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

**Civil Revision No.5240 of 2016
Date of Decision: 03.10.2017**

Usha Devi @ Ram Devi and others

.....Petitioners

Vs

Namrata Saini and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Shiv Kumar, Advocate
for the petitioners.

Mr. Jai Bhagwan, Advocate with
Mr. Sandeep K. Rana, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioners are aggrieved of the order dated 02.07.2016 passed by the Civil Judge (Jr. Divn.) Faridabad whereby application filed by the petitioners under Order 7 Rule 11 CPC was dismissed.

[2]. Brief facts are that plaintiff Namrata Saini filed a suit for declaration with consequential relief of permanent injunction. The plaintiff filed the suit on the basis of her being adopted daughter of Ramesh Chand Saini. Following pleadings were made in para Nos.2, 4 and 5 of the plaint by the plaintiff:-

“2. That previously real/natural father of plaintiff Parath Singh was owner in possession of the said properties of his above said share and after the death of Parath Singh, who died on 6.10.2011 intestate (his death certificate is enclosed herewith as Annexure P-2) leaving behind the plaintiff and defendants No.4 & 5 as his real and natural daughters and defendant No.1 as his wife/widow and defendant No.2 & 3 as his sons being the only legal heirs successors in interest and legal representatives who have succeeded to the right estate and interest of Parath Singh to the extent of 1/6th share each in equal share being the natural daughter of Parath Singh and coparcener (although she was later on adopted by her Mause) (Ramesh Chand Saini) but the plaintiff was born on 1.9.1988 at H.No.502, Ward No.25, Saini Mohalla, Unchagaon, Ballabgarh, thereby by birth she has every right to inherit 1/6th share in the properties of her natural father as per law of succession.

4. That the defendants No.1 to 5 in collusion and conspiracy with the defendants No.6 and 7 and patwari halqa has illegally got sanctioned and entered the impugned mutation No.15506 dated 31.1.2012, but in the said mutation the name of plaintiff has not been included as one of the legal heirs of Parath Singh and this fact came to the knowledge of plaintiff only on 28.9.2014 when she has sought information under RTI Act from Tehsildar Ballabgarh vide his office Memo No.288 dated 28.9.2014 (photo copy of the said letter is enclosed herewith as Annexure P-3).

5. That thus the impugned mutation No.15506 dated 31.1.2012 sanctioned and entered in favour of defendants No.1 to 5 qua the suit land and property mentioned in Para

No.2 (i to v) of plaint and report dated 28.9.2014 of Tehsildar Ballabgarh are ex-facie, illegal, arbitrary, malafide against the principle of natural justice, equity and fair play, nonest in eyes of law, having no binding effect on the right, title and interest of plaintiff qua the suit land and property, do not create any right, title and interest in favour of defendants No.1 to 5 qua the suit land and property and these entries are liable to be declared null and void ab initio and are to be rectified and the name of plaintiff being one of the legal heirs of Parath Singh s/o Sh. Harphool be also liable to be included in the column of ownership and possession regarding the suit land and property as owner in possession to the extent of 1/6th share being coparcener and one of the legal heir and daughter of Parath Singh.”

[3]. Defendants filed application under Order 7 Rule 11 CPC for rejection of the plaint being barred by law. Defendants/petitioners relied upon Section 12 of the Hindu Adoption & Maintenance Act, 1956 (hereinafter to be referred as 'the Act') to the effect that the adopted child shall be deemed to be the child of his or her adopted father or mother for all purposes with effect from the date of adoption and from such date all the ties of the child in the family of his/her birth shall be deemed to severed and replaced by those created by the adoption in the adoptive family. The defendants further relied upon the pleadings in the plaint wherein it was admitted that after the birth of the plaintiff on 01.09.1988, she was given and taken in adoption after six months of her birth and since then,

she was living with her adoptive father Ramesh Chand Saini.

[4]. Learned counsel for the petitioners by referring to **Sawan Ram vs. Mst. Kalawanti and others, 1967 AIR (SC) 1761** contended that in the principle clause of the second provision, itself it lays down not only that the adopted child shall be deemed child of his or her adoptive father or mother for all purposes with effect from the date of adoption but, in addition, the rights of such an adopted child has also been defined i.e. all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. The adopted child is deemed to be a member of the adoptive family and the child loses all his rights in the family of his birth. The right which the child had to succeed the property by virtue of being the son of his natural father in the family of his birth is thus clearly replaced by similar rights in the adoptive family.

[5]. Learned counsel further relied upon **Basavarajappa vs. Gurubasamma & Ors., 2005(12) SCC 290** and submitted that on adoption, the adopted child becomes the member of the adoptive family and is entitled to his coparcenary interest in ancestral properties held by the adopted father/mother. In the aforesaid case, the Hon'ble Apex Court while dealing with the case of one Basavarajappa, who was the son of Shankarawwa,

daughter of Narasappa, who had pre-deceased him. Narasappa adopted Basavarajappa and his natural father gave him in adoption. Narasappa got the adoption registered which was signed by both the parties. Narasappa was owner of ancestral property. After the death of Narasappa the dispute arose as Gurubasamma one of the daughter of Narasappa filed the suit claiming share in the property of deceased Narasappa. Basavarajappa was the adopted son of Narasappa and, therefore, he contested the suit. The Hon'ble Apex Court held in the following manner:-

“17. On adoption, the appellant became a coparcener with Narasappa and entitled to his coparcenary interest in the ancestral properties held by Narasappa. Appellant became entitled to half share in the Joint Hindu Family of his father as a coparcener like a natural son. The view which we are taking is in consonance with the view taken by this Court in Sitabai's case (supra) in which it was held that after considering the scheme of Section 11, 12 and 14 of the Adoption Act that on adoption the adopted child would become a coparcener in the adopted family after severing all his ties with the family from which he has been adopted.”

[6]. On the other hand, learned counsel for the respondents by relying upon proviso B to Section 12 of the Act contended that as per proviso B and C of Section 12 of the Act any

property vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attached to the ownership of such property including the obligation to maintain relatives in the family of his or her birth. The adoptive child shall not divest any person of any estate which vested in him or her before adoption. Learned counsel by relying upon **Madala Yathirajulu (Died) by his LRs and others vs. Madala China Ananthaiah (Died) and others, 2014(64) R.C.R. (Civil) 201 (Hyderabad)** contended that even if the adopted child has come to the adoptive family, he does not lose his right in the coparcenary property in the natural family which had vested in him on the day when he was born.

[7]. According to learned counsel, the adoptee can take only that property of his adoptive family from his birth family which is absolutely vested prior to adoption by inheritance or by partition in the natural family or as sole surviving coparcener as he becomes its absolute owner.

[8]. I have heard learned counsel for the parties.

[9]. In order to appreciate the contention of learned counsel for the respondents, vested property in the adopted child has to be culled out from the pleading on record. In the suit filed by the plaintiff, Parath Singh died on 06.10.2011 leaving behind the

plaintiff and defendant Nos.4 and 5 as his real and natural daughters besides defendant Nos.2 and 3 as sons. The plaintiff would succeed 1/6th share in the property being natural daughter of Parath Singh in the ancestral agricultural land which was Hindu joint undivided family property inherited by Parath Singh.

[10]. At this stage of litigation, only averments made in the plaint are to be seen. The averments made by the plaintiff in the plaint would suffice to provide necessary pleadings for determination of the application under Order 7 Rule 11 CPC without taking note/consideration of any other material. The female/daughters by virtue of the amendment in the Act in the year 2005 have been brought in the category of coparceners. The extent of applicability of the provision in the context of alleged ancestral land belonging to the Hindu joint undivided family would be the subject matter of evidence to be led by both the parties at a subsequent stage.

[11]. The interpretation attached to proviso B to Section 12 of the Act means the property in which indefeasible right is created i.e. on no contingency it can be defeated in respect of particular property. Clause B of the proviso to Section 12 of the Act cannot be attracted when the property has not been vested in him and is still fluctuating coparcenary property. The

aforesaid property would be the subject matter of the evidence to be led by the parties. The adoption was made on 01.09.1988, with the aforesaid adoption plaintiff ceases to daughter of his biological parents by virtue of Section 12 of the Act.

[12]. By virtue of amendment in the Act in the year 2005, no such vested property can be presumed in favour of the plaintiff as no such indefeasible right was ever created in favour of the plaintiff prior to the year 2005 i.e. on the date of adoption. When the plaintiff was adopted on 01.09.1988, there was no such vested right in favour of the plaintiff by virtue of clause B of the proviso to Section 12 of the Act and the property was never vested in her, therefore, on the basis of ratio laid down in **Devgonda Raygonda Patil vs. Shamgonda Raygonda Patil and ors. AIR 1992 Bomay 189**, it can be observed that on the date of adoption of the plaintiff on 01.09.1988, there was no vested property in her favour in the context of clause B proviso to Section 12 of the Act and the property, if any, was a fluctuating coparcenary property not capable of vesting in the plaintiff by any stretch of imagination.

[13]. In view of above, it can be observed that there was no cause of action available with the plaintiff to file the suit and the plaint is liable to be rejected in terms of Order 7 Rule 11 CPC. Ordered accordingly. Consequently, this revision petition is

accepted. Impugned order dated 02.07.2016 passed by the Civil Judge (Jr. Divn.) Faridabad is set aside.

October 03, 2017	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No