

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA-4717-2015(O&M)

Date of Decision:11.08.2017

Smt.Ramvati Devi

.....Appellant

Versus

Ashish Tanwar and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Sunil Kumar Bhardwaj, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Plaintiff is in regular second appeal against the impugned judgment of reversal dated 30.09.2014 passed by the learned Additional District Judge, whereby first appeal of the defendants was allowed, setting aside the judgment and decree dated 30.04.2011 of the learned trial court in a suit for declaration.

Brief facts of the case, as noticed by the learned first appellate court in para 2 of its impugned judgment, are that plaintiff was resident of Ashiya Pana Gali No.6, Laxmi Nagar, Dhana Road, Bhiwani and Mahesh Kumar is her husband. One daughter, namely, Vijay Laxmi was born to the plaintiff from the loins of said Mahesh Kumar. The defendant No.1 was nephew of the plaintiff, the defendant No.2 was Jeth and the defendant No.3 was Jethani' of the plaintiff. The parties to the suit belong to one family. It was alleged that the plaintiff never adopted the defendant No.1 nor agreed to adopt him. The defendant No.1 never remained with them as their

adopted son and he had been living with his parents from the very beginning. The defendants No.1 to 3 in order to grab the properties of the plaintiff got prepared the illegal adoption deed, however, the defendant No.1 never remained as adopted son of the plaintiff. It was further alleged that the plaintiff belongs to Hindu religion and is Hindu Rajput. She was an illiterate and Parida-Nasheen lady. There was no talk about any adoption deed between the plaintiff and the defendant No.4. Even otherwise, if there was any adoption deed executed by the defendant No.4, the same is illegal, against law and facts and is liable to be set aside. The plaintiff requested the defendants to correct their names in the record but the defendants adjourned the matter on one pretext or the other. Now, by filing the present suit, the plaintiff had sought the declaration to the effect that the defendant No.1 Ashish Tanwar was not an adopted son of the plaintiff and he was the son of the defendants No.2 and 3. The defendant No.1 had not been taken in adoption. If there was any adoption taken place, the same was not in the knowledge of the plaintiff. The defendant No.1 had no concern or connection with the plaintiff.

Defendants were put to notice. They appeared and filed their joint written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the plaintiff is entitled for the decree for declaration as prayed for on the grounds as alleged in the plaint?OPP*
- 2. Whether the plaintiff has no locus standi or cause of action to file the present suit?OPD*
- 3. Whether the suit of the plaintiff is not maintainable in the present form?OPD*

4. *Relief.*”

With a view to substantiate their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. Plaintiff-appellant tendered some documents in her evidence and appeared as her own witness as PW1. On the other hand, defendants examined as many as six witnesses besides their documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has duly proved her case. Accordingly, suit for declaration filed by the plaintiff to the effect that defendant No.1-Ashish Tanwar was not the adopted son of the plaintiff, but was son of defendant Nos.2 and 3, was decreed by the learned trial court vide its impugned judgment and decree dated 30.04.2011. Feeling aggrieved, defendants filed their first appeal which came to be allowed by the learned first appellate court, vide its impugned judgment and decree dated 30.09.2014. Hence, this regular second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

A bare perusal of the impugned judgment passed by the learned first appellate court will make it crystal clear that the adoption-deed was duly proved on record as Ex.D1 bearing No.596 dated 13.02.2003. It was a registered document and presumption of truth would attach therewith. No doubt, such a presumption would be rebuttable but in the present case, plaintiff-appellant has failed to lead any such evidence which might have been said to be sufficient for rebutting presumption attached with the registered documents.

In fact, plaintiff made only her self-serving statement which

was not sufficient to prove her case. However, since the learned trial court fell in serious error of law while decreeing the suit of the plaintiff without there being any sufficient and cogent evidence, the learned first appellate court was well within its jurisdiction to pass the impugned judgment and decree by allowing the first appeal of the defendants and the impugned judgment and decree deserve to be upheld.

Evidence given by DW5-Ram Avtar, Deed-Writer was of great importance in the present case. DW5 scribed the adoption-deed and he specifically deposed that he prepared the adoption-deed Ex.D1 on 13.02.2003 on the directions of Shri Mahesh Kumar. He further deposed that at the time of execution of adoption-deed, Smt.Ramvati-plaintiff wife of Shri Mahesh Kumar, Rajbir Singh, Smt.Shakuntla Devi and witnesses Ratti Ram, Numberdar and Raj Kumar, Advocate, were present. After preparing the adoption-deed, it was read over and explained to the parties. There was hardly any contrary evidence produced by the plaintiff-appellant. Under such circumstances, she was bound to fail and the impugned judgment and decree passed by the learned first appellate court deserve to be upheld, for this reason also.

A categorical statement made by Shri Ram Avtar-DW5, scribe of adoption-deed Ex.D1 was duly corroborated by witnesses to the adoption-deed Ratti Ram, Numberdar, who appeared as DW3 and DW1-Rajbir Singh Clerk, also proved adoption-deed No.596 dated 13.02.2003. The adoption-deed was a registered document. Plaintiff herself appeared before the Sub-Registrar and put her thumb impression after knowing and understanding the contents of the adoption-deed.

In such a situation, if the appellant-plaintiff was intending to

deny the correctness and authenticity of this adoption-deed in question, a heavy onus was on her to prove her pleaded case but she failed to do so, for the reasons best known to her. Under these undisputed circumstances, it can be safely concluded that the learned first appellate court committed no error of law, while passing the impugned judgment and decree and the same deserve to be upheld, for this reason as well.

The view that has been taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court in cases **Bijender and another Versus Ramesh Chand and others**, 2016(12) SCC 483, **Laxmibai (Dead) through LRs and another Versus Bhagwantbuva (Dead) through LRs and others**, 2013(4) SCC 97, **Saroja Versus Santhil Kumar**, 2011(3) RCR (Civil) 332, **Sant Ram Versus Brij Mohan Kaura and another**, 2006(2) PLR 655 and **Ram Singh and another Versus Hardip Singh and others**, 2010(1) RCR (Civil) 476.

The relevant observations made by the Hon'ble Supreme Court in para 8 and 9 of its judgment in **Bijender's case(supra)**, which can be gainfully followed in the present case, read as under:-

“The adoption deed dated 07.06.1977 is a registered deed. Under Section 16 of the Hindu Adoptions and Maintenance Act, 1956, (for short “the Act”) there is a presumption in law as what is recorded in the said deed.

The High Court while construing the said adoption deed has taken the view that the persons who had given the defendant-appellant in adoption to Nanuwa had not signed the adoption deed as executant's thereof and had appended their signatures thereto as attesting witnesses. The said finding of fact does not appear to be correct on a perusal of the copy of the adoption deed which is on record. We have noticed from a perusal of the adoption deed that apart

*from the natural guardians of the defendant-appellant who had given the defendant appellant in adoption to Nanuwa there were other persons who had signed the deed. Even otherwise, the view taken by the High Court with regard to the deed in question and the provisions of Section 16 of the Act appears to be contrary to what has been said by this Court in the case of **Laxmibai (Dead) Through Lrs. and Anr. v. Bhagwantbuval (Dead) Thr. Lrs. & Ors. Reported in 2013(1) R.C.R. (Civil) 895: 2013(1) Recent Apex Judgments (R.A.J.) 294 : (2013) 4 SCC 97**, particularly what has been recorded in paragraphs 31 and 34 of the report which may be reproduced as under :*

“31. Mere technicalities therefore, cannot defeat the purpose of adoption, particularly when the respondent-defendants have not made any attempt to disprove the said document. No reference was ever made either by them, or by their witnesses, to this document i.e. registered adoption deed. Undoubtedly, the natural parents had signed along with 7 witnesses and not at the place where the executant's could sign. But it is not a case where there were no witnesses except the executant's. Instead of two witnesses, seven attesting witnesses put their signatures.

34. The trial Court in this regard has held that the fact that the natural parents of the adoptive child had signed along with seven other witnesses as attestants to the deed, and not as its executors, would not create any doubt regarding the validity of the adoption, or render the said registered document invalid, as they possessed sufficient knowledge with regard to the nature of the document that they were executing, and that additionally, no challenge was made to the registration of the document, immediately after its execution. The first appellate court took note of the deposition of Shri Vasant Bhagwantrao Pandav (PW1), who had deposed that the adoption deed had been scribed,

and that the signatures of the parties and witnesses to the deed had been taken on the same, only after the contents of the said documents had been read over to Smt. Laxmibai, the adoptive mother, and then to all parties present, Smt. Laxmibai, appellant-plaintiff was in good health, both physically and mentally, at the time of the adoption. The validity of the adoption deed, however, was being challenged on the basis of the mere technicality, that only interested witnesses had been examined and the court finally rejected the authenticity of the said document, observing that witnesses who wanted to give weight to their own case, could not be relied upon.”

Coming to the judgments relied upon by the learned counsel for the appellant in **Dhanno wd/o Balbir Singh Versus Tuhi Ram (Died) repto. by his LRs, 1996(2) PLR 276, Ragnath Beheri Versus Balaram Behera and another, 1996 AIR (Orissa) 38 and Deepraj Versus Vijay Laxmi, (2010-4) PLR Delhi Section page 9**, there is no dispute about the observations made and law laid down therein. However, on a close perusal of the cited judgments, none of them has been found to be of any help to the appellant, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

Before arriving at its judicious conclusion, the learned first appellate court has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. The relevant observations made by the learned Additional District Judge in para 34 of his impugned judgment, which deserve to be noticed here, read as under:-

“After hearing both the sides on the main appeal, this Court is of the view that there is no force in the contentions of the learned counsel for the respondent/plaintiff. The entire case of the respondent/plaintiff is based upon the adoption deed Ex.D1 bearing No.596 dated 13.02.2003. Regarding the contentions of the learned counsel for the plaintiff/respondent that the plaintiff never gave her consent for adoption of Ashish Kumar Tanwar and never executed the adoption deed Ex.D1, in the considered opinion of this court, since DW2 Ram Avtar Deed Writer, who scribed the adoption deed has specifically deposed that he prepared the adoption deed Ex.D1 on 13.02.2003 on the direction of Sh.Mahesh Kumar and at the time of execution of the adoption deed, Smt.Ramvati his wife, Rajbir Singh, Smt.Shakuntla Devi and waitresses Rati Ram Numberdar and Raj Kumar Advocate were present and further that the adoption deed was read over and explained to the parties. DW3 Rati Ram Numberdar has also corroborated the version of the DW5 Ram Avtar. DW! Rajbir Singh Clerk has proved the adoption deed No.596 dated 13.02.2003. Besides this, from the bare perusal of adoption deed Ex.D1 it is proved that it is a registered document and the plaintiff herself appeared before the Sub Registrar and put her thumb impression after duly knowing or understanding the contents of the adoption deed. It is well settled that on the registered documents, there is a presumption of being validly executed. As per Section 16

of the Adoption Act, the Court has to presume that the adoption deed has been made in compliance with the provisions of the Act unless and until it is disproved. Merely saying by the plaintiff that she never gave her consent for adoption of Ashish Kumar Tanwar is not sufficient to disprove the registered adoption deed No.596 dated 13.02.2003. The perusal of the photographs placed on record by the appellants by way of additional evidence also strengthen the stand of the appellants that at the time of adoption ceremony, all the relatives and neighbourers had assembled there and photographs were taken when Ashish Kumar was made to sit in the lap of the plaintiff and her husband. In all the photographs Ashish Kumar is there. Regarding the contention of learned counsel for the respondent/plaintiff that these photographs are of some other ceremony instead of the adoption ceremony, in the considered opinion of the Court has no force as the child is sitting in the lap of the adoptive mother and adoptive father. On the hand hand, there is sufficient oral as well as documentary evidence on the record to prove that the adoption deed was validly executed by the respondent/plaintiff. Therefore, in the considered opinion of the Court, the learned trial Court has erred in deciding the issue No.1 in favour of the plaintiff/respondent. Therefore, the findings under issue No.1 is reversed. The findings under issues No.2 and 3 were not assailed during the course of arguments. Therefore, these are affirmed. The net result is that the appeal of the appellants defendants succeeds and allowed with no order as to costs and the impugned judgment and decree dated 30.04.2011 passed by the learned trial Court are hereby set aside and the suit of the respondent/plaintiff is hereby dismissed.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned

judgment and decree passed by the learned first appellate court. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

August 11, 2017
seema

(**RAMESHWAR SINGH MALIK**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

**CM-11342-C-2015 in
RSA-4717-2015**

**Smt.Ramvati Devi
Versus
Ashish Tanwar and others**

Present: Mr.Sunil Kumar Bhardwaj, Advocate,
for the applicant-appellant.

Applicant seeks condonation of delay of 91 days in re-filing the
appeal.

After hearing the learned counsel for the applicant-appellant,
instant application is allowed, for the reasons stated therein. Delay of 91
days in re-filing the appeal is condoned.

C.M. stands disposed of.

August 11, 2017
seema

**(RAMESHWAR SINGH MALIK)
JUDGE**