

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: July 26, 2018

1. RSA No.1994 of 1999 (O&M)

Smt.Kalawati & another

...Appellants

Versus

Roor Mal & others

...Respondents

2. RSA No.3854 of 1999 (O&M)

Roor Mal

...Appellant

Versus

Smt.Kalawati & others

...Respondents

3. RSA No.3110 of 1999 (O&M)

Smt.Maina Devi & others

...Appellants

Versus

Smt.Kalawati & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Sanjay Mittal, Advocate,
for the appellants in RSA No.1994 of 1999 &
for respondent Nos.1 & 2 in RSA No.3110 & 3854 of 1999.

Mr.Veerinderjit Singh, Advocate for
Mr.Puneet Sharma, Advocate,
for the appellant in RSA No.3854 of 1999 & for
respondent No.3 in RSA No.3110 of 1999 & for
respondent No.1 in RSA No.1994 of 1999.

None for the appellants in RSA No.3110 of 1999.

AMIT RAWAL, J.

This order of mine shall dispose of three Regular Second

appeals No.1994, 3110 and 3854 of 1999 as the same are arising out of adjudication of Civil Suit No.923 of 1987 titled as “Smt.Kalawati & another Versus State of Haryana & others”.

RSA No.1994 of 1999 has been filed on behalf of appellant-plaintiffs against the findings rendered by the Lower Appellate Court on issue No.4 declaring defendant No.4 to be adopted son of late Smt.Jai Devi, whereas RSA No.3110 of 1999 has been preferred on behalf of legal heirs of defendant No.5, namely, Bhagwani Devi vis-a-vis the findings on issue No.3. Hira Lal, father of the plaintiffs and predecessor-in-interest of defendant No.5, had divided the suit property in equal shares.

RSA No.3854 of 1999 has been filed on behalf of defendant No.4 Roor Mal, whereby the findings of the trial Court ordering mutation in favour of defendant No.4 have been reversed by Lower Appellate Court in the absence of any counter claim.

Plaintiffs- Kalawati and Devi instituted the suit, *ibid*, claiming declaration and permanent injunction by assailing the order of the Assistant Collector 1st Grade, Narnaul (Ex.P9), whereby mutation vis-a-vis inheritance of the land belonging to Jai Devi was sanctioned in favour of the Haryana Government on the premise that Jai Devi wife of Jai Narain son of Baldev, resident of Village Khaspur, Tehsil Narnaul, District Mohindergarh was owner in possession of agricultural land comprised in khewat No.127, khatoni No.181, 181/1 and 181/2 measuring 150 kanals 12 marlas and 1/3rd share in the land comprised in khewat No.134, khatoni No.194 measuring 1 kanal 10 marlas respectively. She expired on 29.6.1975. Hira Lal (since deceased), the father of the plaintiffs being an agnate as per provisions of Section 12 of the Hindu Succession Act, 1956 (for short, 1956 Act) claimed

the mutation. Accordingly, mutation of inheritance bearing No.663 dated 21.8.1975 was entered by the Halqa Patwari but the matter was referred to the Assistant Collector, who, as noticed above, sanctioned the same in favour of the Haryana Government.

It was alleged that defendant No.4 Roor Mal tried to interfere with the possession of the plaintiffs over the suit property, necessitating Hira Lal to submit an application under Section 145 of the Criminal Procedure Code in the Court of Sub Divisional Magistrate, Narnaul, who, in the aforementioned proceedings attached the property, however, later on the application was dismissed in default.

Defendants No.1 to 3- State of Haryana did not file any written statement and their defence was struck off. Defendant No.4 filed a separate written statement taking preliminary objections regarding maintainability, locus-standi etc. and denied the plaintiffs to be legal heirs of deceased Jai Devi. It was stated that he was adopted by Jai Devi as her son on Kartik Sudi 2 Samwat 2019. Defendant No.5 filed separate written statement and asserted that Hira Lal, father of the plaintiffs and her predecessor-in-interest, arrived at a compromise (Ex.R1), whereby they became owner in possession of the suit property to the extent of half share.

Since the parties were at variance, the trial Court framed the following issues:-

- “1) Whether plaintiffs are owners of the suit land on account of being heirs of Smt. Jai Devi and the order of Assistant Collector Ist Grade dated 18.2.1979 and order of Collector passed on 18.9.1979 are illegal, null and void? OPD
- 2) Whether plaintiffs are entitled to any amount realised by the State as Chakota, if so, how much? OPP
- 3) Whether defendant No.5 Smt. Bhagwani Devi is also one

of heirs of Smt. Jai Devi along with plaintiffs, if so, to what effect? OPD

4) Whether defendant No.4 Rurmal is adopted son of Smt. Jai Dei if so, to what effect? OPD

5) Whether suit is bad on account of non-joinder of necessary parties? OPD

6) Whether suit of plaintiffs in the present form is not maintainable? OPD

7) Whether defendant No.4 is in possession of the suit property, of so, to what effect? OPD

8) Whether defendant No.4 is entitled for compensatory costs? OPD

9) Relief.”

Plaintiffs, in support of their evidence, examined PW-1 Bihari Lal and PW-2 Raghbir Singh, Clerk of Shri P.N.Gupta, Advocate, Narnaul and brought on record documents Ex.P1 to Ex.P14 and thereafter closed the evidence. On the other hand, defendants examined as many as four witnesses, namely, DW-1 Roor Mal, DW-2 Umrao Singh, DW-3 Mahabir Prasad and DW-4 Dharampal.

On the basis of the evidence brought on record, the trial Court rendered the findings on issues No.1 to 4 against the plaintiffs and defendant No.5 and in favour of defendant No.4 and decreed the claim of defendant No.4, in the absence of counter claim, by ordering mutation of inheritance in respect of the suit property left by Jai Devi.

Two separate civil appeals bearing Nos.18 of 1994 on behalf of Kalawati and Devi, i.e., the plaintiffs and 389 of 1994 on behalf of legal heirs of defendant No.5 were filed. The Lower Appellate Court partly allowed Appeal No.18 by upholding the findings on issue No.4 in favour of defendant No.4 holding him to be adopted son of Jai Devi but reversed the

findings of the trial Court vis-a-vis the direction with regard to the mutation of inheritance as no counter claim was set up. It is in this context, three appeals, as noticed above, have been filed.

Mr.Sanjay Mittal, learned counsel, representing appellants in RSA No.1994 of 1999 and respondent Nos.1 and 2 in RSA Nos.3110 and 3854 of 1999, submitted that along with the aforementioned appeal, application bearing No.3913-C of 1999 under Order 41 Rule 27 CPC has been submitted to place on record mutation of inheritance of Durga Parsad, i.e., father of respondent No.4- Roor Mal in respect of the property succeeded from his father Durga Parsad and another application bearing No.7647-C of 1999 for placing on record mutation in favour of the vendee, on the basis of sale made by Roor Mal in respect of the property inherited by him from his natural father Durga Parsad and voter list of 1976, wherein Roor Mal- defendant No.4 had been shown to be son of Durga Parsad, as additional evidence. All the aforementioned documents are per se admissible and can be looked into for adjudication of the matters, for, on perusal of the aforementioned documentary evidence, it leads to an irresistible conclusion that defendant No.4 was not son of Jai Devi as he had derived the interest in respect of the estate on account of inheritance owing to the demise of his natural father Durga Parsad and thereafter had parted with his share by virtue of the sale deed, which is reflected from mutation bearing No.783. Voter list of 1976 also revealed that Roor Mal had been shown to be son of Durga Parsad, his natural father. Both the Courts below have abdicated in rendering the findings on issue No.4 holding defendant No.4 to be adopted son of Jai Devi without noticing the fact that he failed to lead evidence in affirmative.

It was next contended that adoption deed Ex.D5 has not been proved on record and it has been only tendered into evidence vide statement dated 6.4.1994, therefore, the signatures Ex.D2 to Ex.D5 on the aforementioned adoption deed pales into insignificance. Courts below have totally ignored documents Ex.P9 and Ex.P10, i.e., the orders dated 28.2.1977 and 18.9.1979 of the revenue authorities, where initially mutation was entered in the name of Hira Lal, father of the appellant-plaintiffs. Defendant No.4 challenged the aforementioned mutation before the revenue court. The Assistant Collector 1st Grade vide order dated 28.2.1977 rejected the claim of defendant No.4 but was allowed to lead evidence before the Assistant Collector, wherein findings came that the alleged adoption deed was a concocted and forged affair. Defendant No.4 filed an appeal before the Collector, which was dismissed vide order dated 18.9.1979 (Ex.P10) and thereafter the same attained finality.

Mere exhibition of the document in the absence of proof cannot be looked into. Even the provisions of the Act have not been complied with. No original compromise has been placed on record, except for photocopy and, therefore, the courts below rightly negated the plea of defendant No.5. The trial Court abdicated in granting relief in favour of defendant No.4 despite the fact that no counter claim under Order 8 Rule 6A CPC on behalf of defendant No.4 was set up, thus, the findings have been rightly set-aside by the Lower Appellate Court.

Per contra, Mr. Veerinderjit Singh for Mr.Puneet Sharma, learned counsel for the appellant in RSA No.3854 of 1999, respondent No.1 in RSA No.1994 of 1999 and respondent No.3 in RSA No.3110 of 1999 submitted that both the Courts below concurrently held defendant No.4 to

be adopted son of Jai Devi. Non- registration of the adoption deed, as per provisions of Section 47 of the Registration Act cannot be a ground for rejecting the same. Copy of voter list Ex.DX in respect of Village Khaspur showed that Roor Mal was son of Jai Narain. Admittedly, Jai Narain was husband of deceased Jai Devi, thus, adoption of Roor Mal by Jai Devi had been proved. The document was thirty three years old and, therefore, was inadmissible in evidence as per provisions of Section 90 of Indian Evidence Act. The orders of the revenue courts are non quasi judicial in nature and cannot be looked into by the trial Court for adjudication of the civil controversy as plaintiffs failed to discharge the onus rebutted by defendant No.4 vis-a-vis adoption.

Issue No.7 with regard to the possession of the suit property with defendant No.4 has also been decided in favour of the Roor Mal-defendant No.4, which had not been interfered with by the Lower Appellate Court. As per the provisions of Order 7 CPC, trial Court can always mould relief without there being any counter claim, therefore, the findings of the trial Court were perfectly legal and justified.

It was next contended that the additional evidence, sought to be placed on record by the plaintiffs, cannot be looked into as such piece of evidence was available at the time when the trial of the civil suit was pending. No explanation has come forth in complying with the expression “due diligence” or a whisper as to how and in what manner additional evidence would assist this Court in adjudication of the lis.

As per the averments in RSA No.3110 of 1999, both the Courts below have committed illegality and perversity in not looking into the compromise Ex.R1 signed by predecessor-in-interest of the plaintiffs and as

well as defendant No.5, whereby the property in dispute was agreed to be shared to the extent of half share. Roor Mal had failed to prove the adoption as he along with other heirs of natural father Durga Parsad inherited the property left by him. Ex.D5 adoption deed was, thus, forged and fabricated document and an attempt to usurp the property of Jai Devi. Plaintiffs have miserably failed to prove to be the agnates of Jai Devi and, therefore, rightly so, their claim was rejected.

I have heard the learned counsel for the parties, appraised the paper book, records of the Courts below and of the view that there is force and merit in the submission of Mr.Sanjay Mittal, learned counsel for the appellants in RSA No.1994 of 1999 and the judgments and decrees of the Courts below to the extent are liable to be set-aside on the following reasoning:-

- 1) Roor Mal failed to prove adoption as per document Ex.D5;
- 2) Additional evidence, as indicated above, i.e., mutation of inheritance in favour of Durga Parsad from his father and as well as the mutation in the name of the subsequent vendee showed that the property which he inherited from Durga Parsad was disposed of. Even in the voter list, his name had been shown to be son of Durga Parsad. If a person who had been adopted continues to derive the interest from his natural father, cannot claim the benefit from the adopted parents;
- 3) Neither relations from the mother or father or any relative had been proved on record in terms of provisions of Section 50 of the Indian Evidence Act to establish giving and taking

ceremony;

4) No reply has been filed on behalf of Roor Mal rebutting the aforementioned documents, thus, I deem it appropriate to allow those documents to be taken on record by way of additional evidence as registered document carries a presumption of truth in view of Section 44 of the Punjab Land Revenue Act;

5) Same plea has been taken by defendant No.5 with regard to the inheritance by Roor Mal from his natural father Durga Parsad. If at all, Roor Mal at the age of 13 has been adopted, he should have placed on record some material, i.e., educational certificate or the proof that he was actually adopted by Jai Devi, but on the contrary the defendants have not been able to deny the plaintiffs to be agnates of Jai Devi;

6) Section 12 of 1956 Act enables Roor Mal to succeed to claim the inheritance in the manner prescribed therein. For the sake of brevity, Section 12 reads thus:-

“12. Order of succession among agnates and cognates.-The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down thereunder:

Rule 1.- Of two heirs, the one has fewer or no degrees of ascent is preferred.

Rule 2.- Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3.- Where neither heirs is entitled to be preferred to the other under Rule 1 or Rule 2 they take

simultaneously.”

7) The view expressed by the Lower Appellate Court in setting-aside the findings of the trial Court in allowing the claim of defendant No.4 in the absence of counter claim do not call for any interference as no such prayer was sought;

8) Both the Courts below erred in law and fact by holding defendant No.4 to be adopted son of Jai Devi;

9) Adoption deed has not been proved in accordance with law as it is an unregistered document and the ceremonies were required to be performed as per provision of Section 6 of Hindu Adoption and Maintenance Act, 1956. Even presumption under Section 16 of the Hindu Adoptions and Maintenance Act, 1956 cannot be drawn in favour of defendant No.4 as adoption deed was unregistered. For the sake of brevity, Section 16 reads thus:-

“16. Presumption as to registered documents relating to adoption.- Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

10) Ex.P9 and Ex.P10 findings of the Assistant Collector and the Collector have not been assailed by Roor Mal, whereas the findings vis-a-vis adoption, as collateral, were never challenged by defendant No.4 and , therefore, the same cannot be looked

into for adjudication of the lis;

11) It is settled law that mere exhibition of document does not dispense with its proof in view of the judgment rendered in **Sait Tarajee Khimchand and others Versus Yelamarti Satyam and others, AIR 1971 1865 SC.**

No doubt, this Court, on earlier occasions had been framing the substantial questions of law while deciding the appeals but in view of the ratio decidendi culled out by five learned Judges of the Hon'ble Supreme Court in **Pankajakshi (dead) through LRs and others Vs. Chandrika and others AIR 2016 SC 1213,** wherein the proposition arose as to whether in view of the provisions of Section 97(1) CPC, provisions of Section 41 of the Punjab Courts Act, 1918 would apply or the appeal i.e. RSA would be filed under Section 100 of Code of Civil Procedure and decision thereof could be without framing the substantial questions of law. The Constitutional Bench of Hon'ble Supreme Court held that the decision in **Kulwant Kaur and others Vs. Gurdial Singh Mann (dead) by LRs and others 2001(4) SCC 262** on applicability of Section 97(1) of CPC is not a correct law, in essence, the provisions of Section 41 of the Punjab Courts Act, 1918 had been restored back. For the sake of brevity, the relevant portion of the judgment of five learned Judges of the Hon'ble Supreme Court in Pankajakshi 's case (supra) reads thus:-

“Since Section 41 of the Punjab Act is expressly in conflict with the amending law, viz., Section 100 as amended, it would be deemed to have been repealed. Thus we have no hesitation to hold that the law declared by the Full Bench of the High Court in the case of Ganpat [AIR 1978 P&H 137 : 80 Punj LR 1 (FB)] cannot be sustained and is thus overruled.” [at paras 27 - 29]”

“27. Even the reference to Article 254 of the Constitution was not correctly made by this Court in the said decision. Section 41 of the Punjab Courts Act is of 1918 vintage. Obviously, therefore, it

is not a law made by the Legislature of a State after the Constitution of India has come into force. It is a law made by a Provincial Legislature under Section 80A of the Government of India Act, 1915, which law was continued, being a law in force in British India, immediately before the commencement of the Government of India Act, 1935, by Section 292 thereof. In turn, after the Constitution of India came into force and, by Article 395, repealed the Government of India Act, 1935, the Punjab Courts Act was continued being a law in force in the territory of India immediately before the commencement of the Constitution of India by virtue of Article 372(1) of the Constitution of India. This being the case, Article 254 of the Constitution of India would have no application to such a law for the simple reason that it is not a law made by the Legislature of a State but is an existing law continued by virtue of Article 372 of the Constitution of India. If at all, it is Article 372(1) alone that would apply to such law which is to continue in force until altered or repealed or amended by a competent Legislature or other competent authority. We have already found that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force.”

Therefore, I do not intend to frame the substantial questions of law while deciding the appeal, aforementioned.

For the reasons stated above, RSA No.1994 of 1999 is allowed, whereas RSA Nos.3110 and 3854 of 1999 are dismissed. Suit of the plaintiff is decreed in toto. Decree sheet be prepared accordingly.

July 26, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No