

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

RSA No.2729 of 2012 (O&M)

Date of decision : 19.07.2017

Sube Singh

...Appellant

Versus

Parveen @ Manjeet and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Harkesh Manuja, Advocate for the appellant.

Mr. J.S. Cooner, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J.

The appellant-plaintiff is in Regular Second Appeal against the concurrent findings of fact arrived at by the Courts below dismissing the suit filed by the plaintiff.

Devi Singh had four sons namely Rajender, Sube Singh, Joginder and Narender and two daughters namely Sumitra and Santosh. Dispute in the present case is with regard to the estate of Narender one of the son of Devi Singh who died unmarried and issueless on 08.07.2005. Late Sh. Narender had adopted Parveen @ Manjeet son of brother Rajender through registered Adoption Deed dated 26.05.2005 which is Ex.D1 on the trial Court record.

It is the case of Sube Singh that such Adoption Deed is not valid for two following reasons:-

- i) Parveen @ Manjeet was beyond the age of 15 years on the date of adoption.
- ii) Specific custom has not been pleaded and, therefore, defendants cannot be permitted to take advantage of the custom.

The learned trial Court dismissed the suit on the ground that Parveen is not proved to be more than 15 years of age.

The First Appellate Court although recorded a finding that Parveen was born on 20.05.1990 and since Adoption Deed is dated 26.05.2005, hence he was beyond the age of 15 years, however, the learned First Appellate Court has returned a finding that the parties are Jat and they are governed by custom. It has further been held that custom has been pleaded. Even natural father of Parveen namely Rajender has appeared in the witness box as DW2 and has stated that there is a custom amongst Jat permitting adoption of a son beyond the age of 15 years. The First Appellate Court therefore dismissed the appeal filed by the plaintiff.

Counsel for the appellant has made three submissions:-

1. In the Adoption Deed, Parveen @ Manjeet has been shown as 14 years old whereas he was more than 15 years old.
2. In the Adoption Deed, no custom has been specifically referred to, therefore, it was not permissible for the defendants to plead and prove that adoption was under the custom.
3. Counsel for the appellant has further submitted that since no specific custom was pleaded to the effect that amongst Jats of that area, there is a custom of adopting a child more than 15 years, therefore, the finding of the Court is erroneous.

Section 10(iv) of the Hindu Adoptions and Maintenance Act, 1956 reads as under:-

“10. Persons who may be adopted-

(i) to (iii) xxx xxx xxx

(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.”

Reading of Section 10(iv) of Hindu Adoptions and Maintenance Act, 1956 establishes that in ordinary circumstances, a child beyond the age of 15 years cannot be adopted. However, if there is a custom or usage applicable to the parties which permits a persons to be given in adoption even beyond the age of 15 years, the same is valid.

In this case, in the written statement, it was pleaded by the defendants that the parties are governed by custom. In fact, it was stated that the parties to the suit are governed by customary law. It was further pleaded while replying to para 6 (a) of the plaint that adoption of defendant No.1 who is more than 15 years of age is valid under custom. It was further stated that the parties are Jats of Village Khanpur Khurd part of erstwhile District Rohtak and their livelihood is agriculture and they are governed by customary law of District Rohtak in the matter of adoption. It was further pleaded that as per the customs amongst Jats in District Rohtak, a child more than 15 years can be adopted. Therefore, the arguments of learned counsel, that specific custom has not been pleaded, is erroneous.

It has further been contended by the learned counsel for the appellant that in the Adoption Deed, wrong age has been given and no

custom has been mentioned. A careful reading of the Adoption Deed would show that approximate age of the child to be adopted was mentioned. It was specifically written in the Adoption Deed that as per the Hindu Law, for carrying out last rites of Hindu, a son is required, therefore, in these circumstances, Adoption Deed is being executed. Parties to the adoption deed were mostly illiterate.

Learned counsel for the appellant has relied upon judgment reported as *AIR 1974 SC 2161* to contend that after coming into force of Hindu Adoptions and Maintenance Act, 1956, there is no room for adoption of child beyond the age of 15 years. Learned counsel is reading a judgment out of context. Section 10(iv) specifically saves the customs with regard to age of a child beyond 15 years to be eligible for being adopted. Hon'ble Supreme Court was not dealing with a case of a child beyond 15 years, therefore, judgment relied upon by the learned counsel for the appellant is not applicable.

High Court of Punjab and Haryana has judicially recognized the custom amongst Jats in the judgment reported as *1982 PLR 237, Amar Singh Vs. Tej Ram*. In this judgment, the custom amongst Jats to adopt a child beyond the age of 15 years has been recognized. Relevant para of the judgment is extracted as under:-

“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

Ujaggar 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 customs, 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 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 u/s. 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 as regards 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.”

It cannot be expected that the Adoption Deed would contain the description of custom as applicable. The provisions of the Act do not require that the Adoption Deed must contain an assertion with respect to applicability of customary law. Adoption Deed is required to be in writing and registered. In this case, Adoption Deed is in writing and is duly registered. Even photograph of person adopting a child, as also photograph of person giving the child in adoption, as also the photograph of child being given in adoption, have been affixed on the registered Adoption Deed.

Still further, Rajender natural father of Manjeet appeared in the witness box as DW2. Rajender who appeared as DW2 specifically stated in his evidence that there is a custom amongst Jats of the area to take a child in adoption beyond the age of 15 years. Apart from formal suggestion, no evidence has been brought on record to disprove the pleadings and the

evidence with respect to existence of custom.

Counsel for the appellant has not been able to bring to my notice any substantial questions of law permitting interference by this Court.

Learned counsel has further failed to make out any case within the parameters of Section 41 of the Punjab Courts Act governing Regular Second Appeals in the area of Punjab and Haryana.

Therefore, finding no merit in the present appeal, the same is ordered to be dismissed.

19.07.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No