

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

RSA No.4123 of 2012 (O&M)

Date of decision : 29.01.2018

Rajwant Kaur Hundal

...Appellant

Versus

Irvindeep Kaur Hundal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. R.S. Narang, Advocate for the appellant.

Mr. S.S. Rangi, Advocate for respondent No.1.

Mr. Maninder Singh, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

The plaintiff-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The plaintiff had filed a suit for declaration challenging the validity of the Adoption Deed dated 26.11.1999 executed on behalf of her husband-Manmohan Singh. The suit was filed in the year 2010. It was claimed that the adoption was without her consent and hence adoption is not valid being in violation of the provision of Section 7 of the Hindu Adoption and Maintenance Act, 1956.

The adoptive daughter was impleaded as defendant No.1. She contested the suit and pleaded that she has been adopted through the registered Adoption Deed dated 26.11.1999 and the plaintiff had given her

consent by way of affidavit dated 22.09.1999 sworn by her at Ontario, Canada and sent to India enabling adoption.

Both the Courts after appreciation of the evidence available on the file recorded the concurrent findings of fact that the consent of the plaintiff is proved from the affidavit, as also from the registered Adoption Deed, wherein this fact is recorded that the adoptive mother has given consent.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below as well as the records.

Learned counsel for the appellant has vehemently submitted that in absence of the consent of the adoptive mother, no adoption can take place by referring to the provision of Section 7 of the Hindu Adoption and Maintenance Act, 1956. He has further submitted that it was for the defendants to prove that the plaintiff had given consent, whereas the Courts have wrongly placed onus on the plaintiff. He has further submitted that the alleged affidavit has been forged by Manmohan Singh, her husband. He has further submitted that the Courts below have wrongly dismissed the suit filed by the plaintiff being barred by the law of limitation. He has submitted that the plaintiff came to know about the adoption in November, 2009.

On the other hand, learned counsel for the respondents has submitted that the suit is barred by limitation as the registered Adoption Deed was executed on 26.11.1999, whereas the suit was filed only in the year 2010, after a period of more than 10 years. He has further submitted that basically now the husband and wife have colluded and the plaintiff has

filed a suit whereas defendant No.2, the husband has not chosen to appear in the Court. He has further submitted that in fact the suit has been filed by the plaintiff in collusion with her In-laws as she admits that she is residing in her In-laws house and mother-in-law and father-in-law have come alongwith her in the Court complex.

With regard to the consent of the plaintiff, it is significant to note that the plaintiff was residing in Canada. She had executed an affidavit dated 22.09.1999 specifically giving her consent to the adoption by her husband Manmohan Singh Hundal. Although, learned counsel for the appellant has submitted that such document has not been proved on the file, however, the affidavit was sworn and attested by the Notary Public in Canada. Defendant No.1 has never visited Canada. It was for the plaintiff to explain as to how this affidavit was executed. Still further, the Deed of Adoption records that the adoptive mother has given her full and free consent to the adoptive father to take child in adoption. The Deed of Adoption dated 26.11.1999 is registered. As per Section 16 of the Hindu Adoption and Maintenance Act, 1956, a registered document has a statutory presumption to the effect that the adoption has taken place in accordance with the provision of this Act. Section 16 of the Hindu Adoption and Maintenance Act, 1956 is extracted as under:-

“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.”

In view of the statutory presumption, it was for the plaintiff to rebut the aforesaid presumption. Both the Courts have held that the plaintiff has failed to rebut the aforesaid presumption.

Second argument of the learned counsel is that the Court has wrongly placed onus to prove on the plaintiff that she had not given her consent whereas onus should be on the defendants. This Court finds that the argument does not have substance. Once, the plaintiff is asserting a particular fact, it was for the plaintiff to prove that fact. The defendants cannot be called upon to prove that she had also given consent. In any case as discussed earlier, consent of the plaintiff stands proved.

Learned counsel for the appellant has further submitted that the affidavit of the plaintiff was forged by her husband-Sh. Manmohan Singh. However, the plaintiff has failed to produce any evidence in this regard and also failed to prove that the affidavit, Mark-C is not signed by her. The onus was heavy on the plaintiff to prove this fact.

Last argument of the learned counsel for the appellant is that the suit filed by the plaintiff is within limitation as the plaintiff acquired knowledge only in the year 2009. Adoption Deed is a registered document. It was registered on 26.11.1999. It is recorded in the Deed of Adoption that the adoption had taken place on 14.11.1999. Once a document is registered, such registered document is to the knowledge of everyone. Hence, the Courts have rightly concluded that the suit filed by the plaintiff was barred.

Learned counsel for the appellant finally submitted that

ceremonies of giving and taking have not been proved. This argument is to be noticed and rejected because once in the registered Adoption Deed, this fact is recorded and not disputed by Manmohan Singh, adoptive father, the plaintiff cannot be heard to say that the required ceremonies were not performed. She was not present at the time of adoption. As per the requirement of the Hindu Adoption and Maintenance Act, only ceremony required is giving and taking which has been specifically recorded in the registered Adoption Deed.

In view thereof, there is no scope for interference with the concurrent findings of fact arrived at by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, shall stand disposed of in terms of the aforesaid judgment.

29.01.2018

Pawan

(ANIL KSHETARPAL)

JUDGE

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No