

RSA No. 5360 of 2015 (O&M)
RSA No. 4657 of 2016 (O&M)

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

RSA No. 5360 of 2015 (O&M)
Date of decision: 16.5.2018

Malho

... Appellant

Versus

Kanwal @ Kamal (since deceased) through LRs and another

... Respondents

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RSA No. 4657 of 2016 (O&M)

Malho

... Appellant

Versus

Kanwal @ Kamal (since deceased) through LRs and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ram Bilas Gupta, Advocate
for the appellant.

Mr. Adarsh Jain, Advocate
for the caveator-respondent.

ARUN PALLI, J. (Oral)

Vide this order and judgment, I shall decide RSA Nos. 5360 of 2015 and 4657 of 2016, as both these appeals arise out of the same suit, and the questions involved for determination are common.

The suit filed by the appellant-plaintiff was partly decreed by the trial court, vide judgment and decree dated 2.8.2013. Being aggrieved, both the parties filed their respective appeals against the said decree. But,

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the appellate court, vide judgment dated 21.4.2015, allowed the appeal preferred by respondent No.1, and set aside the decree rendered by the trial court. Thus, as a natural consequence, appeal filed by the appellant-plaintiff was dismissed. That is how, the appellant-plaintiff is in Regular Second Appeals before this Court. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In a suit filed by the plaintiff, she prayed for a declaration that she was the only heir of Niadar and Smt. Singar Kaur, and, was thus, owner in possession of the suit land. The revenue entries, and mutations showing defendant No.1 to be the owner as also in possession of the suit property were illegal and not binding upon the rights of the plaintiff. Likewise, relinquishment deed No. 1824 dated 25.6.2001, alleged to have been executed by the plaintiff in favour of defendant No.1, was null and void, and ineffective qua the rights of the plaintiff. In brief, the case set out by the plaintiff was that Niadar, the father of the plaintiff, was owner of the suit property, who died in the year 1984-85, and as a result, the plaintiff and her mother (Singar Kaur) inherited his estate. However, defendant No.1-Kanwal @ Kamal, son of Munshi, got entered his name in the mutation that was entered upon the death of Niadar. Subsequently, Singar Kaur, mother of the plaintiff, also died in the year 2002, and the plaintiff being her only heir, succeeded even to her share in the suit land. But, again the defendant, in collusion with the revenue agency, got a mutation No. 9330 sanctioned, showing him to be the son of Niadar. Further, in the year 2001, the defendant called the plaintiff for the purpose of sanctioning of mutation qua the suit property in her favour, and brought her to Tehsil premises, Ballabgarh, on

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25.6.2001, and got her thumb impressions on certain papers, which subsequently, the plaintiff came to know were used by the defendant for fabricating some relinquishment deed.

In the written statement filed on behalf of the defendants, it was pleaded that although Niadar died in the year 1984-85, but his estate was inherited not only by the plaintiff and Singar Kaur, but also by defendant No.1, for Niadar, during his lifetime, had adopted defendant No.1-Kanwal @ Kamal as his son. Therefore, even post death of Singar Kaur, defendant No.1 also inherited her estate to the extent of his share. And, the plaintiff herself had executed the relinquishment deed in respect of her share in the suit land in favour of defendant No.1 with her free consent.

The trial court, vide judgment and decree dated 2.8.2013, partly decreed the suit, as it was held that in terms of Section 10 (iv) of the Hindu Adoption and Maintenance Act, 1956, a person who has not completed the age of 15 years, unless there is a custom or usage applicable to the parties, which permits persons who have completed the age of 15 years being taken in adoption, may be taken in adoption. But, as in the matter at hands, age of defendant No.1 was above 15 years on the date of execution of the adoption deed, dated 26.5.1959, there, indeed, was no valid adoption. However, the plaintiff failed to prove that relinquishment deed, dated 25.6.2001, was illegal, null and void, or was a result of any misrepresentation or fraud. That is how, as indicated above, both the parties filed appeals against the decree rendered by the trial court.

On a consideration of the matter in issue and the evidence on record, the first appellate court reached a conclusion that burden of proof to

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show that relinquishment deeds No. 1824, dated 25.6.2001 (Ex.P9) and 1882, dated 25.6.2001 (Ex. P-8), were a result of misrepresentation or concealment of facts was upon the plaintiff. However, no evidence was led by the plaintiff to substantiate the said plea. Rather, the defendants examined Sh. O.P. Bhati, Advocate,(DW7), who testified in his deposition that these documents were scribed by him, upon instructions from the plaintiff. Further, after he scribed the documents, contents thereof were duly read over and explained to the plaintiff, whereupon, she affixed her thumb marks on the document (Ex. P9). Concededly, the relinquishment deed was duly registered, and, therefore, carried a presumption as regards its due execution. Nothing was brought on record by the plaintiff to rebut the said presumption. Therefore, the findings recorded by the trial court in this regard could not be interfered with.

As regards the issue of adoption of defendant No.1, it was observed that concededly, Niadar had died on 25.1.1984 and upon his death, mutation No. 5300 dated 22.11.1985 (Ex.P4), as regards his inheritance, was sanctioned in favour of Singar Kaur, being his widow, plaintiff (Malho) and defendant No.1 (Kanwal @ Kamal). Further, the document (Ex.P4) also revealed that name of defendant No.1 was entered on the basis of an adoption deed. Likewise, after even Singar Kaur passed away in the year 2000, mutation No.9330 of 2002 (Ex.P5) was sanctioned in favour of plaintiff and defendant No.1. In the document (Ex.P5), defendant No.1 was clearly shown as a collateral of the plaintiff in the pedigree table. Both these documents and the positions reflected therein were never questioned by the plaintiff till filing of the suit in the year 2009. Besides this, in the copy of

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sale deed, dated 11.6.1959 (Ex.D1), name of defendant No.1 was mentioned as son of Niadar. Even in the certified copy of the mutation No. 95 dated 24.11.1959 (Ex.D2), defendant No.1 was shown as an adopted son of Niadar. So was the position reflected in the lease deed dated 9.1.1967 (Ex.D3), as also in the copy of mutation No. 2839, dated 18.10.1967 (Ex.D4). Not just that, Tek Chand (DW1), testified in his deposition that ceremonies of adoption were carried out in the year 1954. Likewise, Bhulle (DW-2), deposed that defendant No.1 was taken in adoption by Niadar and Singar Kaur in the year 1954 in the presence of respectable of the society. And, when the natural father of defendant No.1, i.e. Munshi, died, his property was not inherited by him. Shiv Narain (DW5) also corroborated the claim of defendant No.1 in his deposition. The issue: whether defendant No.1 was above 15 years of age, and, therefore, the alleged adoption was invalid: the document on the basis whereof the trial court had held the adoption to be invalid, was inadmissible in evidence for it was never proved, in terms of the Indian Evidence Act, and exhibited on record. Just a photocopy thereof was produced. And even otherwise, the contents thereof did not show that defendant No.1 was taken in adoption in the year 1959. Rather, it reveals that adoption had already taken place and Niadar had done rearing and bearing of defendant No.1 by birth. It appeared that as no formal document was executed at the time of adoption, the adoption deed dated 26.5.1959 was recorded to acknowledge the rights of defendant No.1, as an adopted son of Niadar. Thus, it was concluded that the fact that defendant No.1 was taken in adoption in the year 1954 was duly substantiated on record. Further, as per document (Ex.P20), the date of birth of defendant

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No.1 was 4.10.1941, therefore, adoption of defendant No.1 could not be termed as invalid. Thus, the only and the inevitable conclusion that could be reached: the suit filed by the plaintiff was devoid of merit and, was thus, liable to be dismissed. On being pointedly asked, learned counsel for the appellant could not show as to how, the findings recorded by both the courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration. The appeals being devoid of merit, are accordingly dismissed.

16.5.2018
AK Sharma

(ARUN PALLI)
JUDGE

Whether speaking / reasoned:	YES
Whether Reportable:	NO