

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 3591 of 2011 (O&M)
Date of Decision: 17.08.2017

Sunil Kumar

...Appellant

Vs.

Shri Ram and others

...Respondents

CORAM:-HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. P.R. Yadav, Advocate,
for the appellant.

None for the respondents.

RAJIV NARAIN RAINA, J. (Oral)

The defendants were *ex parte* and the suit was dismissed for the findings recorded at paper-book page 11, para. 6 of the trial Court judgment which has been affirmed by the First Appellate Court.

Para 6 reads as follows:

“In order to prove his case plaintiff has placed reliance on Ex.P7 which is the registered adoption deed dated 18.6.1992. Ex.P8 is the jamabandi of the year 1965-66 which shows Hari Singh and Richpal sons of Chajja as the Gair Marusi in possession of the suit land. Ex.P9 to Ex.P12 are also to the same effect. Ex. P.13 is a Girdawri of suit land which shows Hari Singh etc. in cultivation possession of the suit property. Girdawaris right up to the year of 2000, show possession of Har Singh etc. on the suit property. Jamabandi of the year 2000-2001 which is Ex.P13, shows possession of plaintiff on the suit property. However, in this Jamabandi plaintiff has been shown as Sunil Kumar son Siri chand.

It is worth noticing that the corresponding mutation has not been placed on file which could show that plaintiffs Sunil had inherited Gair Marusi rights from Hari Singh. Plaintiff has placed reliance on the adoption deed to show that he was the adopted son of late Hari Singh. Plaintiff claims that he was the adopted son of Hari Singh and that he was adopted by Hari Singh on 18.6.1992, when he was 12 to 13 years old.”

The entire case of the plaintiff claiming rights to suit property was based on an adoption. Claimant pleaded he was the adopted son of Hari Singh who was died when the suit for declaration was brought. The trial Court has found no evidence adduced on record by the plaintiff to prove the factum of adoption by direct or corroborative evidence which only could have confirmed the status of the plaintiff as adopted son.

Admittedly, his natural parents were alive during the trial but were not produced before the Court to make statement in his favour. In the presence of natural parents remaining silent, there is a strong presumption against adoption and of performance of ceremonies of giving and taking of child, that is, by performance of the *datta homam* ceremony to solemnize adoption. Despite the assertion that adoption deed was registered, registration of adoption deed is not conclusive of its genuineness and burden is on the plaintiff to discharge. It is only conclusive that such a document was registered in public office. There may be a presumption but the presumption like all presumptions is rebuttable. The entire burden to prove the case is on the plaintiff, who failed to discharge and, therefore, I agree with the work of both the Courts below that the suit deserves to be

dismissed. Therefore, the appeal is dismissed for the findings of fact are not open to be disturbed in second appeal.

It will be open for the appellant to get a declaration on his title, if advised, from a court of law. In case any proceedings are initiated by the plaintiff, the evidence recorded in the present suit shall remain preserved and not open to be overwritten by any statement or document. A strong case on merits would have to be made out by the appellant, beyond the evidence in the present suit.

With these observations, the appeal stands disposed of.

(RAJIV NARAIN RAINA)
JUDGE

17.08.2017
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>