

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

RSA No.1295 of 1988 (O&M)
Date of decision : 17.01.2018

Tarlok Singh

...Appellant

Versus

Kirpal Singh (deceased) through his LRs

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sanjay Majithia, Sr. Advocate with
Mr. Inderjeet Singh, Advocate for the appellant.

Mr. P.S. Thiara, Advocate for
LRs of respondent No.1.

ANIL KSHETARPAL, J.

The defendant-appellant is in the Regular Second Appeal against the judgment passed by the learned Additional District Judge, the First Appellate Court, reversing the judgment passed by the trial Court.

In the considered opinion of this Court, following substantial questions of law needs determination:-

- (I). Whether a document which is not required to be attested by marginal witnesses but is registered as per the provision of the Registration Act, 1908 can only be proved on examination of attesting witnesses?
- (II). Whether the judgment passed by the First Appellate Court is result of mis-reading and non-reading of the material evidence available on the

file?

FACTS

Dispute in the present case is with respect to the property owned by late Sh. Sohan Singh. The plaintiffs are brothers of Sohan Singh namely Kirpal Singh and Mohan Singh, whereas defendant-appellant-Tarlok Singh claims himself to be adopted son of Sohan Singh and hence owner of the property. Sohan Singh died on 23.08.1983. It is the case of the defendant-appellant that he was adopted by Sohan Singh in the year 1962-63 and ceremonies of adoption were performed at that time. It is further the case of the defendant-appellant that on 12.12.1972, Sohan Singh and Gurdit Singh (natural father of Tarlok Singh, defendant-appellant) executed and got registered a Memorandum of Adoption acknowledging the factum of adoption having been taken place approximately 9 years back.

Learned trial Court, on appreciation of the evidence, dismissed the suit filed by the plaintiffs after recording a finding that the adoption of Tarlok Singh by Sohan Singh and Hardial Kaur (wife of Sohan Singh) has been proved.

Learned First Appellate Court reversed the finding by giving the following reasons:-

1. Execution of the Memorandum of Adoption dated 12.12.1972 Ex.D1 is not proved as attesting/marginal witnesses have not been examined.
2. Consent of Hardial Kaur wife of Sohan Singh is not proved at the time of the execution of Ex.D1 i.e. a Memorandum of Adoption dated 12.12.1972.
3. Adoption is not valid as consent of Nasib Kaur wife of Gurdit Singh

(natural mother of Tarlok Singh) has not been proved at the time of the execution of the Memorandum of Adoption dated 12.12.1972.

4. Tarlok Singh after knowing that Sohan Singh has died issueless, wants to grab the property of Sohan Singh.
5. Ceremonies of adoption like giving and taking are not been proved.

Stage now set for considering the questions of law.

(I). Whether a document which is not required to be attested by marginal witnesses but is registered as per the provision of the Registration Act, 1908 can only be proved on examination of attesting witnesses?

A Memorandum of Adoption Ex.D1 dated 12.12.1972 is not required to be attested by the two attesting/marginal witnesses. Provisions of the Hindu Adoption and Maintenance Act, does not require that deed of adoption or Memorandum of Adoption must be attested by attesting/marginal witnesses. In the present case, the Memorandum of Adoption has been proved from the statement of Gurdit Singh (natural father of Tarlok Singh) who has appeared as DW3. The defendant-appellant has also examined Scribe-Hukam Chand as DW1. Gurdit Singh is one of the Executant of the document. No doubt, the Memorandum of Adoption is attested by two marginal witnesses, however, once the document is not required to be attested, examination of the attesting witnesses cannot be considered mandatory before the Memorandum of Adoption can be held to have been proved. Once one of the Executant and Scribe has been examined, the document stood proved in accordance with law.

Memorandum of Adoption is registered under the Indian Registration Act, 1908. Registered document has a presumption of

genuineness having been registered by the Registrar in discharge of his official functions. In view thereof, question No.1 is answered in favour of the appellant.

(II). Whether the judgment passed by the First Appellate Court is result of mis-reading and non-reading of the material evidence available on the file?

Learned First Appellate Court has held that consent of Hardial Kaur, (the adoptive mother) and Nasib Kaur (natural mother) are not proved at the time of the execution and registration of the Memorandum of Adoption dated 12.12.1972 and hence, provision of Sections 7 and 9 of the Hindu Adoptions and Maintenance Act, 1956 had been violated.

The learned First Appellate Court has overlooked the fact that Ex.D1, the Memorandum of Adoption is not a Deed of Adoption. It is only a Memorandum of Adoption acknowledging that adoption has taken place approximately 9 years before the date of the execution of the Memorandum of Adoption.

No doubt, the consent of natural mother and adoptive mother is necessary as per the provisions of Sections 7 and 9 of the Hindu Adoptions and Maintenance Act, 1956 at the time of adoption. However, consent is not required at the time of execution of the Memorandum of Adoption. In the present case, Gurdit Singh, the natural father has appeared as DW3. He has deposed that Sohan Singh and his wife had given consent for taking Tarlok Singh in adoption and that is how Tarlok Singh was put in the lap of Sohan Singh. Gurdit Singh also says that the adoption had taken place with his and his wife's consent. Therefore, the requirement of Sections 7 and 9 of the Hindu Adoptions and Maintenance Act, 1956 stood complied with.

It is further proved on the file from the evidence of Tarlok Singh and Gurdit Singh that after adoption, Tarlok Singh lived in the Village Smalsar i.e. the place of residence of Sohan Singh. Sufficient evidence have been produced on file to prove that Tarlok Singh was married by Sohan Singh. Invitation Card for marriage of Tarlok Singh, which is part of the record, proves that Sohan Singh had invited near relations as a father of Tarlok Singh. Mother-in-law of Tarlok Singh, Surjit Kaur has also appeared in the witness-box as DW2 and has proved that fact.

Next reason assigned by the Court against the defendant-appellant is that he wants to grab the property. In the considered opinion of this Court, evidence available on the file is otherwise/to the contrary. It is not in dispute that brothers were in litigation against each other. The complaint filed by Kirpal Singh under Section 324/34 IPC is Ex.DW5/X against Sohan Singh. Copy of the FIR registered by Sohan Singh against his brothers who are plaintiffs is Ex.DW8/A. The defendants have led evidence to prove that brothers had fought and plaintiff had beaten up Sohan Singh who suffered injuries at the hands of his brothers and in a criminal case, brothers-plaintiffs were convicted. Kirpal Singh when appeared as PW1 has admitted that he was released on probation. Kirpal Singh has also admitted that Sohan Singh had even filed a suit for compensation of ₹10,000/- against him which was pending at the time of death of Sohan Singh. Tarlok Singh has proved on file the Voter List to prove that he has been shown as son of Sohan Singh. Most material document which has come on record is Ex.DW5/X, the complaint filed by Kirpal Singh, the plaintiff, wherein Tarlok Singh has been shown as adopted son of Sohan Singh. It has further

come in evidence that Sohan Singh use to resides separately from his brothers.

In view of this overwhelming evidence, the first Appellate Court wrongly assumed that Tarlok Singh was out to grab the property of Sohan Singh. In fact, from the evidence available on the file, it is proved that it was the brothers of Sohan Singh-plaintiff who were after his property.

Last reason given by the First Appellate Court is that the ceremonies of giving and taking are not proved on the file. This finding of the first Appellate Court is also result of non-reading of the material evidence available on the file. Gurdit Singh (natural father of Tarlok Singh) has appeared as DW3. He has specifically stated that he with the consent of his wife had put Tarlok Singh in the lap of Sohan Singh. The wife of Sohan Singh, Hardial Kaur had given consent. It is further recorded in the Memorandum of Adoption Ex.D1, a registered document, that at the time of adoption, all ceremonies of adoption were completed and sweets were distributed. The Hindu Adoptions and Maintenance Act, 1956 does not prescribe for performance of a particular ceremony for validly carrying out a adoption. The adoption can take place on natural parents giving the child in adoption to adoptive parents. Still further, as per Section 16 of the Hindu Adoptions and Maintenance Act, 1956, a presumption of correctness is available to the registered documents relating to the adoption. In the present case, the Memorandum of Adoption is a registered document, which carries a presumption.

In view of the discussions made above, it is clear that the judgment passed by the learned First Appellate Court was result of mis-

reading of the material evidence. In view thereof, the question No.2 is also answered in favour of the appellant.

Keeping in view the discussions made above and answer to both the questions, the Regular Second Appeal filed by the defendant-appellant is allowed while setting aside the judgment and decree passed by the first Appellate Court dated 03.05.1988.

Resultantly, the judgment of the trial Court is restored.

All the pending miscellaneous applications are disposed of, in terms of the abovesaid judgment.

17.01.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No