

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

RSA No. 4734 of 2016 (O&M)

Date of Order: 30.07.2018

Baljeet and others

..Appellants

Versus

Thakur Singh (deceased) through LRs and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. O.P.Goyal, Senior Advocate, with
Ms. Deepshikha, Advocate and
Mr. Naveen Sharma, Advocate,
for the appellants.

Mr. Akshay Jindal, Advocate,
for the respondents.

ANIL KSHETARPAL, J.

Defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court.

Plaintiff filed a suit for declaration with a consequential relief of possession and permanent injunction.

The dispute in the present case revolves around the fact that whether late Sh. Rampat, predecessor-in-interest of the defendants had been adopted by late Sh. Kishan Sahay or not? In fact Kurda was having two sons, one Thakar Singh, plaintiff-respondent and other late Sh. Rampat, predecessor-in-interest of the defendants-appellants. It is the case of Thakar Singh that late Sh. Rampat, predecessor-in-interest was adopted by Kishan Sahay and he inherited the property of Kishan Sahay as is proved from mutation No.2015 and Rapat No.326, Ex.P26 on the file.

On the other hand, case of the defendants-appellants is that no adoption took place and the property from Kurda was rightly mutated in

favour of Rampat and Thakar Singh, two sons.

Learned trial court dismissed the suit while giving two reasons:-

- (i) Time, place, year and ceremonies of adoption have not been proved;
- (ii) Plaintiff has not stepped into the witness box in support of his case.

However, first appellate court after re-appreciating the evidence available on the file, has held that the adoption of late Sh. Rampat by Kishan Sahay is proved as property of Kishan Sahay was mutated in favour of Rampat depicting him to be adopted son of Kishan Sahay. It has been found that since late Sh. Rampat was adopted, hence he was not a member of the family of Kurda whose property is in dispute now.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below and the record.

Learned counsel for the appellants has submitted that the alleged adoption of Rampat has not been proved.

It may be noted here that Rampat or his legal heirs do not dispute the fact that vide mutation No.2015, Rampat had received property from Kishan Sahay. There is an order available on the file by the then Collector, dated 18.06.1929, wherein it has been noticed that Kishan Sahay has appeared before the competent authority in the presence of respectables including lambardar and stated before the authority that Rampat is his adopted son and as such property be transferred in his name. It has also come on record that rapat roznamcha was entered and the mutation of the property was sanctioned in favour of late Sh. Rampat. In such

circumstances, the ceremonies of adoption or the time, date of adoption strictly was not required to be proved once it is proved on file that pursuant to the adoption Rampat had received property from late Sh. Kishan Sahay.

Learned senior counsel for the appellants has further submitted that in the present case, plaintiff has not appeared in evidence and, therefore, trial court rightly draw adverse inference against the plaintiff.

This court has considered the submission, however, find no substance therein.

The present suit is entirely based upon documentary evidence and most important document is mutation no.2015 sanctioned in the year 1929. This court has already examined the issue of drawing adverse inference and have laid down various checks/tests which the court must apply before drawing adverse inference for non appearance of the party. Reference in this regard can be made to a judgment passed in Regular Second Appeal No.2306 of 2008, decided on 24.04.2018 titled **Navneet Kaur v. St. Soldier Properties and Industrial Ltd. and another.**

In view thereof, this court does not find any substance even in the second argument of learned counsel for the appellants.

Learned counsel for the appellants further submitted that there was a suit for partition filed by Babu Lal wherein Thakar Singh was arrayed as defendant no.6. Therefore, Thakar Singh would be deemed to be in the knowledge of the mutation of inheritance of Kurda.

This court does not find any substance even in this argument of learned counsel. The suit was for partition of the property. Suit for declaration is based upon cause of action which arises in favour of the plaintiff. In the present case, plaintiff has asserted that the cause of action

accrued in his favour in March, 2011 when the defendants started demanding their share.

Last argument of learned senior counsel for the appellants is that the suit filed by the plaintiff is barred by limitation.

It may be noted that the present suit has been filed on the basis of inheritance. Change in the revenue record by way of mutation does not give rise to a cause of action to file a suit. Plaintiff cannot be expected to file a suit merely because the mutation has been sanctioned. The plaintiff has filed a suit when cause of action accrued in his favour. It is the case of the plaintiff that he is owner in possession of the property. The relief of possession was only sought in alternative if the defendants enter into possession during the pendency of the suit. Hence, the suit filed by the plaintiff cannot be dismissed on the ground that it is barred by limitation. It has also come in evidence that late Sh. Kishan Sahay had got married late Sh. Rampat. It has also come on the record that Rampat was adopted 15-16 years prior to the sanctioning of mutation in the year 1929, meaning thereby he was adopted somewhere in the years 1913-1914. In such circumstances, it is not possible to get direct evidence of adoption in the present case, documents which have been filed prove the aforesaid fact.

In view of what has been recorded hereinabove, this court does not find any good ground to interfere with the findings of fact arrived at by the first appellate court.

The regular second appeal is dismissed.

July 30, 2018
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No