

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

R.S.A. No. 2904 of 2017 (O&M)

Date of Decision:08.11.2017

Baldev Singh

.....Appellant

Versus

Late Smt. Surjit Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

**Present: Mr.Talwinder Singh, Advocate
for the appellant.**

AVNEESH JHINGAN, J.

The present regular second appeal is at behest of the plaintiff being aggrieved of concurrent dismissal of his suit.

For the sake of convenience the parties are being referred as per their original position in the suit.

The plaintiff filed a suit for joint possession as owner to the extent of 2/3rd share (1/3rd as adopted son of Mansha Singh and 1/3rd purchased from Chint Kaur wd/o Mansha Singh), as detailed in the plaint.

The judgment and decree dated 22.9.1995 passed by the Court of Sh. H.S. Madaan, PCS Sub Judge Ist Class, vide which the Court has given 2/3 share of suit land to defendants No.1 and 2, is wrong, incorrect, against the law of inheritance and the same is void and not binding on the plaintiff. Consequential relief of permanent injunction restraining the defendants No. 3 and 4 from transferring the suit property in any manner.

The facts as averred by the plaintiff was that plaintiff was adopted by Mansha Singh in the year 1963 from Voundling Home, Darya Ganj, New Delhi, vide order dated 2.3.1963 as his only son Sher Singh died

in the month of October 1960. An affidavit was given by Mansha Singh to Municipal Health Office Incharge of the Orphanage. At the time of adoption, plaintiff was 3 ¼ years old. It was averred that the plaintiff came in the village with Mansha Singh and Chint Kaur as their adopted child and served till death. It was further averred that Sh. Mihan Singh and Surjit Kaur, filed a suit for separate possession of the property of Mansha Singh and the Court vide judgment and decree dated 22.9.1995 preliminarily decreed the suit without hearing the objections of the plaintiff in the present suit. It was further averred that the Court passed final decree without notice. Hence, the plaintiff filed the present suit.

On notice respondents filed written statement. Apart from the preliminary objections, the suit was challenged on merits also. One of the issue raised was that the judgment and decree of earlier suit had attained finality. On merit, the adoption of the plaintiff was denied.

The Trial Court framed the following issues:

- "1. Whether the plaintiff is entitled to joint possession as owner upto the extent of 2/3 share in the suit property as detailed in the head note of the plaint?OPP
2. Whether the judgment and decree dated 22.9.1995 passed by the Court of Sh.H.S. Madaan, Civil Judge, Kharar is illegal, null and void?OPP
3. Whether the plaintiff is entitled to permanent injunction as prayed for?OPP
4. Whether the suit of the plaintiff is not maintainable?OPD
5. Whether the suit of the plaintiff is hit by principle of res-judicata?OPD.
6. Relief."

In order to support the suit, the plaintiff himself stepped into

the witness box as PW1 and produce photocopy of the site plan as Ex.P2, copy of sale deed dated 27.7.1993 as Ex.P3, another copy of sale deed dated 16.7.1993 as Ex.P4, copy of order dated 2.3.1963 Mark-A, copy of electricity bills as Mark-B, copy of school leaving certificate as Mark-B, copy of affidavit of Mansha Singhasj Mark-C, copy of voter list as Mark-D and copy of scheduled caste certificate as Mark-E

To rebut the evidence of the plaintiff, defendant No.3 Malkiat Singh stepped into the witness box as DW1. Ex.D1 Jamabandi for the year 2009-10 was produced. Copy of warrant of possession was exhibited as Ex.D2. The attested copy of judgment dated 25.9.2002 was exhibited as Ex.D4, copy of decree of Civil Suit titled as Mihan Singh Versus Chint Kaur and others was exhibited as Ex.D5. Judgment dated 22.9.1995 was exhibited as Ex.D6 and decree sheet of the above said suit was exhibited as Ex.D7.

The learned trial Court after appreciating the facts and considering the evidence produced, dismissed the suit as the plaintiff had failed to establish that he was adopted by Mansha Singh.

Issues No. 1 to 3 were decided against the plaintiff. Issue No.4 was decided in favour of defendant and issue No.5 was decided in favour of plaintiff.

Aggrieved of the judgment and decree dated 30.9.2014, the appeal was filed.

The Learned Additional Sessions Judge, SAS Nagar (Mohali) vide judgment and decree 9.3.2017 dismissed the appeal. Hence, the present regular second appeal.

In the present Regular Second Appeal five substantial questions of law have been raised:

- (i) Whether the factum of passing of judgements and decrees on the basis of misreading of evidence on record makes the said judgments and decrees illegal and arbitrary?
- (ii) Whether judgments and decrees passed by Ld. Courts below are contrary to the evidence on record, hence liable to be set aside?
- (iii) Whether the impugned judgments and decrees are liable to be set aside as the same have been passed by ignoring the statements of the whiteness?
- (iv) Whether the secondary evidence is acceptable in case of non availability of primary evidence?
- (v) Whether the principle of res-judicata can be applied in a case where no issue was framed in the earlier suit on the issue which is alleged to be hit by the principle of res-judicata?

The learned counsel instead of addressing arguments on the questions of law has raised the issue that his adoption was made in the year 1963 and after such a long period it cannot be expected that he can prove the adoption by producing relevant documents and evidence.

The second issue raised by him is that the judgment and decree in the suit of Mihaan Singh Vs. Chint Kaur is not binding as there was no issue framed with regard to his being an adopted son of Mansha Singh, therefore, the findings in the judgment and decree cannot be relied upon.

Dealing with the first contention of learned counsel for the plaintiff, it would be pertinent to note that the suit was filed seeking joint possession as the owner. The basis of claiming 2/3rd share was that 1/3rd share had come to him being adopted son of Mansha Singh and 1/3rd was

purchased from Chint Kaur wife of Mansa Singh.

In order to substantiate his claim, the onus in law is upon the plaintiff. He cannot raise a plea that the said onus is not casted upon him as his adoption was as a long period as passed between his adoption and the suit. The documents produced by him were mainly the documents which were prepared because of the information supplied by the plaintiff. The oral evidence produced had very little value. Ex.P1 to Ex.P4 produced by him were the photocopies and the same were not proved by any witness. No official of Orphanage house was examined. No evidence was led even to show that he has been adopted through customary rights. In such circumstance, the Courts below are left with no other option except to reject the claim on his failure to discharge the onus casted upon him.

In the present appeal, the plea raised by him is an indicator towards the fact that he is not having any evidence regarding his adoption.

As regard the second contention, the same is not necessary to be gone into in view of the rejection of the first contention raised by the plaintiff. But in any case when the suit was filed by Mansha Singh though there was no specific issue framed with regard to the adoption of the plaintiff, but the issue was discussed. Further, the plaintiff was a party to the said suit. The relevant portion out of judgment and decree dated 22.9.1995 are reproduced below for ready reference:

"Therefore, Baldev Singh, defendant No.2 is not established to be legally and validly adopted son of Mansha Singh and Chint Kaur as such, he is not to inherit the properties left by Mansha Singh."

The said decree was challenged before the First Appellate Court. The First Appellate Court also in its judgment and decree dated

20.10.1999 held that the documents of adoption of Baldev Singh were not placed and filed nor any customary adoption was alleged. In absence of the evidence Baldev Singh cannot be held to be legally adopted son of Mansha Singh. The said judgment and decree of the First Appellate Court was not further challenged.

Be that as it may, since the suit fails at the threshold for want to discharge of onus by the plaintiff regarding his adoption, the earlier judgment and decree being binding or not, will not change the outcome of the suit.

The cogent findings recorded by the learned First Appellate Court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the First Appellate Court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

08.11.2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No