

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

1. RSA No.1690 of 1999 (O&M)  
Date of decision : 20.11.2018

Dev Ram Jhami and others ...Appellants

Versus

Nirmal Singh and others ...Respondents

2. RSA No.1714 of 1999 (O&M)  
Date of decision : 20.11.2018

Raji Devi and others ...Appellants

Versus

Nirmal Singh and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Kunal Dawar, Advocate for the appellants.

Mr. R.K.S. Brar, Advocate for the respondent-Nirmal Singh.

Mr. K.K. Garg, Advocate with  
Mr. R.P. Daaria, Advocate for  
Mr. G.S. Gandhi, Advocate for the respondents.

\*\*\*\*

**ANIL KSHETARPAL, J. (ORAL)**

Different defendants in a suit have filed these two separate appeals against a common judgment passed by the learned First Appellate Court decreeing the suit filed by the plaintiff.

The parties would be referred to by their name.

The estate of Labhu Ram, who was unmarried and issueless, died on 20.04.1991, is in dispute. The plaintiff-respondent Nirmal Singh claims to be adopted son of Labhu Ram whereas defendants contest this fact

and claim inheritance on the basis of natural succession. Munshi Ram, the common ancestor was having six sons, Labhu Ram, Lachhu Ram, Ramji Dass, Sarwan Ram, Arjan Dass and Ram Kishan (who had died earlier). One appeal has been filed by LR of Ramji Dass, whereas the other appeal has been filed by the LR of Lachhu Ram.

A registered deed dated 21.03.1991 executed by natural parents of Nirmal Singh acknowledging the adoption of Nirmal Singh by Labhu Ram, has been produced on file. This Memorandum of Adoption deed is registered one wherein Labhu Ram has stated that adoption took place when Nirmal Singh son of Arjan Dass son of Munshi Ram was three years old, on the day of Baisakhi when the ceremonies were stated to have been performed. It has further been written that the Memorandum was being written so as to avoid any dispute in future. It has further been mentioned in the aforesaid Memorandum of Adoption that after his death, his whole property would stand transferred/bequeathed in favour of Nirmal Singh. The Memorandum of Adoption is signed by Jangir Kaur (natural mother), Arjan Dass (natural father), Labhu Ram (adoptive father) and two witnesses Tarsem Singh (Lambardar) and Sital son of Hukma.

Both the marginal witnesses Tarsem Singh and Sital have been examined as PW1 and PW4. Bhupinder Nath, Scribe of deed has also been examined as PW3.

Learned trial Court held that the adoption is not proved while giving following reasons:-

1. In Matriculation Certificate, name of the natural father is appearing.
2. There is contradiction in the oral evidence of both the attesting

witnesses as to when the actual adoption took place.

3. In the Voter list, the name of the father has not been changed.
4. Nirmal Singh was admitted in School at the age of 6 years but the name of his natural father has been given.
5. Natural parents have not stepped into the witness-box.
6. In the service record, the name of the natural father continues.

Thus, the learned trial Court dismissed the suit filed by the plaintiff.

Learned First Appellate Court reversed the judgment on the ground that even if the adoption is not proved, the Memorandum of Adoption can be treated as last wish of the testator/owner (Testament/Will) and, therefore, the judgment of the trial Court has been set aside. That is how these two appeals have been preferred by the defendants.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record of the Courts.

As per Section 16 of the Hindu Adoptions and Maintenance Act, 1956, whenever any document registered under any law to record an adoption made and is signed by the persons, giving and taking the child in adoption, there is statutory presumption that the adoption has been made in compliance with the provisions of the Act. In the present case, the Memorandum of Adoption duly registered on 21.03.1991 has been proved on file. In such circumstances, the learned trial Court particularly erred in doubting the correctness of the aforesaid adoption on the grounds which have been noted above. For brevity, this Court is not repeating those

grounds. However, in the considered view of this Court, a registered Memorandum of Adoption cannot be ignored on the grounds which have been mentioned by the trial Court.

The defendants have not produced any substantive evidence to prove that the Memorandum of Adoption was not thumb marked by the adoptive father-Labhu Ram. He had, as noted above, acknowledged that Nirmal Singh has been taken in adoption when he was three years old. Hence, merely because in the Matriculation Certificate, School Record and the Voter List, the name of the father has not been changed, therefore, the fact that the adoption had taken place cannot be doubted. These documents in the facts of a particular case may be used as an evidence to prove that no adoption took place.

Learned trial Court was in error in ignoring a registered Memorandum of Adoption particularly when its execution has been proved and the defendants have not led any convincing evidence to create doubt in the mind of the Court with regard to the correctness thereof.

As regards certain contradictions in the evidence of the attesting witnesses and the plaintiff about the time when the adoption took place, it may be noted that the Memorandum of Adoption although styled as Adoption Deed clearly prove that Nirmal Singh was adopted when he was three years old.

Learned counsel for the appellants laid much stress on the fact that natural parents of Nirmal Singh have not stepped into the witness-box.

This Court has considered the submissions. However, do not find any merit therein because the adoption has been proved by leading

cogent evidence.

The defendants have not led any evidence to prove that the Memorandum of Adoption has not been signed by the natural parents. Both the marginal witnesses have been examined. Hence, in the considered view of this Court, even adoption of Nirmal Singh stands proved and, therefore, he is declared as adopted son.

Learned counsel for the appellants while challenging the judgment of the First Appellate Court, has submitted that a Full Bench judgment of this Court in the case of **Ranjit Singh @ Ajit Singh Vs. Garja Singh and others, 1967 PLR 697**, have held that the adoption deed cannot be treated as a testamentary disposition.

This Court has carefully read the aforesaid judgment passed by the Hon'ble Full Bench of this Court. The answer as given by the Hon'ble Full Bench in para 8 of the judgment is extracted as under:-

*“8. The consideration of the cases cited, in so far as non-ancestral immovable property is concerned, settles these propositions according to the rules of customary law in Punjab-*

*(a) Where the adoption is proved, through its validity is open to question, the immovable property of the adoptive father passes to the adopted son, and*

*(b) If the adoption is not proved as a fact, it depends upon the facts and circumstances of a particular case, whether the language of the adoption deed and the surrounding circumstances lead to the conclusion that it operates as a gift or a testamentary disposition, and (i) if such a conclusion is available, the alleged adopted son takes the property, but (ii) if such a conclusion is not available, he*

*does not do so and the property passes to the natural heirs of the executant of the deed in intestacy.”*

On careful perusal thereof, it is apparent that Hon'ble Full Bench did not lay down that a registered adoption deed can never be treated as testamentary disposition. In this case on reading of the Memorandum of Adoption although styled as adoption deed clearly prove that Labhu Ram had bequeathed all his property in favour of Nirmal Singh. As per Section 63 of the Indian Evidence Act, 1872, the testamentary disposition has to be attested by two attesting witnesses. In the present case, the aforesaid requirement stands fulfilled and once Labhu Ram had written in the Memorandum of Adoption that after his death, the property would stands bequeathed in favour of the plaintiff-respondent, no exception can be taken to the judgment passed by the learned First Appellate Court.

In view thereof, while upholding the judgment of the learned First Appellate Court, it is also declared that Nirmal Singh-plaintiff is proved to be the adopted son of Labhu Ram.

In view of the above, both the appeals are dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

**20.11.2018**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:-                      Yes/No**

**Whether reportable:-                                  Yes/No**