

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

RSA No. 2099 of 2016 (O&M)

Date of Decision: 02.05.2016

Hansa Singh and others

.....

Appellants

Versus

Gurtej Singh and others

.....

Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Sunny Saggar, Advocate and
Mr. Rohit Joshi, Advocate,
for the appellants.

Jitendra Chauhan, J.

CM No.5573-C of 2016

There is delay of 56 days in re-filing the appeal. It is mentioned in the application that the appeal was filed within limitation on 2.11.2015. However, some objections were raised by the registry on 18.1.2016. Thereafter, the Clerk of the counsel for the appellants took the paper book of the case to the office. Inadvertently, the paper book of the appeal got misplaced in some other cases. The case file was traced out on 22.4.2016 and objections were removed and the case was re-filed on 23.4.2016. Therefore, delay of 56 days occurred.

Keeping in view the averments made in the application and

the fact that the application is supported by duly sworn affidavit, the

delay of 56 days in re-filing the appeal stands condoned. The application is allowed.

Main case

The unsuccessful plaintiffs have challenged the judgment and decree dated 03.08.2015, passed by Additional District Judge, Sri Muktsar Sahib vide which their appeal was dismissed and the judgment and decree dated 26.11.2011, passed by Additional Civil Judge (Senior Division), Gidderbaha was upheld and the suit of the plaintiffs remained dismissed.

In brief, the plaintiffs filed suit for declaration and joint possession. It was pleaded by the plaintiffs that Jagjit Singh, Dalip Singh, Mahla Singh and Ranjit Singh, all sons of Kapoor Singh were owners in possession of the suit property in equal shares. Dalip Singh was married to Basso and they were issueless. Dalip Singh expired in the year 1949 leaving behind his widow-Basso. Basso continued to be the joint owner to the extent of 1/4th share of the suit property. Mahla Singh, plaintiff no. 1 got his separate share in the consolidation proceedings. Basso, Ranjit Singh and Jagjit Singh remained owners to the extent of 1/3rd share each. Baldev Singh son of Jagjit Singh obtained a decree on 28.8.1978 in his favour regarding land measuring 397 kanals 13 marlas. Further, Baldev Singh suffered a decree in favour of his wife Rajwinder Kaur on 19.11.1982. The plaintiffs challenged the aforesaid decrees dated 28.8.1978 and 19.11.1982 on the ground that immovable property more than Rs.100/- cannot be

transferred by any un-registered instrument. The claim of Baldev Singh-adopted son of Basso was also challenged by the plaintiffs.

Upon notice, the defendants appeared and filed written statement, contesting the suit of the plaintiffs. It was pleaded by the defendants that the plaintiffs have no cause of action to file the present suit. The aforesaid decrees have been validly suffered by Basso and Baldev Singh. Basso adopted Baldev Singh as her son and in the various documents, Baldev Singh was reflected as son of Basso and Dalip Singh.

After adjudicating the rival claims of the parties, the trial Court came to the conclusion that Baldev Singh was the adopted son of Basso. The trial Court also observed that the decrees dated 28.8.1978 and 19.11.1982 were validly suffered. The plaintiffs, Mahla Singh and Ranjit Singh did not have any cause of action to file the instant suit. Consequently, the suit was dismissed vide judgment and decree dated 26.11.2011 passed by the trial Court.

Feeling aggrieved, the plaintiffs filed appeal before the lower Appellate Court. The lower Appellate Court upheld the judgment and decree passed by the trial Court and dismissed the appeal vide judgment and decree dated 3.8.2015.

Still feeling dissatisfied, the plaintiffs have filed the instant Regular Second Appeal assailing the judgments and decrees passed by the Courts below.

On behalf of the appellants, it is contended that the Courts

below fell in error in considering Baldev Singh as the adopted son of Basso because it was not pleaded by the defendants as to how he became the son of Basso and by whom Baldev Singh was given in adoption to Basso and what were the ceremonies that took place in that regard. In the absence of any cogent and clinching evidence, the factum of adoption cannot be presumed under the law. The second plank of the argument is that land worth more than Rs.100/- cannot be transferred by an unregistered instrument. The decree dated 28.08.1978 being unregistered cannot transfer any right, title or interest in immovable property worth more than Rs. 100/-. The third limb of argument of learned counsel for the appellants is that Will Ex. D6 allegedly executed by deceased Basso during her lifetime is surrounded by suspicious circumstances and the learned Courts below fell in grave error in holding that Will Ex. D6 is duly proved. To buttress his arguments, the learned counsel has placed reliance on **Hira Nand Vs. Maya Devi and ors. 2014 (2) R.C.R. (Civil) 680 (P&H)** and **Jarant Singh and ors. Vs. Sukhjinder Singh and ors. 2008 (1) R.C.R. (Civil) 434 (P&H).**

I have heard the learned counsel for the appellants and have gone through the case file.

The defendants No.10 to 13 have clearly pleaded in paragraph No.2 of the written statement that Basso adopted Baldev Singh with the consent of his natural parents when he was a child and

Baldev Singh was brought up by Smt. Basso as her son. Till her death,

Basso lived with Baldev Singh as his mother. In the replication, the plaintiffs did not deny the factum of adoption but only pleaded that no essential ceremonies are alleged to have been performed. Kala Singh Chowkidar, PW-3, has admitted as correct that Basso was residing at the house of Baldev Singh. The relationship of Basso and Baldev Singh was of mother and son. It is also admitted as correct by PW-3 that Baldev Singh had been calling Basso by addressing her as mother and Basso had been calling Baldev Singh as son. It is also admitted as correct by PW-3 that the cremation ceremony of Basso was performed by Baldev Singh and the Bhog ceremony of Basso was also held at the house of Baldev Singh. Harjinder Singh, PW-6 has admitted that Basso died at the house of Baldev Singh. The last rites, cremation etc. were also performed by Baldev Singh. It is further admitted as correct by PW-6 that Baldev Singh performed all his duties as her son and he has seen Basso residing along with Baldev Singh. He further admitted that the family of Baldev Singh has been looking after Basso and was providing food and clothes etc. to her. Further, Smt. Basant Kaur, DW-9, the real sister of Dalip Singh son of Kapoor Singh deposed that Basso adopted Baldev Singh younger son of Jagjit Singh as her son with the consent of his natural parents. Baldev Singh immersed her ashes at Kiratpu. Ration card and votes of Basso were prepared at the address of house of Baldev Singh being his mother. There being sufficient evidence, the trial Court rightly held Baldev Singh as the adopted son of Basso.

Further, there is a finding of fact recorded by the Courts below that Basso, during her lifetime, suffered a decree dated 28.08.1978 in favour of Baldev Singh and in the Will executed in favour of the minor sons of Baldev Singh, said Baldev Singh was referred as the adopted son of Basso. Not only this, if the decree executed by Basso in favour of Baldev Singh had been obtained by fraud and coercion, the deceased, Basso could have challenged the decree during her lifetime. Interestingly, the decree was suffered in the year 1978, whereas, Basso died in the year 2001 and she remained alive for about 22 years after the sufferance of decree. Basso was party to the suit filed by Baldev Singh. The factum of decree was well within her knowledge. The fact that no challenge was laid by Basso during her lifetime to the decree goes a long way to prove that the decree was genuine.

As regards the first argument raised by the learned counsel for the appellants that the decree dated 28.8.1978 suffered by Basso in favour of Baldev Singh being unregistered does not confer any right, title, or interest in favour of Baldev Singh, this Court is of the opinion that since the validity of Will suffered by Basso in favour of minor sons of Baldev Singh has been upheld in RSA No.2631 of 2010 titled as “Hansa Singh and others vs. Iqbal Singh and others”, the right to inherit the property would not have vested in the appellant in any case.

It is the minor sons of Baldev Singh, who could have laid challenge to the decree. The decree suffered by Smt. Basso in favour of her adopted

son Baldev Singh did not create any new right. Baldev Singh was the adopted son of Basso. After the death of Basso, the property was to be inherited by Baldev Singh. Therefore, the decree was not required to be registered. The argument is therefore, repelled. There is no dispute about the preposition of law laid down in the authorities cited by learned counsel for the appellants. However, the ratio of the reported cases does not apply to the facts of the instant case.

It is established on record that document dated 29.07.1997 (Ex. D6) was the last Will and testament of Basso, for the reasons, firstly, it is a registered Will and secondly its due execution has been proved by its scribe, Surya Singh, Advocate and one of the attesting witnesses namely Harnek Singh (DW6). Both these witnesses have withstood the test of cross-examination.

This being so, this Court does not find any reason to interfere in the findings recorded by the Courts below. There is no substantial question of law involved in the present Regular Second Appeal.

Consequently, the appeal is dismissed.

(JITENDRA CHAUHAN)
JUDGE

02.05.2016
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