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

RSA No.5579 of 2014

Date of decision: March 17, 2016

Makhan Singh

.....Appellant

Versus

Amar Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S. Sahu, Advocate
for the appellant.

SABINA, J

Appellant had filed suit for declaration challenging the adoption deed dated 11.09.1991.

The case of the appellant-plaintiff, in brief, was that defendant No.7 was his brother, whereas, defendants No.8 to 12 were his sisters. Defendants No.13 to 17 were sons and daughters of Kartari Bai sister of Shamsheer Singh. Defendants No.1 to 4 were children of the brother of Shamsheer Singh, who was working as a Beldar in Public Health Department. Shamsheer Singh had died unmarried and issueless. During his lifetime, Shamsheer Singh had been residing with Harpal Singh and Karnail Singh. Shamsheer Singh never adopted defendant No.1. Shamsheer Singh had died on 07.03.2007 and his last rites were performed by Harpal Singh and Karnail Singh. The alleged adoption deed in favour of defendant No.1 was a result of

misrepresentation. Shamsheer Singh had never executed the said adoption deed.

Defendants No.1 to 3 in their written statement averred that Shamsheer Singh son of Kishan Singh was unmarried. In the year 1981, he had adopted defendant No.1 as his son with the consent of natural parents of defendant No.1. After completion of necessary formalities, defendant No.1 started residing with Shamsheer Singh. On 11.09.1991, the adoption deed was got registered.

Defendants No.5 and 6 in their written statement averred that Shamsheer Singh had submitted his nomination papers while in service and had described defendant No.1 as his adopted son/nominee.

The remaining defendants were proceeded *ex parte*.

On the pleadings of the parties, following issues were framed by the trial Court:-

- “1. Whether the adoption deed No.530 dated 11.9.1991 is illegal, null and void?OPP
2. Whether the plaintiff and proforma defendants are entitled to get the pensionary benefits of Shamsheer Singh deceased being legal heri?OPP
3. Whether the plaintiff has no cause of action or locus standi to file the present suit?OPD
4. Whether the suit of the plaintiff is within the period of limitation?OPD
5. Relief.”

Parties led their evidence in support of their respective pleas.

Trial Court vide judgment/decreed dated 20.01.2012 dismissed the suit filed by the plaintiff-appellant. The said judgment/decreed passed by the trial Court were upheld in an appeal filed by the plaintiff-appellant by the First Appellate Court vide judgment/decreed dated 24.04.2014. Hence, the present appeal by the plaintiff-appellant.

I have heard learned counsel for the appellant and have gone through the record available on the file carefully.

In the present case, appellant had challenged the adoption deed dated 11.09.1991 on the ground that the same was based on fraud and misrepresentation. Appellant is the brother of Shamsheer Singh. As per the adoption deed in question, Shamsheer Singh had adopted defendant No.1 Amar Singh as his son. The case of the appellant was that Shamsheer Singh was being looked after by Karnail Singh and Harpal Singh and they had performed the last rites of Shamsheer Singh after his death. However, Karnail Singh and Harpal Singh were not examined as witnesses by the appellant. Admittedly, Karnail Singh and others had filed civil suit against defendant No.1 and others seeking pensionary benefits on account of death of Shamsheer Singh, but the said suit was got dismissed as withdrawn vide order

dated 21.05.2009 without seeking permission to file a fresh one on the same cause of action.

Defendant No.1, on the other hand proved on record the adoption deed executed in his favour. Defendant No.1 also examined DW3 Madan Lal Deed Writer to corroborate his version qua execution of the adoption deed. DW3 Deed Writer proved entry made in his register at Sr. No.1032 dated 11.09.1991. Shamsheer Singh had also filled in the nomination form Exhibit D2 vide which he had nominated Amar Singh defendant No.1 as his nominee. Amar Singh was described as adopted son of Shamsheer Singh in the nomination form. Moreover, the adoption deed in question had never been challenged by Shamsheer Singh during his lifetime. In the facts and circumstances of the present case, the Courts below rightly held that the suit filed by the plaintiff was liable to be dismissed.

No substantial question of law arises in this case warranting interference by this Court.

Dismissed.

**(SABINA)
JUDGE**

March 17, 2016
mahavir