

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:18.7.2018

RSA No. 1214 of 2014(O&M)

Ranjit Singh and others

---Appellants

vs.

Kapoor Singh and others

---Respondents

RSA No. 1215 of 2014(O&M)

Ranjit Singh and others

---Appellants

vs.

Kapoor Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. J.S.Bhinder, Advocate
for the appellants

Mr. Rakesh Gupta, Advocate
for the respondents.

Rekha Mittal, J.

This order will dispose of RSA No. 1214 and 1215 of 2014 as identical questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from RSA No. 1214 of 2014.

The present litigation pertains to inheritance to land measuring 26 kanal 19 marlas left behind by Sant Singh son of Piara Singh. The appellants-plaintiffs claimed ownership of the suit land on the basis of natural succession being the successors-in-interest of Kehar Singh son of

Kishan Singh, brother of deceased Sant Singh who did not have natural born child. On the other hand, respondent/defendant No. 1 has claimed himself to be owner of the suit land being adopted son of Sant Singh as well as on the basis of testamentary succession on the premise that the deceased executed registered Will dated 20.7.1993 in his favour.

There is no dispute between the parties that the appellants are the successors-in-interest of Kishan Singh, brother of deceased Sant Singh and entitled to inheritance to Sant Singh on the basis of natural succession in case plea of defendant No. 1 with regard to adoption and testamentary succession is negated. It is also not disputed that Kapoor Singh, defendant No. 1 is the son of brother-in-law (sala) of Sant Singh. The courts have consistently held that Kapoor Singh is the adopted son of Sant Singh and he is entitled to succeed to the suit property being adopted son of Sant Singh as well on the basis of Will dated 20.7.1993.

The plea of respondent/defendant No. 1 is that he was adopted by Sant Singh and Lachhman Kaur before partition of the country in 1947 when his natural and adoptive parents were living in Pakistan and he was only two years old at that time. After partition of the country, he shifted to India along with his adoptive parents and started residing with them in village Jalalameeran Tehsil Nissing, District Karnal(Haryana). His natural parents Bhagat Singh and his wife shifted from Pakistan and settled in Nissing, District Karnal.

Counsel for the appellants has assailed factual findings recorded by the courts qua adoption of Kapoor Singh by referring to documents Ex. PW2/A to PW2/F pertaining to grant of old age pension by

the Department of Social Justice and Empowerment, Haryana wherein father's name of Kapoor Singh has been recorded as Bhagat Singh. He has also referred to document Ex. PW3/C whereby in the records of Shahpur Primary Agricultural Co-operative Society Limited qua account in the name of Kapoor Singh, his father's name has been mentioned as Bhagat Singh. Counsel would further argue that statement of Sucha Singh DW2 is not sufficient to prove the Will propounded by Kapoor Singh in compliance with the provisions of Section 68 of the Indian Evidence Act as he has not specifically stated that he identifies thumb impression of Bhagat Singh and signatures of the second attesting witness namely Bhim Singh Lambardar.

Another submission made by counsel is that Kapoor Singh in the written statement has not disclosed that Sant Singh suffered a decree dated 28.2.1986 in his favour but since the appellants learnt about the judgment and decree marked as Ex. D4, they filed an application for amendment of the plaint in order to challenge the judgment and decree dated 28.2.1986 but the application was wrongly dismissed by the trial court. It is argued that the judgment and decree dated 28.2.1986 produced by the respondent is the result of fraud, therefore, respondent No. 1 cannot derive any advantage thereof to contend that he is the adopted son of Sant Singh and for that reason Sant Singh suffered decree dated 28.2.1986 in respect of land measuring 25 kanal 10 marlas, situated at village Jalalameeran, Tehsil and District Karnal.

Counsel representing respondent/defendant No. 1 has supported concurrent findings recorded by the courts accepting plea of the respondent that he is the adopted son of Sant Singh and is entitled to inherit to Sant

Singh on the basis of natural as well as testamentary succession. It is argued with vehemence that it is not open in the second appeal to re-appreciate the evidence to record a finding different from what has been held by the courts. According to counsel, the courts on appreciation of entire materials on record including the documents, referred to by counsel for the appellants, on the basis of balance of probabilities has concluded that Kapoor Singh has successfully proved himself to be adopted son of Sant Singh and is entitled to the land in question being adopted son of the deceased as well as on the basis of Will proved, in accordance with law by Sucha Singh DW2, an attesting witness to the Will. Counsel would urge that Ranjit Singh appellant in his cross examination has not specifically denied that Sant Singh left behind Registered Will dated 20.7.1993. The Will Ex. D2 also records the factum of Kapoor Singh being adopted son of Sant Singh and the said statement of fact has evidentiary value in the light of Section 32(6) of the Indian Evidence Act. In the judgment and decree dated 28.2.1986, in the head note, defendant No. 1 had given his father's name as Bhagat Singh with adopted son of Sant Singh and the said judgment and decree was passed on the basis of statement of Sant Singh recorded by Sh. Anil Kumar Singh Panwar, Sub Judge 2nd Class, Karnal on 28.2.1986, certified copy whereof is Ex. D4.

To counter plea of the appellants with regard to rejection of their application for amendment of plaint to challenge the judgment and decree dated 28.2.1986, it is urged that Sant Singh passed away in the year 2002 and since he did not challenge the judgment and decree of 1986 and rather executed the Will dated 20.7.1993, the appellants have rightly been

non-suited in their effort to amend the plaint by introducing a time barred claim qua challenge to the judgment and decree passed in February 1986, more than 20 years since it came into existence.

I have heard counsel for the parties, perused the paper book and original records of the trial court.

As has been rightly argued by counsel for the defendant/respondent No. 1, consistent factual findings recorded by the courts do not warrant interference merely because a different view is possible viz-a-viz one taken by the courts. Equally settled is that concurrent findings recorded by the courts can be intervened in case the same suffer from perversity or raise a question of law that requires determination in regular second appeal.

In the instant case, both the parties adduced evidence in support of their respective contentions. On a detailed consideration of the materials on record, the courts accepted plea of the respondent/defendant No. 1 that he is the adopted son of Sant Singh and the deceased left behind registered Will dated 20.7.1993 in favour of the defendant wherein the factum of Kapoor Singh being adopted son of Sant Singh has also been clearly and unequivocally recorded. In this view of the matter, the appellants cannot seek intervention merely by referring to certain documents wherein father's name of Kapoor Singh has been mentioned as Bhagat Singh

The respondent/defendant examined Sucha Singh DW2, one of the attesting witnesses of the Will. He tendered into evidence his duly sworn affidavit by way of examination in chief. Perusal of affidavit tendered by Sucha Singh would leave no manner of doubt that his testimony

in examination in chief is sufficient to comply with the requirements of Section 68 of the Indian Evidence Act to prove the Will by one of the attesting witnesses thereof. The statement of Sucha Singh also makes a mention of Sant Singh having suffered a decree in favour of Kapoor Singh, his adopted son in the year 1986 in respect of land measuring 25 kanal 10 marlas. Sucha Singh was subject to cross examination at length. Counsel for the appellants has not pointed out any facts elicited in his cross examination to discredit him or shatter evidential value of his testimony. There is no such fact brought on record that Sucha Singh is not an independent witness or he is favourably inclined towards defendant to support his claim.

A conjoint reading of examination-in-chief and cross examination of Sucha Singh does not give even an inkling that his testimony is not worthy of reliance or is not otherwise sufficient to prove the Will in question. The appellants have failed to point out any suspicious circumstance shrouding the Will. In this view of the matter, I find merit in contention of the respondent/defendant No. 1 that findings recorded by the courts rejecting claim of the appellants on the basis of natural succession and accepting plea of the defendant that he is the adopted son of Sant Singh and is also entitled to succession on the basis of Will are liable to be affirmed.

To be fair to the appellants, one of the contentions raised by their counsel is that Kapoor Singh was the only son of his natural parents, therefore, there was less possibility of his being given in adoption by his natural parents to Sant Singh. As per plea of defendant No. 1, he was given

in adoption before partition of the country when natural parents and adoptive parents were residing in Pakistan. At that time, the Hindu Adoption and Maintenance Act had not come into existence which came into force in the year 1956. The litigation was initiated by the appellants in the year 2004. Though natural father of Kapoor Singh was alive but he was not examined but at the same time since Kapoor Singh was barely two years old at the time of his adoption, possibility cannot be ruled out that parents gave the child in adoption with a hope that they will give birth to another child. Sant Singh is the Jija (sister's husband) of Bhagat Singh. There is nothing unnatural and abnormal for Bhagat Singh to have given his child in adoption to his sister. Even otherwise, once Sant Singh has admitted factum of adoption in the court proceedings of Civil Suit No. 126/1986, long before his death as well as by way of Will executed in the year 1993, any such contention raised by counsel for the appellants is of no avail.

So far as the application filed by the appellants to amend the plaint to challenge the judgment and decree dated 28.2.1986, the appellants are claiming rights in the suit property through Sant Singh. Sant Singh remained alive till 11.3.2002 i.e. for a period of more than 15 years after the judgment and decree were passed in 1986. The fact that Sant Singh did not challenge the judgment and decree during his life time and in addition executed the Will in favour of the respondent in the year 1993, the appellants have rightly been disallowed to introduce a time barred claim to challenge the judgment and decree of 1986 by filing an application for amendment of the plaint in a suit that was instituted in December 2004. In

this view of the matter, plea raised by the appellants to challenge the order rejecting their application for amendment of plaint or to deny the benefit of previous litigation qua respondent being adopted son of Sant Singh, is misconceived and accordingly rejected.

No other point has been raised.

For the foregoing reasons, the appeals fail and are accordingly dismissed with costs.

(Rekha Mittal)
Judge

18.7.2018
paramjit

Whether speaking/reasoned: Yes
Whether reportable : Yes/No