

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

**Regular Second Appeal No.970 of 1989 (O&M)
Date of Decision : November 3, 2017**

Mohar Ram

... Appellant

Versus

Bhim Singh and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr.Lakshman Sharma, Advocate, for
Mr. Chandra Singh, Advocate,
for the appellant.

Mr. R.S.Sihota, Sr. Advocate with
Mr. B.R.Rana, Advocate,
for the respondents

RAJ SHEKHAR ATTRI, J.

The plaintiff has come in this appeal by assailing the judgment and decree dated 2.12.1988 passed by the learned first appellate court vide which the appeal was accepted and the suit filed by the plaintiff-appellant was dismissed by holding that the adoption of defendant Bhim Singh by Mam Raj son of Gangal is valid, therefore, defendant Bhim Singh stepped into his shoes and had inherited the property in dispute.

The facts necessary for disposal of the appeal are that Gangal son of Bhagirath was the erstwhile owner of the property in dispute situated in the revenue estate of village Durgapur, District Faridabad. After his death, his inheritance devolved upon his sons namely Kour, Mam Raj,, Ghoor Mal @ Ghuri and Mohar Ram (plaintiff-appellant) in equal shares.

Thus, Mam Raj became co-sharer to the extent of ¼ share. Defendant Bhim

Singh is the son of Ghoor Mal. Thus, he is the real nephew of Mam Raj.

Said Mam Raj was initially married to Smt.Chirongi but she had died issueless somewhere in the year 1966. Mam Raj had died on 26.10.1981. His inheritance was mutated vide mutation No.674 in the name of Bhim Singh on the basis of registered adoption deed dated 14.9.1979 (Ex.D2) as well as registered will (Ex.D1) which is also of the same date.

The instant suit has been filed by Mohar Ram, a real brother of deceased Mam Raj. It is his case that Mam Raj had died issue less, therefore, he being the real brother succeeded his inheritance along with his brothers Kour, Ghoor Mal @ Ghoori (both proforma defendants). It has been specifically averred in the plaint that parties are '*Bairagi*' by caste and they mainly depend upon the agriculture for their livelihood and that the property in the hands of Mam Raj was ancestral.

It is also alleged that since the suit land was ancestral, therefore, aforesaid Mam Raj was not lawfully competent to alienate or dispose of the same in favour of defendant Bhim Singh and that the alienation of suit property was without legal necessity and also against the order of succession. According to the plaintiff, after the death of Mam Raj, all his living brothers namely Mohar Ram plaintiff, Kour, Ghoor Mal had inherited the suit property in equal shares but defendant Bhim Singh with the assistance of his father and mother had got executed a will as well as the adoption deed from said Mam Raj deceased on or about 14.9.1979 and created a false and untrue claim and that the said documents are false, fictitious and forged.

It has also been pleaded by plaintiff that Mam Raj did not

having disposing mind on account of his old age, illiteracy and illness, as

such, the defendants seemed to have succeeded to obtain his thumb impressions on the aforesaid documents i.e. will and adoption deed by exercising undue influence over Mam Raj. According to the plaintiff, no ceremony of alleged adoption had taken place at any time and even the aforesaid documents were not witnessed by any witness from village Durgapur, as such, both the documents Ex.D1 and Ex.D2 are forged documents and not binding upon his rights and that these documents had not seen the light of the day till 1982 when the impugned will was got produced before village Patwari.

It is further alleged that Assistant Collector, 1st Grade has wrongly sanctioned mutation of inheritance of Mam Raj (bearing No.674 on 6.9.1993) in favour of Bhim Singh defendant and the same is liable to be set aside.

The suit has been contested, *inter alia*, that no cause of action accrued in favour of the plaintiff to file the suit and the suit is not maintainable in the present form. However, the relationship between the parties and that of Mam Raj is admitted. It is denied that the land in the hands of Mam Raj was ancestral. It is admitted that the parties to the appeal are governed by agriculture custom as prevalent in the State of Punjab prior to 1956 and that deceased Mam Raj had adopted defendant Bhim Singh in accordance with law; that Mam Raj was a adult Hindu, his wife had pre-deceased him, therefore, he was competent to take Bhim Singh in adoption and Bhim Singh was also competent to be adopted; that the ceremony of giving and taking in adoption were took place between Mam Raj and natural parents of defendant Bhim Singh which were attended and witnessed by the several persons of the village and by other relatives of the

parties. It is denied that any fraud or impersonation was played upon Mam Raj. It is also asserted that Mam Raj has validly executed will as well as adoption deed 14.9.1979. The registered adoption deed Ex.D2 was duly thumb marked by natural father and mother of Bhim Singh and thus, defendant Bhim Singh became the adopted son of late Mam Raj. After his death, he inherited his property. According to defendant Bhim Singh, the parties are governed by custom in the matter of adoption and the adoption was fully legal and valid. It has been denied if deceased Mam Raj was not of sound disposing mind or that if the above said documents are in any way forged or fabricated, rather those are fully legal and valid.

From the pleadings of the parties, the following issues were framed : -

1. Whether Mam Raj executed a valid will, as alleged, in favour of the defendant no.1? OPD
2. Whether the defendant no.1 was validly adopted by Mam Raj, as alleged ? OPD
3. Whether the said will and the adoption-deed, if any are false, fictitious and forged documents as alleged? OPP
4. Whether the suit land is ancestral property qua the plaintiff, if so, to what effect? OPP
5. What is the custom regarding alienation by will in respect of ancestral property? If so; what that custom is ? OPP
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the plaintiff has no locus standi to file the present suit? OPD
8. Whether Mam Raj did not possess disposing mind at the time of alleged execution of the said documents?
9. Whether the suit is not properly valued for the purposes of court-fee and jurisdiction, as alleged? OPD

10. Relief.

Learned trial court afforded adequate opportunities to both the parties to adduce evidence. On appreciation of evidence, it was held that it was not a valid adoption as the age of Bhim Singh was more than 15 years of age and that adoption was in violation of the provisions of Section 4 and 10 of Hindu Adoptions and Maintenance Act, 1956 (in short, “the Act”). It was held on issue No.4 that the suit property was ancestral in the hands of Mam Raj. On issues No.1 to 3, it was held that will was surrounded by suspicious circumstances and the adoption was not valid, as such, issues No.1 to 7 were decided in favour of the plaintiff and against the defendants. However, issue No.8 with regard to mental capacity of Mam Raj was decided against the plaintiff and in favour of the defendant. Issue No.9 was also decided against the defendant and in favour of the plaintiff. As a result, the suit was dismissed.

On appeal, learned first appellate court held that the adoption of Bhim Singh defendant by Mam Raj deceased was valid, parties were governed by custom vide which a person above 15 years of age and even married person can be adopted. Thus, being adopted son, Bhim Singh defendant had inherited the suit land. However, the issue with regard to the will was kept open. Consequently, the appeal was accepted and the judgment and decree of the learned trial Court was set aside and the suit of the plaintiff was dismissed.

This Court has heard at length learned counsel for the parties and examined the evidence on the record.

Learned counsel for the appellant have vehemently contended

that the learned first appellate court wrongly upset the well reasoned judgment of the learned trial court; that learned appellate court failed to properly appreciate the evidence on record; that Bhim Singh defendant was above 15 years of age and was married at the time of adoption, therefore, he could not be validly adopted under the provisions of Section 10 of Hindu Adoption and Maintenance Act (in short, “the Act”); that customary law has been abrogated in view of Section 4 of the Act, therefore, the impugned judgment of the first appellate court is completely contrary to law and facts and liable to be reversed. In support of his contentions, he placed reliance upon the precedents in cases Madan Lal v. Vinod Kumar and others, 2008 (4) MPHT 418; Kartar Singh (Minor) through Guardian Bachan Singh v. Surjan Singh (Dead) and others, 1975 HLR 78; Mahalingam v. Kannayyan and another, 1989 MLJR 341; Marimuthu v. Pichai Ammal and others, 2010 GMLJ 391; Dhanraj Jain v. Smt. Suraj Bai, AIR 1973 (Raj) 7; Smt. Dhanno and others v. Tuhi Ram (Died) and others, AIR 1996 (P&H) 203; Pritam Singh v. The Assistant Controller of Estate Duty, Patiala 1976 CLJ (Civil) 193.

On the other hand, learned counsel for defendant Bhim Singh have strenuously contended that it is admitted case of both the parties that the parties are governed by custom in the field of succession and adoption; that as per the general custom prevalent in the State of Punjab and Haryana, age and martial status is no bar to a valid adoption; that the Bairagi community is also governed by customary law of Punjab and under a general customary rule, a person who is married and above than 15 years of age can be validly adopted; that apart from it, the adoption was made when

Ex.D2 could be executed on 14.9.1979 as a memorandum of adoption, therefore, the adoption of Bhim Singh in the age of 10 years is fully legal and valid in accordance with the provisions of the Act; that Bhim Singh defendant inherited the estate of deceased Mam Raj being the adopted son; According to him, the will has also been duly proved. He endorsed the findings of the learned first appellate court and urges for dismissal of the appeal with exemplary costs. In support of his contentions, he placed reliance upon the precedents in cases Mohinder Singh and another v. Gurbax Singh; (2004-3) PLR 154; Amar Singh v. Tej Ram; 1982 PLR 237; Basdeo Bhardwaj v. Ram Sarup and others; 1968 PLR 535; Senthilkumar v. Dhandapani and others; 2005 (2) RCR (Civil) 165.

This Court has given its thoughtful consideration to the rival contentions and critically examined the evidence on record. In this case, the following substantial questions of law have arisen for determination :

- 1. Whether adoption of defendant Bhim Singh is valid under the Punjab customary rules ?*
- 2. Whether said adoption is also valid under the provisions of Hindu Adoptions and Maintenance Act, 1956?*
- 3. Whether presumption raised under Section 16 of Hindu Adoption and Maintenance Act is available to defendant Bhim Singh or the same stands rebutted by evidence on record?*

It has been vehemently argued on behalf of defendant Bhim Singh that his adoption is valid under the provisions of the Act and also under the customary law of Punjab which is applicable to the State of Haryana as the same was also part of erstwhile State of Punjab before coming into force the Punjab Reorganisation Act, 1966. Learned first

appellate court has given categoric finding that adoption of defendant Bhim Singh was fully legal and valid under the customs of Punjab. As such, this Court would like to discuss firstly the validity of the adoption in question under the customary law of Punjab.

The customary law of erstwhile Punjab (*which was applicable before coming into force the Act*) has a unique identification because it was applicable to both Hindu and Mohamdan agriculturists. It was applicable not only to the *Jat* agriculturists but other communities also and even on non-agriculturist classes irrespective of their personal laws. Custom in Punjab is more local than tribal, though it may be both.

Sir William Henry Rattigan had collected and compiled the customs prevalent in the province of erstwhile Punjab in nineteenth century. His book was published in the year 1880 under the title Customary Law which is a monumental classic *par excellence*. Ever since the publication of the first edition of the book in 1880, it has been regarded as the *locus classicus* on the subject and has been of the greatest assistance to Judges and lawyers alike. The Hon'ble Supreme Court in a case **Daya Singh v. Dhan Kaur**, AIR 1974 SC 665 described it as a “book of unquestioned authority in the Punjab.”

Sir W.H. Rattigan while writing preface to the first edition has categorically recorded as under : -

“It was hoped that by thus grouping and classifying a large body of decisions of this kind together, facilities would be afforded for ascertaining what was really the Customary Law with respect to most matters appertaining to the domain of private rights, to which it was well-known that the agricultural

population was tenaciously attached, or where divergencies occurred, and how far they were peculiar to particular tribes or localities. It had long been left by those best acquainted with the habits and customs of the rural population that neither the *Shara* nor the *Shastras* really exercised any direct influence among them in regard to such matters, and it was also known that the Hindu and Muhammadan, though differing in religion, were often united together in the village community, as it was natural they should be, by the same common rules regulating the devolution and disposal of property which, in theory and frequently in practice, was recognised as involving a community of interest.”

The Punjab customary rules were never treated derogatory or inconsistent to ancient Hindu law. The customs and usages are always considered an important source of Hindu Law and those have been recognized by the Hindu community of this region. It may be due to geographical reasons which brought change in the social strata of the province. Sir Dinshaw Fardunji Mulla in his famous treatise-Hindu Law (Eighteenth Edition) in para 515-B has specifically discussed the customary adoption in Punjab. According to it, “*a customary adoption in Punjab is ordinarily no more than a mere appointment of an heir creating a personal relationship between the adoptive father and the appointed heir only. There is no tie of kinship between the appointed heir and the collaterals of the adoptive father. The incidents of an informal adoption of the above type as well as those of a formal customary adoption were examined by Hon'ble*

Hon'ble Supreme Court in **Kartar Singh v. Surjan Singh**, 1975 HLR 78 made following observations with regard to the customary law : -

*“In Punjab before the Hindu Adoptions and Maintenance Act, 1956 came into force there was prevalent the customary adoption, which was a custom of appointing a heir, the heir so appointed not ceasing to be a member of the family of his birth and not becoming a member of the family of the person who appoints him as his heir. There was also the more formal adoption which was recognised under the Hindu Law in which there was giving and taking and the adopted son becoming a member of the adoptive family. The question whether the adopted son became a member of the adoptive family used to arise in the case of collateral succession. An appointed heir cannot succeed to the collaterals of the person who appointed him as his heir but an adopted son would succeed to the collaterals of the adoptive father. In **Abdur Rehman Khan v. Raghbir Singh**, (1949) 51 Pun LR 119, the custom in Punjab is set out likely is :*

"A customary adoption in the Punjab is ordinarily no more than a mere appointment of an heir creating only a personal relationship between the adopter and the adoptee. By such adoption the adoptee does not become the grandson of the adopter's father, nor the adoptee's son becomes the grandson of the adoptor."

Our Constitution, under Article 13, while defining the

of India the force of law. Numerous special statutes also encourage customs subject to the condition that those are not derogatory to the basic provisions thereof and which owing to its prolonged use, has obtained the force of law.

The Custom is a rule, which is in practice in a particular community or class, a particular family, or in a particular area. Section 3(a) of the Act 1956 defines 'custom' as follows :

"The expressions, 'custom' and 'usage' signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family".

This Section provides that in order to apply a custom, it is pre-requisite that the same must be ancient, certain and reasonable and being in derogation of the general rules of law, must be construed strictly. It is further essential that it should be established to be so, by clear and unambiguous evidence, for it is only by means of such evidence that the courts can be assured of its existence and of the fact that it possesses the conditions of antiquity and certainty on which alone its legal title to recognition depends. For a valid custom having force of law, it is necessary that the same must not be opposed to morality or public policy, and it must not be expressly forbidden by the legislature.

The customs may be classified into two categories i.e. general and special. A general custom includes a custom common to any

considerable class of persons or applicable in a particular area or province. A custom which is applicable to a locality, tribe, sect or a family is called a special custom.

Some agricultural tribes in certain places have been found to be governed by a special custom under which adoption does not amount to mere appointment of an heir, but has attached to it all the consequences which flow from a full and formal adoption of Hindu Law. Where such a special custom is found to exist, it is not necessary for the adoption that it should have taken place in conformity with the rules of Hindu Law in the matter of ritual or otherwise, because in such cases, it is not the rule of Hindu Law which operates to attach such consequences to the adoption, but it is the custom governing the adoption, that does so, and therefore in order to attract all such consequences it is quite enough if the adoption conforms to that custom in the matter of form etc.

Such an adoption effects a complete transplantation of the adoptee from one family to the other and confers the right of collateral succession in the adoptive family and takes away the right of such succession in the natural family. In the case of such adoption the property devolving on the adopted son continues to be ancestral in his hands.

Custom has the effect of altering general personal law to some extent, but it does not override statutory law, unless the custom is expressly saved by it. It is well settled that a custom cannot be extended by analogy or logical process and it also cannot be established by hypothesis. The principle that he who relies upon custom modifying general law, must plead and prove it. A custom must be established by clear and unambiguous evidence, albeit, when a custom has been judicially recognised by the

Courts, it passes into the law of the land and proof of it becomes unnecessary under Section 57(1) of the Evidence Act, 1872.

In *Dr. Surajmani Stella Kujur v. Durga Charan Hansdah, 2001(1) R.C.R.(Civil) 766 SC*, Hon'ble Supreme Court held that custom, being in derogation of a general rule, is required to be construed strictly.

In *Bhimashya & Ors. v. Smt. Janabi @ Janawwa, 2007(3) R.C.R.(Civil) 534 SC* it was held :

"A custom is a particular rule which has existed either actually or presumptively from time immemorial, and has obtained the force of law in a particular locality, although contrary to or not consistent with the general common law of the realm.....it must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect.

xx xx xx xx

Custom is authoritative, it stands in the place of law, and regulates the conduct of men in the most important concerns of life; fashion is arbitrary and capricious, it decides in matters of trifling import; manners are rational, they are the expressions of moral feelings. Customs have more force in a simple state of society. Both practice and custom are general or particular but the former is absolute, the latter relative; a practice may be adopted by a number of persons without reference to each other; but a custom is always followed either by limitation or prescription; the practice of gaming has always been followed by the vicious part of society, but it is to be hoped for the honour of

man that it will never become a custom."

In the modern era of codification, the customs play minimum role in the matter of adoption unless it has been specifically so provided. The Act has provided detailed procedure, qualifications and other requisite conditions of adoption. Section 4 gives overriding application to the provisions of the Act and in fact, lays down that in respect of any matters dealt with, the Act, it seeks to repeal all existing laws, customs or usages, whether in the shape of enactment or otherwise which are inconsistent with this Act.

Section 5 of the Act, in terms states that no adoption shall be made after commencement of the Act or to a Hindu except in accordance with the provisions in Chapter II of the Act. This Section specifically provides that any adoption made in contravention of the said provisions shall be void and a void adoption neither create any right in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

However, section 10 of the Act prescribes four conditions for a valid adoption of a person : -

- (i) he or she is a Hindu;
- (ii) he or she has not already been adopted;
- (iii) he or she has not been married, ***unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;***
- (iv) he or she has not completed the age of fifteen years, ***unless there is a custom or usage applicable to the parties which permits persons***

who have completed the age of fifteen years being taken in adoption.

Section 10, overrides all texts, rules or interpretations of Hindu law and all customs and usages as part of that law in force immediately before the coming into operation of the said Act. The intention of legislature in making exceptions in the case of custom and usage relating to the marital status and age of the person to be taken in adoption was to preserve any custom or usage contrary to the conditions prescribed by Clauses (iii) and (iv) of the said Section 10 intact provided it was applicable to the parties concerned and was in force prior to the date of the coming into force of the said Act, namely, prior to December 21, 1956.

In the present case, there is no dispute in respect of the first two conditions laid down under Section 10 of the Act. However, the conditions (iii) and (iv) prescribe that a person to be adopted should not be a married one and must not have completed the age of 15 years unless there is a custom or usage applicable to the parties permitting such adoptions. It is, therefore, clear that the first two conditions accept no exceptions, while the subsequent conditions are subject to a contrary rule prevalent in the community by reason of a custom or usage. It is on the basis of this exception to conditions (iii) and (iv) that the plaintiff claims a valid and legal adoption inasmuch as, he had crossed the maximum age of 15 years and was also married at the time of this adoption.

In the case in hand, defendant Bhim Singh claims that his family forms a compact agriculture community and adhere to customary law of Punjab. As per the general custom applicable in Punjab and also applicable on his community, the age and marital status is no bar with

regard to adoption.

Now the question arises what criterion to determine whether parties (member of agriculture tribe or community) are governed by agriculture custom or personal law. This fact is mentioned by Sir William Henry Rattigan in his treatise on Customary Law, (16th Edition) at page 23 as under : -

“ The test laid down above, for determining whether a tribe not primarily agricultural, follows custom or personal law, has been invariably applied, consciously or unconsciously in numerous cases; see *inter alia* (1931) 133 Ind Cas 113 : (1931) 134 Ind Cas 302. One of the most important tests (as laid down above) to be applied in determining whether a particular caste is, or is not governed by agricultural custom is to ascertain whether or not they form a compact village community, or at least, a compact section of the village community. If they do so, the presumption is strongly in favour of the applicability of custom as against the personal law. This presumption in favour of custom has been applied even in cases of non-agricultural classes, such as *Brahmans* and *Khatris*, see *inter alia* (1923) 72 Ind Cas 775, followed by Shadi Lal, C.J. And Abdul Qadir, J., in (1933) 147 Ind Cas 1182 AIR 1943 Lah 22; see also 53 PLR 335 (FB) : AIR 1949 EP 367.”

On the bare perusal of the above quoted test, it is essential that parties must be dependent on agriculture to form a compact village community or at least a compact section of the village community. Plaintiff has admitted this fact and it is specifically pleaded in para 4 of the plaint.

This Court would like to reproduce the same hereunder : -

“4. That the parties are Bairagi by caste and they mainly depend upon agriculture for their livelihood. The parties are agriculturist and their main occupation is agriculture. Since the suit land was ancestral and therefore the aforesaid Mam Raj was not lawfully competent to alienate or to dispose of the said ancestral property in favour of any one including the defendants without a legal necessity and against the order of succession. That after the death of aforesaid Mamraj, the plaintiff alongwith the proforma defendants succeeded his respective $\frac{1}{4}^{th}$ share out of the total agriculture land described above in para no.1 of the plaint.”

Defendant Bhim Singh in his written statement had taken a specific plea that the parties were governed by customary law and said Mam Raj was competent to take Bhim Singh in adoption in accordance with the custom. This plea was never controverted. Surprisingly, while appearing as his own witness, plaintiff Mohar Ram failed to utter a single word regarding the adoption even he had not stated with regard to nature of land, albeit, he is bound by his pleadings.

Under general customs of Punjab, as laid down in para 36 of Rattigan's Digest on Customary Law, there is no bar with regard to age and marital status of the adopted child. This relates to the general custom. This para of Rattigan's Digest reads as under : -

“36. There are no restrictions as regards the age or the degree of relationship of the person to be appointed.

Although, as stated in para. 36 of the Digest, the general rule as regards age (of the adoptee) is that it is not material, if the adoption is otherwise proper and valid, it has been held that by custom among *Sainis* of Pathankote Tehsil, only a person who was below seven years of age or in any case had not yet attained the age of puberty, could be validly adopted, (1934) 155 Ind Cas 1020. Generally speaking, however, under the Punjab Customary Law, the age at which the adoption takes place is immaterial; 44 PR 1913. Thus, the Privy Council upheld, as valid under custom, the adoption of an orphan, who was 19 years of age at the time of his adoption, among Hindu *Jats* of Ballabgarh, (formerly in the Delhi District); (1935) 57 All 494 PC affirming (1929) 118 Ind Cas 154 All.

It has to be noted that the age and martial status of an adoptee under the customary law has also been protected by the Act under conditions (iii) and (iv) of Section 10 (*ibid*) subject to the applicability of custom or usage. Thus, under the customary law of Punjab as admitted by the parties, the custom was fully legal and valid.

This Court in **Amar Singh v. Tej Ram** (supra) had discussed a similar question of law and fact which relates to adoption of a male who was married and was more than 15 years of age, it was held that the customary law of Punjab permits such an adoption. That was also a case of district Karnal (Haryana). This Court would like to reproduce para 13 of this precedent hereunder : -

“13. I find force in the contention of the learned counsel. It is well-settled that if the Courts have recognised the custom in a

particular matter for a long time, that is considered to be the law and it is not necessary to prove it. The Courts can take judicial notice of such a custom. In the aforesaid, view, I am fortified by the Supreme Court in *Ujagar Singh v. Mst. Jeo*, **AIR 1959 Supreme Court 1041**. The following observations may be read with advantage :-

"It therefore, appears to us that the ordinary rule is that all custom, general or otherwise, have to be proved. Under section 57 of the Evidence Act, however, nothing need be proved of which Courts can take judicial notice. Therefore, it is said that if there is a custom of which the Courts can take judicial notice, it need not be proved. Now the circumstances in which the Courts can take judicial notice of a custom were stated by Lord Dunedin in *Raja Ram Rao v. Raja of Pittapur*, **45 Ind. App. 148** at pp. 154, 155, (AIR 1918 PC 81 at p. 83) in the following words, 'when a custom or usage, whether in regard to a tenure or a contract or a family right, is repeatedly brought to the notice of the Courts of a country, the Courts may hold that custom or usage to be introduced into the law without necessity of proof in each individual case, When a custom has been so recognised by the Courts , it passes into the law of the land and the proof of it then becomes unnecessary under section 57(1) of the Evidence Act. It appears to us that in the Courts in the Punjab the expression 'general custom' has really been used in this sense, namely, that a custom has by repeated recognition by Courts , become entitled to judicial notice as was said in *Bawa*

Singh v. Mt. Taro, AIR 1951 Punjab 239 and *Sukhwant Kaur v. Balwant singh, AIR 1951 Punjab 242.*"

Admittedly, the parties are Jats. It is well-recognised that the Jats in the State of Haryana, which was earlier a part of the erstwhile State of Punjab, are governed by customary law. In para 36 of Rattigan's Digest of Customary Law in the Punjab it is clearly stated that there are no restrictions are regard the age or the degree of relationship of the person to be adopted. It is also well-settled that a married man having children can be adopted under custom. Reference in this regard may be made to *Ram Kishore and others v. Jainarayan, ILR 49 Calcutta 120*, wherein it has been observed that under the Customary Law, a brother can be adopted, a daughter's son can be adopted, there is no limit as to the age of the person who may be adopted, a married man who has had children may be adopted; and a guardian may give a boy in adoption. No contrary view has been brought to my notice to the effect that amongst Jats such a person cannot be adopted. Therefore, I am of the opinion that the adoption of Harkesh respondent cannot be challenged on this ground."

In the case in hand, the claim of defendant Bhim Singh is based upon the document Ex.D2 which is a registered adoption deed dated 14.9.1979. Undoubtedly, the courts while construing a document, are under an obligation to examine its true purport and draw an inference with respect to the actual intention of the parties. Thus, a document must be construed, taking into consideration the real intention of the parties. The substance, and

not the form of a document, must be seen in order to determine its real purport.

In ***Delta International Limited v. Shyam Sundar Ganeriwalla & Anr., 1999(2) R.C.R.(Civil) 471 SC***, Hon'ble Apex Court held that the intention of the parties is to be gathered from the document itself. Intention must primarily be gathered from the meaning of the words used in the document, except where it is alleged and proved that the document itself is a camouflage. If the terms of the document are not clear, the surrounding circumstances and the conduct of the parties have also to be borne in mind for the purpose of ascertaining the real relationship between the parties. If a dispute arises between the very parties to the written instrument, then intention of the parties must be gathered from the document by reading the same as a whole.

Mere technicalities therefore, cannot defeat the purpose of adoption, particularly when the plaintiff/appellant has not made any attempt to disprove the said document. No reference was ever made either by him, or by his witnesses, to this document i.e. registered adoption deed. Undoubtedly, the natural parents of Bhim Singh had signed along with the witnesses.

In ***Atluri Brahmanandam (D), Thr. LRs. v. Anne Sai Bapuji, 2011(2) R.C.R.(Civil) 97 SC***, the Supreme Court held :

"The aforesaid deed of adoption was produced in evidence and the same was duly proved in the trial by the evidence led by PW-1, the respondent. We have carefully scrutinized the cross-examination of the said witness. In the entire cross-examination, no challenge was made by the appellant herein either to the

legality of the said document or to the validity of the same.

Therefore, the said registered adoption deed went unrebutted and unchallenged.

We have already referred to the recitals in the said documents which is a registered document and according to the recitals therein, the respondent was legally and validly adopted by the adoptive father. Since the aforesaid custom and aforesaid adoption was also recorded in a registered deed of adoption, the Court has to presume that the adoption has been made in compliance with the provisions of the Act, since the respondent has utterly failed to challenge the said evidence and also to disprove the aforesaid adoption."

In the backdrop of the *ratio decidendi* laid down in the above referred precedents, let us examine the adoption deed Ex.D2 in order to gather its true construction and intention of the persons giving and taking defendant Bhim Singh in adoption. This document has also been attested by various witnesses and relatives of Mam Raj and Ghoor Mal, out of them, Duli Ram has been examined as DW3, who is none else but the maternal uncle of Bhim Singh being the real brother of Smt.Chameli. This witness being the relative of the parties has special means of knowledge of their family matters, especially with regard to the adoption. He not only proved the adoption deed Ex.D2 but also proved the photograph which was clicked at that time. He has testified that Bhim Singh was taken in adoption by Mam Raj in the presence of Ghoor Mal and Smt. Chameli (natural parents of Bhim Singh). He further testified that the natural parents had put Bhim Singh into the lap of Mam Raj. Apart from it, another attesting witness Mr.

Sharwan Kumar, Advocate has been produced as DW4. He has stated that adoption deed Ex.D2 was presented by Mam Raj before the Joint Sub Registrar who has read over and explained its contents to Mam Raj and Mam Raj in the presence of natural parents of Bhim Singh and all of them admitted the same to be correct. He also proved the document and also established the intention of executant thereof.

Thus, it has been successfully proved by leading cogent evidence that Ex.D2 was executed on 14.9.1979 by Mam Raj and was registered with the office of Joint Sub Registrar, Palwal on the same day. The same is also signed by the natural parents of Bhim Singh namely Ghoor Mal and Smt.Chameli. A bare perusal of Ex.D2 transpires that it contains the following recitals : -

- (i) that Mam Raj was issueless and his wife had died much earlier from the date of adoption.
- (ii) that when Bhim Singh was aged about 10 years, he was taken in adoption and since then he had been residing with Mam Raj as his son who was brought up and provided education to Bhim Singh being his adopted son. Even Mam Raj had arranged the marriage of Bhim Singh.
- (iii) that Mam Raj had taken Bhim Singh in adoption in the presence of his natural parents, other relatives and the village community and all the ceremonies were performed.
- (iv) that natural parents also put Bhim Singh in his lap and since then Bhim Singh is his adopted son. At that time, photographs were also clicked.
- (iv) that the natural parents namely Ghoor Mal and his wife

Smt. Chameli also put their thumb impressions on this adoption deed (Ex.D2) in token of its correctness and they had given their consent.

(v) that although Mam Raj had taken Bhim Singh in adoption when the latter was 10 years of age, yet formal adoption deed could not be executed on that day, as such he had executed Ex.D2 on 14.9.1979.

(vi) In Ex.D2, it is also stated that Bhim Singh had attained all the rights of a son and none of the relatives of Mam Raj was having any objection. It is mentioned in Ex.D2 that before it, Mam Raj had never taken any person in adoption.

A careful examination of registered adoption deed (Ex.D2) makes it abundantly clear that the adoption was in accordance with the Act and the same is valid. The intention of Mam Raj is very much visible and clear that he bestowed all the rights of his son upon Bhim Singh. Thus, the adoption was fully legal and valid under the custom of Punjab.

In addition to the custom, if we consider the adoption in question under the provisions of Hindu Adoptions and Maintenance Act, even then the same is also found to be valid. As stated above, it has been specifically recited in the adoption deed Ex.D2 that in fact Bhim Singh was taken in adoption about 10 years earlier when Bhim Singh was only 9 or 10 years of age. However, at the time of execution of Ex.D2, he was 20 years of age. The document Ex.D2 was duly signed by the natural parents of Bhim Singh as well as his adopted father Mam Raj which clearly denotes their consent to give Bhim Singh in adoption to Mam Raj. It has come into

evidence that the same was read over and explained to all of them. Thus,

each one was knowing the contents of this document Ex.D2. The intention of Mam Raj as well as the natural parents of Bhim Singh namely Ghoor Mal alias Ghoori and Smt. Chameli was that the adoption was given effect and Bhim Singh was put in the lap of Mam Raj who accepted him as his son. All this happened when Bhim Singh was only 10 years of age. Said Mam Raj, Ghoor Mal and Smt. Chameli are rustic. Therefore, they could not got execute a formal adoption deed which could be executed in the shape of Ex.D2 after about 10 years therefrom. However, this document establishes the intention of said Mam Raj, Ghoor Mal as well as Smt. Chameli to the effect that Bhim Singh had snapped all the ties with the natural family and he was given in adoption and was also validly taken in adoption by Mam Raj. At that time, when actual adoption had taken place, Bhim Singh was about 10 years of age.

The claim of respondent Bhim Singh is further strengthened by the presumption as provided under section 16 of the Act. This provision requires that where there is a duly registered document, then the Court shall presume that the adoption was in accordance with the provisions of the Act unless and until it is disproved. In the case in hand, the factum of adoption in accordance with the provisions of the Act has been well proved. When a lawful adoption takes place, a presumption under Section 16 can be drawn and the presumption would operate as long as it is not challenged or it is not rebutted by a procedure known to law. This presumption is about the validity of a adoption and that the adoption is in conformity with the Act. Thus, the case of defendant Bhim Singh is also supported by the presumption as contemplated under Section 16 of the Act.

In *S.T. Krishnappa v. Shivakumar & Ors., 2007(3) R.C.R. (Civil) 778 SC*, Hon'ble Supreme Court observed that the "adoption deed" must be read as a whole and that on reading the same in such a way, the intention of the parties with respect to whether the adoptive father/mother wanted to make an adoption according to law and not merely, to appoint an heir, must be clearly established.

Furthermore, in *Mst. Deu & Ors. v. Laxmi Narayan & Ors., (1998)8 SCC 701*, the presumption of registered documents under Section 16 of the Act was discussed. It was held that in view of Section 16, wherever any document registered under any law is produced before any court purporting to record an adoption made, and the same is signed by the persons mentioned therein, the court shall presume that the said adoption has been made in compliance with the provisions of the Act, until and unless such presumption is disproved. It was further held, that in view of Section 16 it is open for a party to attempt to disprove the deed of adoption by initiating independent proceedings.

However, the facts in case *Madan Lal v. Vinod Kumar (supra)* are distinguishable. That case pertains to the state of Madhya Pradesh. The adoption was not proved therein but in the case in hand, the adoption by way of customary rules of Punjab is fully established and the same is also valid under the provisions of the Act.

The facts in *Marimuthu v. Pichal Ammal and others (supra)* are on different footings. In that case, the suit was dismissed on the ground that the plaintiff failed to prove the adoption and adoption deed was registered after 12 years thereafter and natural mother was not signatory to such deed and no explanation was furnished for this. However, this situation is not

available in the case in hand.

The facts in case *Dhanraj v. Suraj Bai (supra)* are distinguishable. That was a adoption by step mother. It was held that step mother is not a competent person to give a child in adoption and only the natural parents are competent to give a child in adoption.

The facts in case *Dhanno and others v. Tuli Ram and others (supra)* are also distinguishable. It was held that the person claiming adoption must prove the ceremonies of the adoption.

The ratio decidendi laid down by the Full Bench of this Court in case *Pritam Singh v. Assistant Collector of Estate Duty, Patiala (supra)* is not in dispute herein. In that case, it was held that Sikhs and Sikh Jats are Hindus and their personal law is Hindu law and thus, they are governed by Hindu Successions Act.

So far as the plea of fraud and undue influence as taken by the plaintiff is concerned, the same is not available to him as he was stranger to the documents in question i.e. the adoption deed and will. Mam Raj had never challenged these documents on any ground. Apart from it, no amount of evidence has been adduced to prove the plea of fraud or undue influence.

Learned counsel for the appellant has also submitted that in the school leaving certificate mark PX, the name of the father of Bhim Singh is mentioned as Ghoor. This Court has considered the said document but it carries no weight. A bare perusal of document Ex.PX transpires that the date of birth of Bhim Singh is 8.2.1958. He was admitted in the school on 4.5.1964 and discharged on 31.3.1969 after passing 5th standard examination. The adoption has taken place much after the admission of

Bhim Singh defendant in the school. It seems that he was adopted

somewhere in the year 1968-69.

A careful evaluation of the evidence makes it abundantly clear that the adoption of Bhim Singh was in accordance with the Act as he was less than 15 years of age at the time of actual adoption and also the natural parents had given their consent for adoption and in fact, they put Bhim Singh into the lap of Mam Raj. Thus, the adoption was fully legal and in accordance with the provisions of the Act.

Thus, viewing from all the angles, this Court reaches to the conclusion that Bhim Singh was validly adopted by Mam Raj and Ex.D2 is a legal and valid document. After the death of Mam Raj, Bhim Singh had inherited him being the sole natural heir.

In this view of the matter, this appeal is devoid of any merit and the same is hereby dismissed with costs and the judgment of the first appellate court stands upheld.

(RAJ SHEKHAR ATTRI)
JUDGE

November 3, 2017

Paritosh Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No