned trial Court vide judgment dated 27.04.2009 and the appeal preferred by him against the judgment and decree of the trial Court did not find favour with the District Judge, Narnaul.

The present *lis* pertains to inheritance to the estate of deceased – Raja Ram, the real brother of the appellant. Raja Ram was unmarried and passed-away on 13.11.1999. Raja Ram suffered a decree

in favour of Abhey Singh-respondent in Civil Suit No.167 of 1994 on 21.05.1994. The appellant has challenged the said decree primarily on the plea that Abhey Singh had no relation with the deceased, therefore, there cannot be any family settlement between the respondent and deceased – Raja Ram and the registered adoption deed dated 24.05.1982 purported to be executed *qua* adoption of Abhey Singh is nothing but a paper transaction.

Counsel for the appellant has submitted that the Courts below have failed to appreciate overwhelming documentary evidence produced on record that Abhey Singh had been using the name of his natural father namely Prabhati Lal, sufficient to negate the plea that Abhey Singh was adopted by Sh. Raja Ram or there was a family settlement between Raja Ram and Abhey Singh *qua* suit land to form the basis of judgment and decree passed in Civil Suit No.167 of 1994 on 21.05.1994.

Counsel for the respondent has supported the judgments passed by the Courts below with the submissions that consistent findings recorded by the Courts below in regard to factual controversy *qua* adoption of Abhey Singh by Sh. Raja Ram are not amenable to challenge in the regular second appeal. It has been argued with vehemence that prior to institution of the present suit, Rattan Singh @ Rattan Lal filed Civil Suit No.526 (Ex.D-4) to challenge the legality of the adoption deed (Ex.D-1) but subsequently Rattan Singh @ Rattan Lal made a statement on 11.12.2003 withdrawing the said civil suit. It is argued that copy of the plaint of the said suit, copy of the statement dated 11.12.2003 withdrawing the suit, copy of order dated 11.12.2003

vide which the civil suit was dismissed as withdrawn and copy of issues framed in the civil suit were duly marked as exhibits in order to substantiate plea of the respondent that the instant suit filed by the appellant/plaintiff is barred under Order 2 Rule 2 and Order 23 Rule 1 of the Code of Civil Procedure (in short 'CPC') in regard whereof, a specific Issue No.6 was framed by the learned trial Court and was answered against the appellant by both the Courts below. It is further argued that as the earlier suit giving challenge to the adoption of Abhey Singh by Raja Ram was allowed to be withdrawn without seeking any permission of the Court to file a fresh suit on the same cause of action, the present suit filed by the appellant is otherwise not maintainable as has been rightly held by the Courts below. It is urged that the trial Court, on a detailed consideration of the entire matter, in the light of materials on record has negated claim of the appellant and the First Appellate Court concurred with the findings of the trial Court on all material aspects of the matter without any variance.

Counsel for the appellant despite being specifically confronted with the findings of the Courts below on Issue No.6, is not in a position to explain much less satisfactorily that despite dismissal of the earlier suit as withdrawn without permission to file a fresh suit on the same cause of action, how the appellant can maintain the present suit or cross the hurdle created under Order 23 Rule 1 CPC.

I have heard counsel for the parties, perused the records but find no merit in the appeal.

The main plank of asserting right in the property left behind by deceased-Raja Ram, brother of the appellant is that

defendant/respondent – Abhey Singh is not the adopted son of Sh. Raja Ram, therefore, the judgment and decree passed in Civil Suit No.167 of 1994 in favour of Sh. Abhey Singh on the basis of admission of his claim by Sh. Raja Ram cannot be allowed to sustain. As the previous suit filed by the appellant to challenge the adoption of Abhey Singh or adoption deed (Ex.D-1) was dismissed as withdrawn without permission of the Court to file a fresh suit on the same cause of action, the present suit filed by the appellant is clearly barred under Order 23 Rule 1 CPC as has been rightly held by the Courts below. Since the appellant was not entitled to maintain a fresh suit on the same cause of action, it would otherwise be an exercise in futility to examine the findings of the Courts below *qua* merits of the case. This apart, the consistent findings of fact recorded by the Courts below cannot be challenged in the regular second appeal unless they give rise to a question of law and that too a substantial one.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed leaving the parties to bear their own costs.

03.05.2016
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(REKHA MITTAL)
JUDGE