

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

RSA No.130 of 1987

Date of Decision: 05.07.2017

Jas Ram (deceased) through LRs

...Appellants

Vs.

Pehlad (now deceased) son of Kalu through LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Mahavir Sandhu, Advocate
for the appellant.

Mr. G. R. Vashisth, Advocate, and
Ms. Neeru Bansal, Advocate,
for respondents.

Amol Rattan Singh, J.

This is the second appeal of the plaintiff in a suit, instituted by him seeking a declaration that he is the owner in possession of a 2/3rd share in the suit property (fully described in the head note of the plaint), comprising 233Ks and 7Ms of land, falling in village Pajju, Tehsil Loharu, District Bhiwani, and that mutation no.317 dated 12.01.1972, entered in the name of the defendants, be declared to be null and void and not binding on the rights of the plaintiff.

The civil suit instituted on 30.06.1981 having been dismissed by the learned Sub Judge Ist Class, Bhiwani, and the first appeal of the plaintiff against that judgment and decree also having been dismissed by the learned Additional District Judge, Bhiwani, this second appeal has come to be filed.

2. As per the case of the plaintiff, Kalu and Jhabar were brothers, son of Khetu, with Jhabar remaining unmarried. Kalu had three sons and two

daughters, i.e. the plaintiff, Jas Ram, Pehlad (defendant no.1), Lekh Ram (not a party to the *lis* as he is stated to have died earlier, unmarried and issueless), and two daughters, Burji and Khema, i.e. the defendants no.2 and 3, all born from the womb of Smt. Anchi, defendant no.4.

Kalu is stated to have died in the year 1952 and a mutation of inheritance was sanctioned in favour of his three sons, i.e. the plaintiff, Pehlad and Lekh Ram in equal shares, the Hindu Succession Act, 1956, not having come into force at that time, as contended, (and therefore the daughters not getting any share in the property).

Hence, the plaintiff inherited a 1/3rd share of the property left by Kalu, which he continued to be in possession of, as per his averment.

3. It was further contended in the plaint that thereafter, Jhabar, i.e. the brother of Kalu, took the plaintiff in adoption in accordance with law and customs prevalent in the village, in the presence of respectables of the village, as also close relations of the family. An adoption deed was thereafter contended to have been got registered by Jhabar, on 09.09.1958.

The plaintiff lived with Jhabar as his adopted son, also in possession of the whole property of Jhabar, but “somehow or the other mutation of the property of Jhabar could not be sanctioned in favour of the plaintiff”, even though the plaintiff remained in possession of that property after Jhabar died.

4. It was further averred by the plaintiff that he is an illiterate villager, not aware of the fact that a mutation of inheritance was not sanctioned in his favour. It was further averred that he came to know of this fact only in the year 1979, after which the mutation was sanctioned in his favour by the concerned revenue officer.

The plaintiff had therefore earlier also filed a suit for declaration regarding his rights, but that suit was withdrawn with permission to file a fresh one, leading to the filing of the suit in the instant *lis*.

5. Upon notice issued, the defendants filed a written statement contesting the plaint and alleging that the plaintiff was not the adopted son of Jhabar and in fact he was residing in village Siswala, Tehsil Dadri, as a “*Ghar-Jamai*” with his father-in-law, and was actually not a resident of village Pajju.

It was further denied that Kalu had died in the year 1952 and in fact, it was contended that he died after the Hindu Succession Act came into effect and as such, the plaintiff succeeded to a 1/6th share in the property of Kalu, because the widow and daughters of Kalu were also entitled to equal shares in his estate.

6. It was further alleged that the mutation of inheritance qua the estate of Jhabar was sanctioned in favour of the plaintiff as also the defendants in the year 1972 and that the plaintiff was very much present at the time when it was sanctioned by the Tehsilar.

Further contending that a fictitious adoption deed was got prepared by the plaintiff, he had also, in the year 1978, in connivance with the village Patwari, got the khasra girdawaries changed in his favour, which were not binding on the defendants, as they were also in joint possession of the suit property.

It was further contended that the plaintiff had no locus to file the suit, which was also beyond limitation. Therefore, dismissal of the suit was prayed for.

7. On the basis of the aforesaid pleadings, the following issues were

framed by the learned Sub Judge Ist Class, Bhiwani:-

- “1) Whether the plaintiff is owner in possession of the land in dispute? OPP
2. Whether the plaintiff was validly adopted by Jhabar and if so to what effect? OPP
3. Whether the suit is time barred? OPD
4. Whether suit is not maintainable in the purposes of Court form? OPD
5. Whether the plaintiff is estopped from filing the present suit by his act and conduct? OPD
6. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
7. Whether the suit is malafide? OPD
8. Whether Kalu died in 1956 and affect? OPD
9. Whether the principle of res-judicata is applicable? OPD
10. Whether the mutation no.353 has been rejected on 02.07.1980 and if so, to what effect? OPD
11. Relief.”

8. Taking up issue no.2 first, on the validity of the adoption of the plaintiff, as claimed by him, the learned trial Court noticed that in the plaintiffs' own testimony as PW1, he supported his stand taken in his plaint, contending that he was taken in adoption by Jhabar at the time that he was 6 to 7 years old and that a writing in that regard was prepared in the year 1958. He further contended that the original adoption deed was, in fact, in the possession of defendant no.1 Pehlad, who refused to deliver the possession of the same to him.

As per the plaintiffs' testimony, he used to call Jhabar his father, with Jhabar calling him his son.

In his cross-examination however, he admitted that he was taken

in adoption by Jhabar during the life time of Kalu, i.e. his father and that he started living with Jhabar and was taken in the adoption in “Samvat 95 or 96”.

9. It is further recorded in that Courts' judgment that PW2, Sheo Lal, also deposed that the plaintiff was adopted by Jhabar in “Samvat 92 or 93” and that he (PW2) was present at the time of the adoption ceremony, alongwith other relatives and inhabitants of the village and that “Shakkar” (a form of jaggery) was distributed and subsequently, the deed of adoption was prepared, when the plaintiff was aged 20 to 22 years.

It has been further noticed in the judgment that in his cross-examination PW2 stated that it was the mother of Pehlad who told him about the adoption and that however, he did not know as to when Kalu had died.

10. PW3, Gordhan, was found to have deposed that the plaintiff was taken in adoption when he was 7 or 8 years old, in the presence of the brotherhood and that Jhabar was about 40 or 45 years old at that time. As per this witness, the adoption deed was prepared about 20 years after the adoption.

PW4, Om Parkash, is stated to have deposed that the land belonging to Jhabar was being cultivated by the plaintiff as he was the adopted son of Jhabar.

PWs5 and 6, Guggan and Nihal Singh, are also shown to have both deposed that Jas Ram was taken in adoption by Jhabar and that he was his sole heir.

11. On the part of the defendants, the first defendant examined himself as DW1, deposing in terms of the written statement, further stating that his father Kalu had died in the year 1956, after which he and his two brothers, i.e. the plaintiff and Lekh Ram, had inherited the property in three

equal shares. He further submitted that though a mutation should have been entered in favour of all the sons and daughters of Kalu, but due to 'some mistake' it was mutated only in favour of the three sons.

12. The mother of the parties, i.e. Anchi widow of Kalu, testified as DW2, also stating that the plaintiff was never adopted by Jhabar and admitting in cross-examination that though she was the natural mother of the plaintiff, relations between them were now strained.

DW3 Dale Ram is shown to have deposed that the land belonging to Jhabar was mutated in favour of the legal heirs of Kalu including the plaintiff and that the plaintiff was present at that time.

DW5, Ram Narain, proved a copy of the voters list in which the plaintiff was shown as the son of Kalu.

DW6 Nand Kishore is shown to have proved a ration card, in which again the name of the father of the plaintiff was shown as Kalu.

13. Going ahead to discuss the adoption deed, Ex.P1, relied upon by the plaintiff, it was found to have been “signed or thumb marked” (as stated in the judgment of the learned Sub Judge) by Jhabar and some attesting witnesses, but was neither signed nor thumb marked or executed by the person giving the plaintiff in adoption.

From the aforesaid fact, the learned Court drew a presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956, stating that no document of adoption, as is not executed by the person giving a child in adoption, can be presumed to be a valid document.

The learned trial Court in fact came to the conclusion that the entire story of adoption put forth by the plaintiff was wholly concocted by him, as, other than the above, firstly, in paragraph 2 of his plaint, he had

stated that his natural father, Kalu, died before 1956, i.e. before the coming into force of the Hindu Succession Act and therefore, he succeeded to the property of his father (alongwith his brothers). However, it was found that at the same time he had also contended that he was adopted after he inherited the property of Kalu; and when he was examined as PW1, he gave his age to be 47 years. Thus, the Court concluded that if he was adopted at the age of 7 years as was also contended, the adoption would have to be taken to be in the year 1941 or 1942; but the plaintiff had averred that it took place after the death of Kalu, with Kalu actually shown to have died in the year 1952 as per the mutation of inheritance, Ex.D4, dated 04.09.1956. In that document it was found to be stated that Kalu had died about two months prior to the mutation entry.

14. Hence, the Court concluded that with Kalu in any case not having died prior to 1941, the plaintiffs' story that he was adopted at the age of 7 years, was not believable.

Further, even though two witnesses examined by him had stated that the plaintiffs' mother was present at the adoption ceremony, that was disbelieved in the light of the testimony of the plaintiff himself, with the Court concluding that the plaintiff wanted to keep the share he inherited from his father, Kalu, as also the entire share of Jhabar, who had otherwise died unmarried and issueless.

15. The fact that no adoption actually took place, was found to be further strengthened from the fact that in March 1980, i.e. about slightly earlier than two years before the institution of the suit, a voters list had been prepared, in which the plaintiff himself had disclosed his name and parentage to be Jas Ram son of Kalu.

Yet further, it was found that the mutation qua the estate of Jhabar was entered at no.317 in the mutation register, with the plaintiff himself also present at that time. The said mutation entry qua the estate of Jhabar was in favour of the plaintiff, his brothers and sisters and his mother.

Thus, holding that since the pedigree table, Ex.D5, was also prepared in the year 1969-70 after being read over in the village in the presence of proprietors of the village, showing the plaintiff to be the son of Kalu (and showing Jhabar to be issueless), it meant that even till the year 1969-70 at least, the plaintiff was being treated as the son of Kalu in the revenue records, as also by the inhabitants of the village.

16. From all of the above facts, the learned Sub Judge drew a conclusion that actually no ceremony of adoption took place by which Jhabar took the plaintiff in adoption, but possibly the plaintiff managed to get Jhabar to sign the adoption deed Ex.P1 and therefore, concocted the whole story of the adoption.

17. Thus, having held issue no.2 against the plaintiff, to the effect that he was never actually adopted by Jhabar, issue no.1, on whether he was the owner in possession of the land in dispute was also decided against him, further noticing that the aforesaid mutation of inheritance qua the estate of Jhabar was for the first time entered in the revenue record in the year 1972 (in favour of the plaintiff, his mother and siblings), to the extent of a 1/6th equal share each and consequently, with the plaintiff also never having taken any action qua the said mutation right till immediately before the filing of the suit, he could not be held to be the owner in possession of the entire estate of Jhabar but only to the extent of a 1/6th share thereof, alongwith his mother and siblings.

On the aforesaid reasoning, issues no.1 and 5 (though separately discussed) were also decided in favour of the defendants

18. On issue no.8, on the date of death of Kalu, it was held that as per the mutation of inheritance qua his property, Ex.D4, he had died 2 months prior to the 'entry date', i.e. 04.09.1956, and with nothing shown to the contrary, it was held that Kalu died in the year 1956, though with the exact date not given, it could not be established whether the Hindu Succession Act had come into force at the time of his death or not.

(It is to be noticed at this stage itself that the said Act is shown to have received the assent of the President of India on 17.06.1956, with nothing stated in the Act to show that it was enforced at any later date).

19. Issue no.10, on whether mutation no.353, entered in favour of the plaintiff in the year 1978, qua the estate of Jhabar, was rightly rejected by the competent revenue authority, was also decided against the plaintiff, it already having been held that he was not the exclusive owner of Jhabars' estate.

20. The material issues all having been decided against the plaintiff, however, the 'formal issues', on limitation, maintainability of the suit, improper Court fee, as also the issue on whether the suit was barred on the principle of resjudicata, are shown to not have been pressed by the defendants and were therefore, held in favour of the plaintiff.

On the aforesaid findings, the suit of the plaintiff was dismissed by the learned Sub Judge Ist Class, Bhiwani.

21. The plaintiff having filed a first appeal against that judgment and decree, the learned Additional District Judge, Bhiwani, after noticing the contents of the pleadings, the issues framed and the evidence led by the parties, duly noticed the documentary evidence also led on both sides as

follows:

“Plaintiff:-

Deed of adoption dated 9.9.1958	Ex.P1
Copy of mutation no.353 (doubly exhibited)	Exs.P2 & P3
Copy of jamabandi for the year 1974-75	Ex.P4
Copy of jamabandi for the year 1980-81	Ex.P5
Khasra girdawari from Kharif 1977 to Rabi 1979	Ex.P6
Again khasra girdawari from Kharif 1978 to Rabi 1980	Ex.P7
Copy of judgment passed by Shri R. K. Bishnoi, Sub Judge II Class, Bhiwani, dated 24.7.81	Ex.P8
Copy of decree-sheet	Ex.P9
Receipt relating to deposit of mutation fee	Ex.P10
Certificate	Ex.P11
Ration Card	Ex.P12
Copy of jamabandi for the year 1974-75	Ex.P13
Receipt issued by Consolidation Officer	Ex.P14”

“Defendants:-

Voters list pertaining to Jas Ram issued by the Election Commission in 1980	Ex.D1
Order of Collector dated 10.10.79	Ex.D2
Mutation no.317, whereby Jhabars' property was inherited by plaintiff and defendants in the year 1972	Ex.D3
Mutation no.207 showing the inheritance of share left by Kalu, deceased, in favour of plaintiff and defendants	Ex.D4
Pedigree-table relating to the family	Ex.D5
Mutation no.353 (also exhibited as P2 and P3)	Ex.D6”

22. Before that Court, other than what had already been noticed qua the pleadings and arguments before the trial Court, it was further noticed that an argument had been raised on the basis of the testimony of PW2 Sheo Lal,

that the plaintiff had been adopted by Jhabar and therefore, further on the basis of mutation no.353 (of the year 1978), the adoption of the plaintiff by Jhabar was fully proved.

However, that argument was rejected, even though PW5 Guggan had also testified to the same effect, essentially on the same reasoning as was given by the learned Sub Judge, to the effect that with Jas Ram himself having given his age to be 47 years at the time of his testimony and that he was aged 7 when the adoption was made, the year of adoption would be 1941-42, but then he could not have succeeded to the property of his natural father, Kalu, as Kalus' death was shown to have taken place about two months before 04.09.1956.

Consequently, the finding of the learned Sub Judge, that the adoption could not be believed, was upheld by the 1st appellate court.

23. Very importantly, it was also noticed by that Court, that DW2, Anchi, mother of the plaintiff and the other defendants, wholly denied the factum of the adoption of Jas Ram by Jhabar.

Also finding the reasoning of the trial Court to be correct with regard to the fact that the adoption could not be believed even due to the first mutation entered (in the year 1972) qua the estate of Jhabar, in favour of the plaintiff, his mother and his siblings, as also the fact that in the voters list the appellant had shown himself to be the son of Kalu, the first appeal was dismissed.

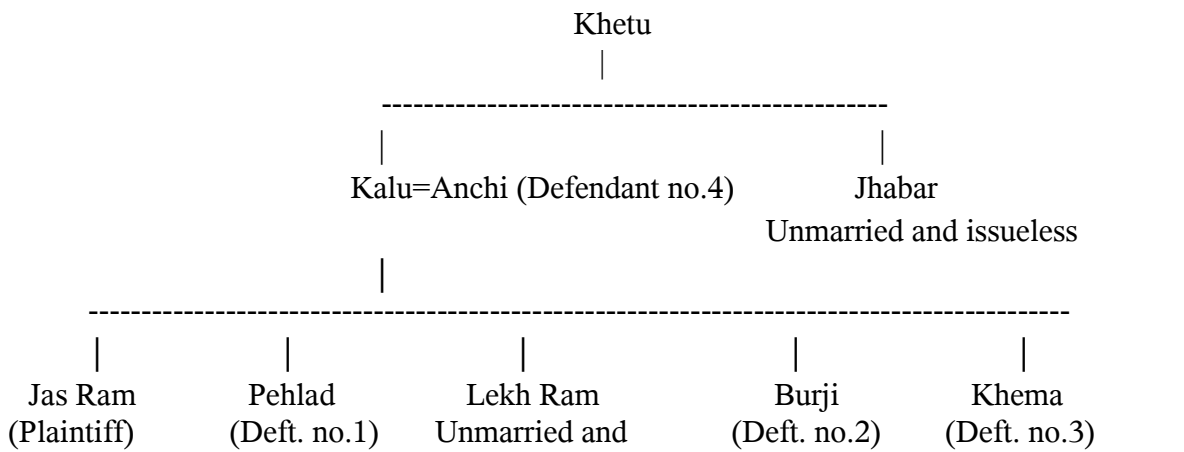
24. After this second appeal was admitted to regular hearing vide an order of this Court dated 13.04.1987, upon an application having been filed on behalf of the appellant, status quo was ordered to be maintained during the pendency of the appeal, vide an order dated 09.01.1991.

Vide an order dated 21.10.2016, the following two questions of law had been framed, as are seen to arise in this second appeal:-

- “i) Whether an adoption deed registered after the coming into force of the Hindu Adoptions and Maintenance Act, 1956, purporting to be the registration of an adoption that took place prior to the coming into force of the aforesaid Act, would be governed by the provisions of the Act of 1956 or by customary law prevailing prior to the enforcement of the aforesaid Act?
- ii) Whether a son stated to have been adopted prior to the coming into force of the Hindu Adoptions and Maintenance Act, 1956, as also the Hindu Succession Act, 1956, can retain rights of inheritance in the property of his natural father and subsequently also take a right of inheritance in the property of his adoptive father?”

25. However, the first essential question to be determined is as to whether an adoption was proved by the plaintiff at all, by which he was adopted by his uncle, Jhabar, as claimed by him, whether before or after the aforesaid Act of 1956. In fact, arguments were essentially addressed on that question itself by learned counsel for the parties.

26. Before proceeding to discuss the arguments of learned counsel on both sides, a pedigree table qua the parties to the *lis* can be drawn up as has been admitted to by both learned counsel.



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before institution of the suit

27. After giving the facts as given in the pleadings of the parties, Mr. Mahavir Sandhu, learned counsel for the appellants, first submitted that the learned Courts below have wholly mis-appreciated the cogent oral and documentary evidence led by the plaintiff, inasmuch as all the witnesses examined by him clearly testified that a valid adoption, as per custom, took place in the presence of relatives and respectables of the village, by which the plaintiff was adopted by Jhabar.

Hence, learned counsel submitted that the adoption having taken place before the coming into force of the Hindu Adoptions and Maintenance Act, 1956, the learned Sub Judge wholly erred in drawing an adverse inference, in terms of Section 16 thereof.

He further submitted that with the signatures and thumb impression of Jas Ram on the adoption deed dated 09.09.1958, Ex.P1, in any case not refuted at any stage and the said document having specifically been registered also, there was no ground to hold that a valid adoption had not taken place.

Therefore, Mr. Sandhu further submitted, that once it was proved that the plaintiff was validly adopted by Jhabar, after the plaintiff had already inherited the estate of his natural father, the plaintiff alone is entitled to the entire estate of Jhabar, there being no other Class-1 legal heirs.

Learned counsel further submitted that though the document is dated 09.09.1958, i.e. after the coming into effect of the 'Adoption Act', 1956, however, the document simply reflects the adoption already made when the plaintiff was about 7 years old, as is stated in the adoption deed itself.

28. Mr. Sandhu further submitted that the Courts below erred in holding that the plaintiff kept silent qua the mutation entry made in the year 1972, showing the plaintiff and his mother and siblings to have inherited Jhabars' estate, because he had actually applied for a correction in the mutation entry in the year 1978, after which the mutation entry Ex.P2 was initially correctly entered by the revenue authority, but was thereafter wholly erroneously reversed by the higher revenue authority.

This illegal reversal of the mutation has been duly challenged by the plaintiff in the suit in the present *lis*.

Therefore, learned counsel submitted that as per customary law, even in terms of what has been opined in Mullas' Hindu Law, the adoption was very much valid.

29. Mr. Sandhu next contended that with the mother of the plaintiff having admitted in her cross-examination that relations between her and the plaintiff, who is admittedly her natural son, being strained, it was not surprising that she testified to the effect that he had never been given in adoption to Jhabar, because the other defendants are also equally her children and therefore, she being on good terms with them, wanted to protect their interest, to the detriment of the plaintiff.

30. Responding to the counsel for the appellant plaintiff, Mr. G. R. Vashisth, learned counsel for the defendants-respondents, specifically pointed to the findings of the Courts below, to submit that whereas the specific contention in the plaint itself was that the plaintiff was adopted by Jhabar after the death of his natural father, i.e. Kalu, and after he had already inherited his share of Kalus' estate, with a mutation of inheritance duly entered in his favour in that regard, in his testimony recorded on 01.12.1981,

he admitted to being 47 years old and with the contention that as per the adoption deed, Ex.P1, he was 7 years old at the time of his adoption, very obviously, the learned Courts below correctly came to the conclusion that in that case the adoption would be sometime in the year 1940-41.

However, with the natural father of the plaintiff, i.e. Kalu, not shown to have died in 1940-41 and as per the mutation entry Ex.D3, he having died about two months prior to the entry, his death would be in July 1956.

Therefore, Mr. Vashisth submitted, obviously the testimony of the plaintiff was wholly contrary to his own pleadings in the suit and as such, the testimony has to be discarded and the adoption can not be held to be a valid adoption.

31. Mr. Vashisth further argued that as regards the document Ex.P1, if it is accepted to be a document of adoption on the day that it was executed, i.e. 09.09.1958, then very obviously it came into existence after the 'Adoption Act' of 1956 came into force, and as per Section 16 of that Act, a registered document showing an adoption to have taken place, would be presumed a valid adoption, only if it is signed by the person giving, and the person taking the child, in adoption.

Learned counsel submitted that therefore, the said document neither showing the signatures of the natural father of the plaintiff, i.e. Kalu, who had died more than two years earlier, nor of the mother of the plaintiff, i.e. respondent no.2 herein, Anchi, the document cannot be accepted to be a valid document and further therefore, the testimony of Anchi, that as a matter of fact the plaintiff was never adopted by Jhabar, has to be accepted to be a truthful testimony.

32. Mr. Vashisth lastly submitted that as regards the contention that the plaintiff was adopted by customary ceremony by Jhabar in 1940-41 (when the plaintiff was seven years old as stated in the document Ex.P1), firstly, no valid adoption even by custom has been actually shown to have taken place and secondly, it would in any case give lie to the pleadings contained in the plaint, that the plaintiffs' father had already died when the plaintiff was taken in adoption.

He further submitted that if for any reason an adoption is believed, that took place in the year 1940-41, then the plaintiff could not have inherited the share of his father to the extent of $\frac{1}{3}$ rd thereof, the father very much being alive in 1940-41, (and no gift deed to that effect even pleaded anywhere). Mr. Vashishth therefore prayed for dismissal of the appeal.

33. In rebuttal, Mr. Sandhu submitted that the document, Ex.P1, has never been challenged by the defendants and therefore, in defence they cannot take up that plea.

34. Having considered the aforesaid arguments of both parties as also the judgments of the learned Courts below, I see no reason to reverse those judgments, in view of the fact that firstly, the plaintiffs' own testimony as PW1 wholly belies his pleadings as contained in the plaint, as have been referred to by those Courts.

I agree with the argument of learned counsel for the respondents-defendants, that if Ex.P1, read with the testimony of the plaintiff, is to be accepted, then very obviously the adoption took place sometime in the year 1940-41, the plaintiff admitting in his testimony, recorded in December 1981, that he was about 47 to 48 years old on the date of the testimony.

Nothing has been brought on record by the plaintiff to show that

his father had actually died in 1940-41 and that it was falsely or erroneously recorded in the mutation of inheritance in respect of the estate of Kalu (natural father of the plaintiff), that Kalus' death occurred two months earlier, i.e. it occurred sometime in July 1956. (The mutation entry (ExD4) is shown to be sanctioned on 30.09.1956, with the Patwaris' entry being dated 04.09.1956).

35. Further, I also find no error in the reasoning of the Courts below, that with the plaintiff himself having given his name to be the son of Kalu on the basis of which a voters list was also prepared in the year 1969-70, very obviously, he himself also treated Kalu to be his actual father. Thus, even if for any reason, though not specifically proved by the plaintiff, it is to be accepted for the sake of argument that his presence at the time of the mutation of inheritance qua the estate of Jhabar, vide Annxure D-3, on 12.01.1972, was wrongly shown, by which mutation of Jhabars' estate was divided equally amongst the plaintiff and the defendants, his own statement on the basis of which the voters list was prepared, cannot be discarded. This is other than the fact that actually, even his presence at the time when the mutation entry on 12.01.1972 was made, has not been disproved by the plaintiff.

36. Coming then to the issue of whether, if the adoption deed Ex.P1, for any reason is to be accepted to be in respect of an adoption made between the date of death of Kalu and the date of execution of the deed, i.e. 09.09.1958, the adoption in any case would then be invalid, with the parents giving the child in adoption not having signed it and there therefore being a violation of Section 9 of the Hindu Adoptions and Maintenance Act, 1956, by which it is stipulated that no person, except the father and mother or a guardian of the child, shall have the capacity to give the child in adoption.

The natural guardian of a minor child being first the father and

then the mother, in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956, even if the plaintiff is accepted to be a minor in 1958, (though the testimony of PW2 was that he was 20 to 22 years old at that time), the adoption would be invalid, neither his father nor mother having signed the document.

Of course, even as per the plaintiffs' own testimony in the year 1981, to the effect that he was 47/48 years old at that point, very obviously in the year 1958, i.e. about 23 years earlier, he would have been 24 or 25 years old. Hence, actually the question of his being a minor on the date of the signing of the adoption deed, does not arise.

Yet, even if only for academic purpose, a further comment is still needed to be made in terms of the argument made on an earlier date by Mr. Sandhu, learned counsel for the appellant-plaintiff. The argument was that prior to the coming into force of the 'Adoption Act' of 1956, there was no age bar on the adoption of a male Hindu; however, what learned counsel has overlooked is the fact that even if that is accepted to be so (with different customs prevailing in that regard in different parts of India, even as per the commentary by Mulla on the subject as referred to by learned counsel), however, even a male Hindu, regardless of any age, could not have been given in adoption except by his father or mother. [As regards Mr. Sandhus' contention, reference can be made to paragraph 477 (4) of Mulla on Hindu Law, Page 681, 22nd Edition, 2016, and as regards the bar on who could give in adoption, paragraph 471, page 679, of the same volume of the commentary can be referred to.]

The plaintiffs' averment being to the effect that he was adopted by his uncle after his natural father had died, very obviously it could only be

his mother who could give him in adoption. The document of adoption not having been signed by the mother and she having specifically refuted in her own testimony, that she never gave him in adoption, then whether such adoption was made before or after the coming into effect of the Act of 1956, it cannot be held to be a valid adoption.

Next, it needs to be reiterated that no other custom has also been shown to have been proved, by which it was not necessary for a father or a mother to give a child in adoption, and an adoption being simply valid on the alleged adoptive father having simply taken a child in adoption.

Hence, in view of the testimony of the mother of the plaintiff, defendant no.4 Anchi, and the entire circumstances discussed hereinabove, the testimonies of PWs2 and 5, who deposed that the plaintiff had been given and taken in adoption, cannot be believed.

Further, as regards any adoption made in the year 1958, since the plaintiff was not a minor on the date of registration of the instrument (09.09.1958), he in any case could not have been adopted in terms of Section 10(iv) of the Hindu Adoptions and Maintenance Act, 1956, as also because none is seen to have given him in adoption even at that time.

37. The aforesaid reasoning is being given only in view of the fact that the document of purported adoption, Ex.P1, is shown to be of a date after 1956, though even that reasoning is not necessary to be given, with the plaintiff having wholly contradicted the pleadings in his plaint, with his testimony to the effect that he was taken in adoption at the age of about 7, after the death of his natural father, with it in fact, being on record that his natural father died not in 1940-41 when the plaintiff was about 7 years old, but actually died in 1956.

Therefore, no further discussion is being made on the issue of what constituted a valid adoption prior to the coming into effect of the 'Adoption Act' of 1956, in view of what has been already discussed hereinafore.

38. The finding of the learned courts below, to the effect that no adoption in fact was proved in view of the wholly contradictory stand of the plaintiff himself, seen with the testimony of his mother, is therefore upheld.

Once it has been held that the adoption itself has not been proved, the question of whether registration of such an adoption after 1956 would be governed by the Act of 1956 or not, does not arise.

Similarly, the question of whether an adopted son who prior to his adoption also inherited his fathers' estate can retain it or not, is also a question that no longer arises with the adoption itself not proved, as the appellant would obviously retain his right in his father, Kalus', estate, as inherited by him, with there being no question left about any subsequent adoption.

39. Consequently, in view of the aforesaid findings, finding no merit in this appeal, it is dismissed with costs of Rs.1000/-.

July 05, 2017
dinesh

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes