

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

RSA No.3192 of 2016

Date of Decision.09.05.2018

Gian Singh and others

...Appellants

Vs

Inderjit Singh and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.S. Chauhan, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

The appellants-plaintiffs seeking declaration to the effect that plaintiff and defendant No.2 to 7 are joint owners in the property in dispute left by Nanak @ Hako by laying challenge to the mutation No.181 dated 24.10.1996 had remained unsuccessful before the trial Court and the lower Appellate Court.

Mr. R.S. Chauhan, learned counsel appearing on behalf of appellant-plaintiff submitted that the suit aforementioned was filed on the premise that ownership of the property in dispute to the extent of half share was of Nanak son of Hakam @ Hako i.e. ancestors of the plaintiff as per the pedigree table extracted in para 1 of the plaint. He died issueless on 11.09.1996 leaving behind the plaintiff and defendant No.2 to 7 as his only legal heirs. Defendant No.2 in connivance with the revenue staff got the aforementioned mutation recorded by alleging himself to be the adopted son of Nanak, which was illegal, null and void whereas there was no valid adoption made

by the deceased as required under the law. No ceremony of taking and giving was performed. Defendant No.1 had not served his biological family, rather he was not capable of being given in adoption and did not fulfill the other conditions.

The aforementioned suit was contested by the defendants by raising the preliminary objections of no cause of action, estoppels and limitation. On merit, it was stated that defendant No.1 was adopted by Nanak by performing all religious and social formalities in accordance with custom vide registered adoption deed dated 09.09.1980. Since then, the defendant had been acting as son of Nanak and being legal heir was entitled to succeed in the estate of Nanak.

In support of their averments in the plaint, the plaintiffs examined as many as two witnesses i.e. PW1 Rachpal Singh and PW2 Gian Singh whereas defendant No.1 examined Khushwant Singh as DW1, Inderjit Singh as DW2, Rajan Monga as DW3 and Mohinderpal Puri Document Writer as DW4.

The trial Court on the basis of the evidence dismissed the suit which was affirmed by the lower Appellate Court.

Mr. R.S. Chauhan, learned counsel appearing on behalf of the appellants-plaintiffs submitted that PW1 Rachpal Singh, Clerk Khalsa College, Gardhiwala proved the date of birth of defendant No.18.10.1955 and if taken in adoption in the year 1980, he was 25 years of age at the time of adoption, which is not permissible in the absence of any custom. There was no proof of giving and taking ceremony of the defendant No.1 in adoption. The Courts below

failed to appreciate the oral as well as documentary evidence, thus, there is illegality and perversity.

I have heard learned counsel for the appellant and appraised the paper book. The other documents which weighed in the mind of the Courts below were adoption deed, voter and ration card which revealed that defendant No.1 was used to reside with Nanak and was shown to be his legal heir. Registered document carries presumption of truth, much less, testimony of DW4, Mohinderpal Puri, Document Writer.

The argument of Mr. Chauhan with regard to non-performance of ceremony falls flat, for, non-examination of natural mother would not be fatal to the adoption deed. In other documents i.e. Ex.D1 to D9, parentage of defendant No.1 written was that of Nanak.

As regards the date of birth, the witness had only proved the date of birth Ex.P1 but in cross-examination did not say that the said document was prepared from the record of the college. Though the provisions of the Hindu Adoption and Maintenance Act provide that a person beyond 25 years of age cannot be adopted but there is a proviso that the adoption can be made in case customs allows. The onus was on the plaintiffs to belie the adoption deed on the premise that the parties were bound by custom or not. The defendant No.1 was shown/acting to be son of Nanak, therefore, they were stopped to lay challenge to the mutation and claim the declaration by doctrine akin to acquiescence.

In view of the aforementioned, the concurrent finding of

fact rendered by the Courts below is perfectly legal and justified. The argument of Mr. Chauhan has not been able to bring the case within the realm of illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 09, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No