

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

**Regular Second Appeal No.488 of 2014 (O&M)
Date of Decision: May 26, 2016.**

Mange Ram and others

.....APPELLANT(s).

VERSUS

Parkash and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Dr. Praveen Hans, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is regular second appeal against the concurrent judgments of the Courts below dismissing the suit filed by plaintiffs claiming title over the estate of Tohfa Bai daughter of Rampat on the basis of Will dated 13.11.2000 and declaration that defendants have no concern in any manner with the suit land and consequently, mutation of inheritance No.1173 dated 01.03.2007 in favour of defendant No.1 on the basis of registered adoption deed dated 26.05.1995 is illegal, null and void.

2. Plaintiffs are real brothers of Tohfa Bai and claimed title over the land in suit owned by Tohfa Bai on the basis of her Will dated 13.11.2000. Learned Civil Judge (Junior Division), Hansi discarded the Will keeping in view the suspicious circumstances as follows:-

(i) The conduct of the scribe was not found genuine as on 13.11.2000, he had prepared/scribed three Wills of three sisters namely Smt.

Tohfa Bai, Bhagwani Bai and Hardei daughters of Ganpat @ Rampat son of Daulat Ram but Bhagwani Bai had already died on 22.10.2000 and the counsel for the plaintiffs could not explain how a dead person could execute the Will.

(ii) PW8 Ramesh Kumar had stated that Tohfa Bai had executed a Will in favour of plaintiffs in the year 1999 while the Will propounded by plaintiffs is of the year 2000.

(iii) Satpal, marginal witness of the Will has stated that stamp paper for the Will were bought by Smt. Tohfa Bai. The other marginal witness Banarsi Dass stated that he and Satpal Lamberdar bought the stamp paper but the Will was executed on a plain paper.

(iv) PW1 Satpal, marginal witness of the Will stated that there was no Lamberdar in village Jeetpura, as such, Tohfa Bai had to call the Lamberdar from neighbouring village Behtor Rangar, while the other marginal witness Banarsi Dass Lamberdar stated that there was already a Lamberdar in village Jeetpura.

(v) The Will was unregistered and this assumes importance in view of the fact that in the year 1977, Tohfa Bai had executed a registered Will, as such, was fully conversant with the process of registration of Will. As per the plaintiffs, she remained alive for about four years after execution of the Will, as such, she was having enough time to get it registered.

(vi) If the plea of plaintiffs be believed that Tohfa Bai had no legal heir, in that eventuality, plaintiffs were the natural successors to her property and there was no need to execute any Will in their favour.

(vii) Registered adoption deed dated 26.05.1995 executed by Tohfa

Bai which is a memorandum of adoption of defendant No.1 Parkash when he was six years of age, was held to be a valid document.

3. The first Appellate Court affirmed the findings of learned Civil Judge while dismissing the appeal. It took note of contradictions in the statements of marginal witnesses. PW1 Satpal Lamberdar was also witness of the Will dated 13.11.2000 executed by Bhagwani Bai, sister of Tohfa Bai, who had already died on 20.10.2000. He has only identified signatures of Tohfa Bai on the Will. The statement of this witness was found suspicious by the first Appellate Court because of other reasons including the one mentioned above.

4. Learned counsel for the appellants has argued that the Will in favour of plaintiffs executed by Tohfa Bai, though not a registered Will but was duly proved by the marginal witnesses. Regarding Will dated 13.11.2000 of Bhagwani Bai, sister of Tohfa Bai, who had already died in October, 2000, he has argued that the same had nothing to do with the Will of Tohfa Bai. At the time of execution of the adoption deed dated 26.05.1995, defendant No.1 Parkash was 21 years of age, as such, could not be taken in adoption. No date of adoption or ceremonies of adoption were duly proved. The appellants by moving application for additional evidence, sought to produce documents on record, where Parkash Singh was mentioned as son of his natural father in the civil suit filed against him in the year 2002 by one Jaswant Singh and he filed written statement as son of Madan, his natural father. This shatters the contention of respondent-defendant No.1 that he was adopted by Tohfa Bai. Learned first Appellate has wrongly declined this application.

5. On giving a careful thought to the submissions of learned counsel for the appellants, I find no merits therein. The suspicious circumstances as pointed out by the Courts below rendered the Will of Tohfa Bai invalid. It is quite surprising that appellants-plaintiffs are getting prepared three Will of three sisters on 13.11.2000, knowing fully well that one of their sisters Bhagwani Bai had already died. This fact has direct impact on the conduct of the scribe, marginal witnesses, who had also attested the Will of Bhagwani Bai and the appellants-plaintiffs. The concurrent findings of the Courts below are based on evidence on record and call for no interference in this regular second appeal.

6. This contention of learned counsel for the appellant that the date of adoption and ceremonies of adoption were not proved on file, is not based on the evidence on record. The defendants have examined Bhim Singh DW4, who has deposed that the ceremonies of adoption took place in his presence. He has further stated that defendant No.1 was adopted when he was six years of age. Pandit Ram Chander had performed the ceremonies of adoption and natural parents of Parkash have given him in the lap of Tohfa Bai, who had accepted Parkash as her son. There was programme of recital of songs at that time. Shakkar (brown sugar) and Batashe were distributed. All the relatives and respectable of village were present at that time.

7. Pandit Ram Chander, who performed the adoption ceremonies, appeared as DW5. He has further stated that marriage of Parkash was also performed by Tohfa Bai, who was residing in her house and serving her. On the death of Tohfa Bai, her last rites were performed by Parkash. He

(Pandit Ram Chander) had performed the '*Path of Garud Puran*' and ceremonies of '*Rasam Pagri*' on the death of Tohfa Bai. The turban, which was brought by appellants-plaintiffs, was tied on the head of defendant No.1. Palu Ram DW6 has also fully supported the case of defendant No.1 about his adoption by Tohfa Bai.

8. Learned counsel for the appellants has laid much stress on one line in the cross-examination of Palu Ram DW6, wherein he has stated that no ceremonies of adoption were performed and it was a social adoption. Firstly, the statement of this witness is to be read as a whole, wherein he has deposed regarding all the ceremonies of adoption. It is quite possible that he had termed the adoption ceremony of Parkash as social type of adoption due to his own understanding of the matter.

9. Bajrang DW7, resident of village Bajina, stated that he was also present at the time of adoption and stated that the ceremonies of adoption were performed while giving of Parkash in adoption by his natural parents to Tohfa Bai. Similar is the statement of Ramji Lal DW8. He is also a marginal witness of the adoption deed, who has stated that the adoption deed Ex.D3 (also Ex.P6) was executed by Smt. Tohfa Bai. It was read over and explained to her by the deed writer and she after admitting the contents of the deed as correct, had thumb marked the same and he and Rattan Singh also signed it. Thereafter, it was presented before the Sub Registrar, who again read over the same to Smt. Tohfa Bai, where also she thumb marked after admitting the same as correct and then he and other marginal witness appended their signatures. Smt. Shanti, natural mother of defendant No.1 Parkash has deposed that her son Parkash was given in adoption to Smt.

Tohfa Bai when he was six years of age. She deposed regarding the adoption ceremonies and thumb marking the adoption deed. Adoption deed dated 26.05.1995 was duly proved. This adoption deed also reflect the Will of Tohfa Bai, who specifically mention in it that after her death, her entire property will devolve on defendant No.1.

10. The defendants have also proved on record the gift deed executed by appellant-plaintiff Mange Ram in favour of Nirmala wife of Parkash son of Tohfa Bai. This document was executed on 10.03.2006 and is admission of plaintiffs that Parkash was treated as son of Tohfa Bai by plaintiff Mange Ram whom he had also addressed as his real nephew (sister's son). In the gift deed (Ex.D1), he has mentioned Parkash as adopted son of Tohfa Bai. This document leaves no scope for plaintiff Mange Ram to allege that Parkash was not the adopted son of Tohfa Bai.

11. Both the Courts below have elaborately discussed the evidence on record while reaching the conclusion that Parkash is proved to be adopted son of Tohfa Bai and I find no reason to interfere with the above observations.

12. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

May 26, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE