

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

RSA No.5425 of 2014 (O&M)

Date of decision:03.8.2017

Yash Pal

...Appellant

Versus

Krishna Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Namit Khurana, Advocate for the appellant.

RAMESHWAR SINGH MALIK, J. (Oral)

Unsuccessful plaintiff has approached this Court by way of instant regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby his suit for declaration with consequential relief of permanent injunction was dismissed by the learned trial court, vide its impugned judgment and decree dated 21.10.2010 and his first appeal was also dismissed by the learned first first appellate court, vide its impugned judgment and decree dated 15.3.2014, upholding the judgment and decree of the learned trial court.

Brief facts of the case, as noticed by the learned first appellate Court in para 2 of its impugned judgment, are that the suit was filed against Krishna Rani and Aman Devi, who were the daughter and widow of Punnu Ram and the plaintiff claimed share in the properties on the ground that he

was adopted son of Punnu Ram. During his life time, Punnu Ram was stated to have transferred his half share in some agricultural land owned by him in favour of the plaintiff. It was averred that defendants after the death of Punnu Ram had secured mutation No. 287 in respect of the suit land in their favour by concealing that plaintiff was his adopted son and when this fact came to his knowledge, he requested the defendants to treat the mutation as nonest and to recognize his $1/3^{\text{rd}}$ share in the suit properties, but in vain. Hence, the plaintiff felt the necessity of seeking a declaratory decree in his favour.

Having been put to notice, defendants No.1 and 2 appeared and filed their joint written statement, raising more than one preliminary objections. However, defendants No. 3, 5 and 6 admitted the claim of the plaintiff by filing their joint written statement. On completion of pleadings of the parties, learned trial Court framed the following issues:-

- i. Whether the plaintiff is entitled to a decree for declaration to the effect that the plaintiff is owner in possession to the extent of $1/3^{\text{rd}}$ share i.e. $1/6^{\text{th}}$ share being $1/3^{\text{rd}}$ share out of the $1/2$ share of Shri Punnu Ram being the adopted son of Punnu Ram, now deceased, out of the total land as fully detailed in the headnote of the plaint, situated at village Sabapur, HB No. 121, Tehsil Jagadhri, District Yamuna Nagar, as prayed for? OPP.
- ii. Whether the plaintiff is owner in possession to the extent of $1/3^{\text{rd}}$ share in the property of Abadi as shown in the rough site plan, marked by letters ABCDEF, situated at village Sabapur, HB No. 121, Tehsil Jagadhri, District Yamuna Nagar, as alleged? OPP.
- iii. Whether the mutation No. 287 sanctioned in favour of

- defendants is illegal, null and void, ineffective, inoperative, nonest, concealment of facts and not legally binding upon the rights, title and interest of the plaintiff and the same is liable to be set aside? OPP.
- iv. Whether the defendants are liable to be restrained from creating any charge or alienating the properties in question by way of sale, lease gift or in any manner and from changing the existing nature of the suit properties by raising any sort of construction or otherwise? OPP.
- v. Whether the suit of the plaintiff is time barred ? OPD.
- vi. Whether the suit of the plaintiff is bad for non-joinder of necessary parties? OPD.
- vii. Whether the plaintiff has no locus standi to file the present suit? OPD.
- viii. Whether the suit property had already been partitioned in the year 1986? OPD.
- ix. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.
- x. Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction? OPD.
- xi. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD.
- xii. Relief.

With a view to substantiate their respective stands taken, both the parties led their oral as well as documentary evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the plaintiff has miserably failed to prove his case for want of sufficient and cogent evidence. Accordingly, suit of the plaintiff for declaration with consequential relief of permanent injunction was dismissed by the learned

trial court, vide its impugned judgment and decree dated 21.10.2010. Feeling aggrieved, plaintiff filed his first appeal, which also came to be dismissed by the learned first appellate court by passing the impugned judgment and decree dated 15.3.2014. Hence this second appeal, at the hands of unsuccessful plaintiff.

Heard learned counsel for the appellant.

A bare combined reading of both the impugned judgments and decrees passed by the learned courts below, will leave no room for doubt that the plaintiff had no case right from day one either on facts or in law. Plaintiff-appellant was having unending lust for the property. In fact, he was intending to grab the suit property with which he has no concern. Plaintiff-appellant was claiming himself to be the adopted son of late Shri Punnu Ram. However, he failed to prove that fact by leading cogent and convincing evidence.

Appellant, being the plaintiff, onus was on him to prove his pleaded case. Pleadings alone would not be sufficient to decree the suit of the plaintiff. He was not supposed to build up his case on the alleged weakness of the case of the defendants. It is so said, because plaintiff has to stand on his own legs. Having said that, this Court feels no hesitation to conclude that both the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld.

The entire case of the plaintiff-appellant was revolving around the adoption deed. However, he miserably failed to prove the same, in accordance with law. Further, suit property involved in the instant

unwarranted litigation was only a small piece of land measuring 1 kanal 4 marlas. On the other hand, defendants duly proved their pleaded case. In fact, the plaintiff-appellant wanted to take undue benefit of his dominating position. Further, presumption of truth would be attached to the revenue record which was in favour of the defendants. Plaintiff miserably failed to rebut the said statutory presumption under Section 44 of the Punjab Land Revenue Act, 1887. Under these undisputed facts and circumstances of the case, it can be safely concluded that both the learned courts below committed no error of law, while passing their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

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 different High Courts including this Court in **Banwari Lal Vs. Trilok Chand and others, 1980(1) SCC 349, Shyam Lal @ Kuldeep Vs. Sanjeev Kumar and others, 2009(12) SCC 454, Dhanno wd/o Balbir Singh Vs. Tuhi Ram (Died) repled. By his LRs., 1996(2) PLR 276 (P&H); Smt. Sukho alias Phool Wati (died) through LRs Vs. Bijender and another, 2010 (5) RCR (Civil), 664 (P&H), Krushna Chandra Sahu and another Vs. Pradipta Das and others, 1982 AIR (Orisa) 114 and Rukmini Dattatraya Naik Vs. Parmanand Lalchand Joshi, 2001 (3) RCR (Civil) 91 (Bombay).**

Before arriving at its judicious conclusion, the learned first appellate court rightly examined, considered and appreciated true facts of case as well as the evidence available on record, in correct perspective. The

relevant and cogent findings recorded by the learned first appellate court in para 12 of its impugned judgment, which deserve to be noticed here, read as under:-

“This court on conspectus consideration of these rulings finds that the court can allow additional evidence if it is necessary to pronounce the judgement in more satisfactory manner or else such application should be dismissed. In the present case, the proposed evidence which the plaintiff intends to lead under the provisions of Order 41 Rule 27 CPC is not regarding the performance of ceremonies of adoption. Rather, the evidence now intended to be adduced is only in the form of documents in which either the plaintiff himself has described him as adopted son of Punnu Ram or his natural father is shown to have disinherited him on the ground of being an adopted son of Punnu Ram. Mere mentioning of plaintiff as adopted son in the little of a judgment, as held in Rukmini Dattatraya Naib and others Vs. Parmanand Lalchand Joshi and others, 2001 (1) CCC 203 (Bombay), cannot be considered as a proof of adoption because the title of a judgment is not part of pleadings. Likewise, the alleged Will of plaintiff's natural father too cannot be used against the defendants inasmuch as neither they themselves not their predecessor-in-interest Punnu Ram was party to the alleged Will. So, in the facts of the present case wherein the plaintiff has not even pleaded that his natural parents case wherein the plaintiff has not even pleaded that his natural parents had given him in adoption to Punnu Ram and said Punnu Ram had accepted him as his adopted child with the consent of his wife, the proposed additional evidence cannot serve any meaningful purpose. That being the situation, no case is made out for grant of permission to lead additional evidence or to hold that the plaintiff is adopted son of Punnu Ram.”

During the course of arguments, learned counsel for the appellant could not point out any patent illegality or perversity in either of the impugned judgments passed by both the learned courts below. He also could not refer to any question of law much less substantial question of law nor any such question of law has been found involved in the present appeal, 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 view of the matter, no interference is warranted in the present appeal. In this regard, reliance can be placed on the law laid down by the Hon'ble Supreme Court in ***Naryanan Rajendran Vs. Sarojini Lakshmy, 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 instant appeal is bereft of merit and without any substance, thus, it must fail. No case for interference has been made out. Consequently, both the impugned judgments and decrees passed by the learned courts below are upheld.

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

3.8.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No