

FAO No. 1532 of 1993 (O&M)+connected case

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

Date of Decision : 26.2.2018

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FAO No. 1532 of 1993 (O&M)

Sunil Kumar alias Sudesh Kumar

....Appellant

VS

General Public and others

....Respondents

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FAO No. 1636 of 1993 (O&M)

Sadhu Singh and another

...Appellants

VS

General Public and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. C.B.Goel, Advocate
for the appellant in FAO No. 1532 of 1993
for the respondent in FAO No. 1636 of 1993.

Ms. Neha, Advocate
for the appellant in FAO No. 1636 of 1993
for the respondents in FAO No. 1532 of 1993.

AJAY TEWARI, J.(Oral)

These two appeals have been filed against the judgment and order dated 1.6.1993 whereby petition for grant of Letter of Administration under the Indian Succession Act filed by Sadhu Singh and Jagir Singh was rejected. They claimed that the deceased-Joginder Singh had died issue-less and they were his closest collaterals entitled to inherent the property. They have filed FAO No. 1636 of 1993 challenging the rejection. In that petition Sadhu Singh and Jagir Singh

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had impleaded Sunil Kumar alias Sudesh Kumar who had laid his own claim by Will dated 24.12.1988 which as per him was executed in his favour. The learned District Judge rejected the Will also and hence Sunil Kumar has filed FAO No. 1532 of 1993. If the Will is proved, Sunil Kumar has to be held to be the owner of the property. Sunil Kumar claimed to be the adopted son of Joginder Singh and based his claim on the basis of a Will executed in his favour on 24.12.1998. As per Sunil Kumar wife of Joginder Singh had died prior to his death and he had no other issue. He further claimed that he had performed the last rites of Joginder Singh. The Will was typed in Hindi and signed by the deceased in Urdu. Gian Chand and Kalyan Dass were two witnesses whose name were mentioned in Hindi. The Court found the following suspicious circumstances in the Will:-

1. The Testator did not state that he had adopted Sunil Kumar and there was no adoption deed on the record
2. Both the attesting witnesses were chance witnesses.
3. The names of the witnesses and dates were not typed though the name of the scribe was typed.

Learned counsel for Sunil Kumar has argued that the Court clearly erred in presupposing that the testator would have made a Will in favour of Sunil Kumar only if he had been formally adopted. He has pointed out that the Will gave detailed reasons and account of the relationship between the testator and Sunil Kumar. As regards other suspicious circumstances counsel has argued that these are minor irregularities which could have become important only if the testimony of the

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attesting witnesses was discrepant or wanting in any manner. As per him the witnesses have appeared, they are independent persons and have given their testimony in a lucid and convincing manner and have not been shaken in the cross-examination. Counsel for Sadhu Singh and Jagir Singh has again reiterated the objections of the Court.

In my considered opinion, the argument of the counsel for Sunil Kumar carries more weight. No doubt the Will does not give any details of adoption. No doubt the names of the witnesses and dates have not been typed. But the fact of the matter is there is no legal necessity that Sunil Kumar had to be adopted before any testamentary disposition could have been made in his favour. Both the witnesses have appeared and have testified in one voice about the essential factor of the preparation and execution of the Will. Sadhu Singh and Jagir Singh have not been able to elicit anything anomalous from them in the cross-examination. On a conspectus of all the facts, I have come to the conclusion that preponderance of probabilities lies in favour of Sunil Kumar. Resultantly, FAO No. 1532 of 1993 is allowed and consequently FAO No. 1636 of 1993 is dismissed.

Since the main cases have been decided, the pending C.M, if any, also stand disposed of.

26.2.2018
anuradha

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No