

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

RSA No.5843 of 2016 (O&M)

Date of decision:19.11.2018

Harmit Singh

... Appellant

Vs.

Malagar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kamaldeep Singh Sidhu, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff has not been successful in seeking declaration to be owner in possession of the land described in the plaint alongwith consequential relief of permanent injunction on the premise that vide registered adoption deed dated 15.04.1996, appellant-plaintiff was adopted by defendant no.1-Malagar Singh. Malagar Singh and Sarwan Singh sons of Sucha Singh, are the real brothers. Sarwan Singh-defendant no.2 being the natural father gave him to defendant no.1 in adoption. After 7 years of adoption, Malagar Singh could not deal with the property as it was joint Hindu Family Property, therefore, vesting the right by birth sought injunction qua alienation.

The defendants opposed the suit and denied the nature and character of the property to be ancestral. The plaintiff in order to establish the fact that adoption was in lieu of the agreement that Malagar Singh will

transfer ½ share of his property in his favour but the Courts below have mis-interpreted and misread the aforementioned agreement dated 06.06.2003 (Ex.P2).

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, relief as claimed in the suit, as noticed above was not maintainable, remedy lied elsewhere. It should have been the case of specific performance as the agreement to sell, Ex.P2 was entered into between the plaintiff and defendant no.1/adopted father. The plaintiff has miserably failed to prove on record that property at the hands of defendant no.1 was ancestral.

The appeal is also accompanied by an application seeking condonation of delay of 75 days in filing the appeal. No reasonable explanation is forth coming in condoning the delay.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed on limitation as well as on merits.

(AMIT RAWAL)
JUDGE

November 19, 2018

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Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No