

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

**RSA No.273 of 2016 (O&M)
Date of decision:27.01.2016**

Vijay Kumar

... Appellant

Vs.

Rattan Parkash and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Suneet Kumar, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.891-C of 2016

For the reasons stated in the application, duly supported by an affidavit, delay of 62 days in filing the appeal is condoned.

C.M. stands disposed of.

RSA No.273 of 2016 (O&M)

The appellant-plaintiff is aggrieved of the dismissal of the suit seeking partition claiming 1/8th share in the estate of Telu Ram on the premise that he was adopted son of Telu Ram, as well as, decree in counter claim, whereby, he has been directed to hand over the vacant possession of the premise in his occupation.

Mr. Suneet Kumar, learned counsel for the appellant-

plaintiff has raised multi-fold arguments which are enumerated herein below:-

In order to prove the factum of relationship of plaintiff with Telu Ram, the electricity bill, voter card, ration card and two attesting witnesses, namely, Satya Pal and Manorama have been examined. The evidence ex facie shows that plaintiff was son of Telu Ram, much less, adopted by him. Proof of adoption would not be fatal to the case as parentage of plaintiff in the aforementioned documents was proved which clinches the issue in controversy. Branding of status of licensee at the instance of the defendants was totally misplaced, much less, had no foundation.

In support of his aforementioned contention, he relied upon various judgments reported as **Damodar Naryan Singh vs. Sardar Hira Singh and another 2002(4) ICC 203** and in the matter of adoption of Payal @ Sharinee Vinay Pathak Mumbai (Bombay) **2009(4) RCR (Civil) 401** to contend that son cannot be a licensee of father, much less, even if the father has three children, there is no bar under the Act to adopt any other child. He, thus, submits that the aforementioned facts and case laws cited at bar, have not been taken into consideration by both the Courts below, much less, substantial question of law arises for determination by this Court.

I have heard learned counsel for the appellant-plaintiff and appraised the impugned judgments and decrees of the Courts below, much less, case laws cited at bar.

Section 50 of the Indian Evidence Act, provides the factum of proving the relationship which reads thus:-

“50 Opinion on relationship, when relevant – When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecution under Sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).”

Evidence led on behalf of the plaintiff is lacking the compliance of the aforementioned provisions as no family member has been examined to prove whether the plaintiff was adopted or natural son of Telu Ram. In the absence of any evidence, the Courts below formed an opinion qua status of plaintiff as licensee and accordingly, decreed the counter claim. Both attesting witnesses, namely, Satya Pal and Manoramma examined are not relatives. Reflection of parentage of the plaintiff in the voter card is self serving statement which would not clothe the status of adopted son. Having failed to prove the factum of being adopted son of Telu Ram, both the Courts below have rightly dismissed the suit and decreed the counter

claim. The case laws cited at bar, do not apply to the present case as it is a settled law that son cannot be a licensee of the father. No evidence has been led to show that Tolu Ram had adopted the plaintiff as fourth son after having three living children.

In the absence of any evidence, I am of the view that there is no merit in the appeal and both the Courts below have rendered the findings, which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 27, 2016
savita