

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.3311 of 2016 (O&M)

Date of Decision: January 12, 2018

Bhagwani

...Appellant

Versus

Diwan Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ashwani Bakshi, Advocate,
for the appellant.

AMIT RAWAL, J. (Oral)

CM Nos.8787-C &8788-C of 2016

For the reasons stated in the applications, which are supported by affidavits, delay of 8 days in filing and 86 days in re-filing the appeal is condoned.

Applications stand disposed of.

RSA No.3311 of 2016

Appellant-plaintiff is in Regular Second Appeal against the concurrent findings of law and facts, whereby the suit instituted for claiming the following relief, has been dismissed by both the Courts below:-

“A decree for declaration in favour of the plaintiff and against the defendants may kindly be passed to the effect that adoption deed dated 25.02.1987 alleged to be executed by above-said Sh.Inder Singh @ Rajender and will dated 09.02.1984 alleged to be executed by above-said Sh.Harkishan along with subsequent revenue record are illegal, null and void and not effective on the rights of the plaintiff and the plaintiff is owner

in possession of 1/3rd share over the aforesaid land measuring 117 kanal 15 marla mentioned in Para no.1 of the plaint and further pass a consequential decree for permanent injunction restraining the defendants from alienating the suit land and interfering into the peaceful possession of the plaintiff over the same in any manner.

It is further prayed that if during the pendency of the present suit, the plaintiff is dispossessed from the suit land by the defendants forcibly, then a decree for mandatory injunction directing the defendants to restore possession of the plaintiff over the suit land may also be passed in favour of the plaintiff and against the defendants.”

Mr.Ashwani Bakshi, learned counsel for the appellant-plaintiff submits that the appellant-plaintiff instituted the aforementioned suit on the premise that Harkishan had died intestate and left behind Bhagwani (plaintiff) and brother Inder Singh @ Rajender. During his life time, he had 1/3rd share in the land measuring 117 kanals 15 marlas, but the defendant-respondents, on the basis of forged and fabricated Will dated 9.2.1984, got the mutation of the land measuring 16 kanals and as well as with regard to the remaining land after demise of Harkishan. Since Inder Singh @ Rajender was issueless, he adopted Davender-defendant No.2 as his son and later on executed adoption deed, which was registered on 25.2.1987. All these very documents are the result of forgery and fraud played upon, the executor of the same.

He further submits that the Courts below had erroneously placed the onus on the appellant-plaintiff. It should have been on the respondent-defendants. The original Will has also not seen the light of the day and, therefore, the Will could not have been referred to. The documents Ex.P-15 to Ex.P-19, i.e., voter list, ration card and school record brought on

record established that the parentage of Davender-defendant No.2 was of a biological father and not of the adopted father, but the trial Court had not adverted to the aforementioned facts, though there is a passing reference by the Lower Appellate Court. Date of birth of Davender is 3.5.1969 and was not capable of being adopted at the time of alleged execution of adoption deed as he was above 15 years, then it was incumbent upon the respondent-defendants to prove the give and take ceremony. The contents of the adoption deed revealed that Davender was adopted by Inder Singh @ Rajender, but there is no such evidence, therefore, the adverse presumption could not have been drawn and, thus, urges this Court for setting-aside of the concurrent findings of the Courts below as substantial questions of law with regard to the appreciation of the findings arise for consideration by this Court.

I have heard the learned counsel for the appellant, appraised the paper book and of the view that there is no merit and substance in the submissions of the learned counsel for the appellant-plaintiff.

The trial Court, on the basis of the pleadings of the parties, particularly when the appellant-plaintiff had challenged the Will in affirmative, framed the following issues-

“1. Whether the adoption deed dated 25.02.1987 and Will dated 09.02.1984 along with the subsequent revenue record entered on the basis of aforesaid Will dated 09.02.1984 are illegal, null and void on the grounds as averred in the plaint?

OPP

2. Whether the plaintiff is owner in possession of 1/3rd share of the suit property? OPP

3. Whether the plaintiff is entitled to decree for permanent injunction as prayed for? OPD

4. Whether the suit of the plaintiff is not maintainable in the

present form? OPD

5. *Whether the plaintiff has not come before the court with clean hands? OPD*

6. *Relief.”*

The onus to prove issue No.1 was on the appellant-plaintiff. It was incumbent upon the plaintiff to move an application for issuance of directions to the respondent-defendants to prove the original Will. Since this exercise had not been done and the original Will had not been proved, the Courts, thus, rightly drew an adverse inference as the appellant-plaintiff has not discharged the onus by leading cogent evidence. It is established that the burden of proof heavily relied upon the appellant-plaintiff to prove the documents to be sham. Similar analogy would also apply to the instant case, therefore, the argument of Mr.Bakshi is not able to cut the ice with regard to the non-production of the original Will.

As regards the adoption deed, Section 16 of the Hindu Adoptions and Maintenance Act, 1956 emphasis an obligation upon the Courts to draw an inference with regard to the registration of a document and it has been interpreted by various Courts that the ceremonies are not required to be established. 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.”

On the other hand, both the attesting witnesses of the adoption deed, namely, Partap Singh and Jagphool, DW-3 and DW-4 respectively

stated that the adoption deed was executed by Inder Singh @ Rajender. DW-5 Umesh Kumar Sharma, Deed Writer, who had scribed the adoption deed, stated that the adoption deed Ex.D1 was scribed by him at the instance of Inder Singh @ Rajender and the natural parents of the adopted son and after scribing the same, the contents were read over and explained to them. All the ingredients vis-a-vis registration of the adoption deed have been proved. The appellant-plaintiff has failed to prove the ingredients of Order 6 Rule 4 CPC with regard to the fraud and forgery and, therefore, the Courts below did not have any option but to dismiss the suit.

Vis-a-vis the non-advertence to the voter list, ration card and school record, i.e., Ex.P15 to Ex.P19, the Lower Appellate Court examined the said documents and held that all the documents were prior to the adoption deed. The findings aforementioned of the Courts below do not enable me to ascribe a different view than the one arrived at.

For the reasons stated above, no ground for interference in the concurrent findings of the Courts below is made out as no substantial question of law arises for determination by this Court.

Resultantly, the appeal stands dismissed.

January 12, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No