

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

**RSA No.4077 of 2015 (O&M)
Date of Order: 01.09.2017**

Sukhdev Singh

..Appellant

Versus

Harnesk Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Guliani, Advocate
for the appellant.

Mr. Sumeet Mahajan, Sr. Advocate, with
Mr. Amit Kohar, Advocate,
for respondents no.1 and 2.

Mr. P.S.Thiara, Advocate,
for respondents no.4 and 5.

ANIL KSHETARPAL, J.

C.M.No.1684-C of 2017

This application is under Order 1 Rule 10 CPC for adding Kamaljit Singh son of Balbir Singh and Harjot Singh son of Dara Singh as respondents.

The applicants claims that they have purchased the property during the pendency of the suit, from the appellant-Sukhdev Singh. Since the aforesaid sale is during the pendency of the suit, therefore, the sale in favour of applicants is governed by the rule of lis-pendence.

At the stage of regular second appeal, subsequent purchaser cannot be added as party particularly when their vendor is already contesting the appeal.

Hence, the application is dismissed.

RSA No.4077 of 2015

Defendant-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

The dispute in the present case is with regard to the estate of late Shri Kartar Singh. Plaintiffs and defendant are sons of brother Pritam Singh i.e. Nephews of Kartar Singh. There are three documents, which are required to be examined by the Court. First is the registered will executed by late Sh. Kartar Singh, dated 09.03.1971, second is the alleged adoption deed, Ex.DW1/A, executed by late Sh. Kartar Singh adopting Sukhdev Singh, the appellant, dated 15.04.1971 and the third is subsequent will/cancellation deed, dated 06.09.1971 of earlier Will dated 09.03.1971.

It is admitted position on the record that the Will dated 09.03.1971, which is the registered Will executed by late Sh. Kartar Singh has been proved on the file. One of the attesting witness Mohinder Singh son of Rattan Singh has been examined as PW3. Son of another attesting witness, namely, Mohinder Singh son of Bachint Singh and son of the deed writer has also been examined. Both the Courts have found that the will dated 09.03.1971, is proved on the file. Both the Courts below have ignored the registered alleged adoption deed dated 15.04.1971, on the following grounds:-

- (i) the age of Sukhdev Singh was beyond the age prescribed under Section 10(iv) of the Hindu Adoption and Maintenance Act, 1956;
- (ii) the alleged adoption deed is not signed by natural parents of Sukhdev Singh;
- (iii) the ceremonies of adoption are not proved;

- (iv) the adoption is barred in view of Section 10(iii) as Sukhdev Singh was married having four children;

Next document is a unregistered will/cancellation deed dated 06.09.1971. This document has not been found to be proved as none of the attesting witness has been examined. One of the attesting witness was Bachint Singh. His son was examined by the plaintiffs but this document was not put to him. The Will has not been proved in accordance with the provisions of Section 68 of the Evidence Act.

Learned counsel for the appellant has submitted as follows:-

- (i) the alleged adoption deed is only recognizing the adoption which took place before coming into force of Hindu Adoption and Maintenance Act, 1956 and, therefore, the document cannot be treated as deed of adoption and hence the bar as provided under Section 10 of the Hindu Adoption and Maintenance Act, 1956 would not apply.
- (ii) the adoption can only be challenged by the natural parents and the plaintiffs have no locus-standi to challenge the adoption.
- (iii) the suit filed by the plaintiffs is barred by time as the document was executed in the year 1971, whereas the present suit was filed on 05.08.1995.
- (iv) the alleged deed dated 15.04.1971, which is a registered document can be treated as a Will and, therefore, the defendant-appellant is entitled to inherit the property left by late Sh. Kartar Singh

exclusively.

- (v) one application for additional evidence filed before the first appellate Court to produce a copy of mutation No.3620 and jamabandi for the year 1978-79 has not been decided and, therefore, the case is required to be remanded back to the first appellate Court.

On the other hand, Mr. Sumeet Mahajan, learned senior counsel for respondents No.1 and 2 has submitted that the Will/Cancellation deed dated 06.09.1971 is not proved as none of the attesting witness has been examined. Mohinder Singh son of Bachint Singh (attesting witness of document dated 06.09.1971) was not even given the suggestion with regard to the signatures of Bachint Singh. He has further submitted that one Harmeet Singh was examined but he did not come forward for cross-examination, therefore, his evidence cannot be taken into consideration. He has further pleaded that there is no pleading to the effect that the adoption deed can be treated as a Will.

Counsel for the subsequent purchaser has contended that the sale during the pendency of the suit by the defendants in favour of the subsequent purchaser is a bonafide transaction.

I have heard counsel for the parties and with their able assistance gone through the judgments passed by the Courts below as well as the record.

First argument of learned counsel for the appellant is that the alleged adoption deed, a registered document, recognizes the adoption which took place before coming into force of Hindu Adoption and

Maintenance Act, 1956 and, therefore, the document cannot be treated as adoption deed.

A careful reading of the document dated 15.04.1971, would show that Kartar Singh had executed the aforesaid document, recognizing adoption of appellant-Sukhdev Singh, however, no date of adoption was given. It is not proved on the file that any ceremony of adoption took place. The document is totally silent as to the time, month, year, date or place of such adoption. Still further natural father of Sukhdev Singh, namely, Pritam Singh is defendant no.2. Pritam Singh disputes the adoption. According to him, Sukhdev Singh was never given in adoption. Since the natural father is not supporting the plea of adoption, it will not be proper for the Court to give a finding on the legality of such adoption, particularly when neither time, month, year, date or place is coming forth.

Next submission of learned counsel for the appellant is that the adoption can only be challenged by the natural parents and the plaintiffs have no locus standi.

In the present case, natural father is party-defendant in the case. He has specifically asserted against the adoption. Plaintiffs-respondents have filed a suit for separate possession by way of partition on the basis of a registered Will executed by Kartar Singh on 09.03.1971. It was the defendant-appellant who had brought a plea of adoption, therefore, there is no force in the submission of learned counsel.

Next submission of learned counsel for the appellant is that the suit filed by the plaintiffs is barred by time.

As the document was executed in 1971, whereas the suit is being filed in 1995. There is no force in the argument of learned counsel as

the plaintiffs had only filed a suit for separate possession by way of partition. Plaintiffs had not sought cancellation of the alleged adoption deed dated 15.04.1971. Plaintiffs had claimed that the aforesaid document is illegal, null and void as also against the provisions of the Hindu Adoption and Maintenance Act, 1956. The document dated 15.04.1971 is not signed by the natural parents. It is also proved on the file that defendant-appellant was married and more than 30 years old on that day.

Since the suit for plaintiffs is for partition and claiming right to the property on the basis of Will dated 09.03.1971, therefore, the suit filed by the plaintiffs cannot held to be barred by time.

Learned counsel for the appellant has further submitted that the alleged deed dated 15.04.1971, should be treated as Will.

I have seen the pleadings of the parties as also the issues framed by the Court.

Neither this fact was pleaded before the Courts below nor any issue was framed. It will not be possible for this Court while exercising jurisdiction under Section 100 CPC to examine the plea for the first time.

Last submission of learned counsel is that an application for additional evidence was not decided by the first appellate Court.

In the aforesaid application, the appellant was wanting to produce a copy of mutation no.3260 and the jamabandi for the year 1978-79. Both the aforesaid documents are part of the official record and certified copies thereof are being produced. In view of the aforesaid discussion, both the documents, namely, mutation no.3260 and the jamabandi for the year 1978-79 are permitted to be brought on the file as additional evidence.

In view of the discussion made hereinabove, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is ordered to be dismissed.

September 01, 2017
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(ANIL KSHETARPAL)
JUDGE

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