

RSA No.716 of 2013 (O&M)

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

RSA No.716 of 2013 (O&M)
Date of decision: 04.05.2018

Nand Lal

.....Appellant

versus

Om Parkash and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. T.C. Dhanwal, Advocate, for the appellant.
Mr. Jitender Malik, Advocate, for respondents No.1 to 3.

RAMENDRA JAIN, J. (ORAL)

Through this Regular Second Appeal challenge has been laid to the findings of both the Courts below, whereby suit of the appellant-plaintiff for declaration to declare him co-owner to the extent of 1/5th share in the suit property along with his brothers and mother, was dismissed.

Briefly stated, appellant-plaintiff in his suit claiming himself as joint owner in possession of 1/5th share in the agriculture land measuring 16 kanals 14 marlas detailed in para 1 of the judgment of the trial Court, situated in the revenue estate of Bhiwani Johnpal-I, Tehsil and District Bhiwani, on the ground that defendant No.1 was his mother and defendants No.2 to 4 were his real brothers, having taken birth from the loins of Chhotu Ram, who was *karta* of the family. The appellant-plaintiff along with defendants constituted a Joint Hindu Family. The suit property was coparcenary property amongst them being purchased from the joint family funds in the name of their mother defendant No.1.

The trial Court after holding trial, dismissed the suit vide

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impugned judgment and decree dated 15.04.2010.

Being aggrieved, appellant approached the First Appellate Court, but remained unsuccessful as his appeal too was dismissed vide impugned judgment and decree dated 10.10.2012.

Learned counsel for the appellant contends that both the Courts below have failed to appreciate that no adoption deed qua adoption of the appellant by his maternal grandmother was proved on the record. Therefore, alleged adoption of the appellant by his maternal grandmother was not proved. Document Ex.D1, which has been treated as an adoption deed, is, in fact, a gift deed. Therefore, the same has wrongly been treated as adoption deed by both the Courts below. Since the suit property was purchased from the joint family funds, therefore, appellant being a coparcener with the defendants, had 1/5th share in the same. In support of his contentions learned counsel for the appellant has relied upon decision in *Indranarayan v. Roop Narayan and another*, AIR 1971 Supreme Court 1962 and *Suma Bewa and others v. Kunja Bihari Nayak and others*, AIR 1998 Orissa 29.

On the other hand, learned counsel for respondents No.1 to 3-defendant vehemently opposing the submissions of learned counsel for the appellant, pleaded the legality and validity of the judgments of both the Courts below.

Having given considerable thought to the submissions made by learned counsel for both the sides, this Court finds that instant appeal is completely devoid of any merit for the reasons to follow.

Even if, document Ex.D1 is treated as gift deed, there is a specific recital therein that the appellant was given in adoption by his parents to the executant of the said document, who is none else, but

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maternal grandmother of the appellant. Recital to this effect in the said document Ex.D1 has never been challenged by the appellant till date. Therefore, the same cannot be ignored or set aside, it being a registered document.

That apart, real mother of the appellant, namely, Parwati-defendant No.1, while appearing as DW1 categorically testified that appellant was given in adoption on 28.02.1938 to Smt. Bhani Devi vide adoption deed Ex.D1 registered on the next very date i.e. 01.03.1938. Not only this, she has also categorically deposed that at the time of adoption of the appellant by Smt. Bhani Devi all ceremonies of adoption were performed. When real mother of the appellant herself is deposing about adoption of the appellant by his maternal grandmother, no better proof could have been brought than the above deposition of own mother of the appellant.

In 'will' Ex.D6 real father of the appellant has also recited that his son Nand Lal (appellant herein) was given in adoption to Smt. Bhani Devi and for that reason he has not given any property to Nand Lal. This recital has also never been challenged by the appellant in the instant suit or by way of any other suit. Therefore, the same has rightly been given effect by both the Courts below. Ex.D1 was prepared in the year 1938, therefore, the same being 30 years old has to be treated as well-executed and genuine more particularly when it is registered. Such an old document cannot be fabricated or factitiously registered. Both the Courts below, treating document Ex.D1 as adoption deed have rightly non-suited the appellant.

Suit property is the self-acquired property of defendant No.1.

Therefore, the alleged purchase of the same by joint family funds is immaterial after coming into force of the Prohibition of Benami Property

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Transactions Act, 1988.

Facts and circumstances of the judgments, referred to above, relied upon by learned counsel for the appellant are not identical to the facts of the present case, therefore, no benefit of the same can be given to the appellant.

I have gone through the impugned judgments of both the Courts below and find no ambiguity or illegality in the same.

No question of law, much less substantial, arises for consideration in this appeal.

Resultantly, this appeal being devoid of any merit, is hereby dismissed.

(Ramendra Jain)
Judge

May 04, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No