

In the High Court of Punjab and Haryana at Chandigarh

RSA-281 of 2018(O&M)

Date of Decision:2.4.2018

Munish Kumar

---Appellant

vs.

Krishna Devi

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Kulbir Singh Sekhon, Advocate
for the appellant

Rekha Mittal, J.

The present appeal directs challenge against judgment and decree dated 16.10.2017 passed by the Additional District Judge, Bathinda whereby appeal preferred against judgment and decree dated 27.7.2016 passed by the trial court was accepted and suit filed by the respondent/plaintiff for declaration and permanent injunction was decreed to the effect that Munish Kumar has failed to establish that he is an adopted son of Krishna Devi and Amrit Pal and as such mutation of inheritance of Amrit Pal sanctioned by A.C.Ist Grade, Maur vide order dated 11.3.2014 is liable to be declared as illegal, null and void and not binding upon rights of the plaintiff. It was further held that Krishna Devi is the sole legal representative of deceased Amrit Pal and entitled to inherit his property by way of natural succession. The appellant/defendant was restrained from alienating and dispossessing the respondent-plaintiff from land, detailed in head note of the plaint.

The sole submission made by counsel for the appellant is that with regard to adoption of Munish Kumar by Amrit Pal and Krishna Devi, writing by

way of *Bahi* entry Ex. D2 was prepared and the same has been proved, in accordance with law. It is further argued that the trial court rightly relied upon document Ex. D2 and oral evidence led by the appellant to record its conclusion that Munish Kumar was adopted by Amrit Pal and Krishna Devi, therefore, entitled to succeed to the estate of Amrit Pal being one of the class-I heirs of said Amrit Pal.

The Court in appeal, in para 11 of the judgment, has dealt in detail legal value of Ex. D2 and held that the same is not at all sufficient to prove that Munish Kumar was adopted by Amrit Pal when otherwise the said document does not bear signatures of Krishna Devi wife of Amrit Pal whose consent was necessary for taking a child in adoption by Amrit Pal in the light of relevant provisions of the Hindu Adoption and Maintenance Act, 1956. It has further been held that witnesses examined by the appellant/defendant failed to establish any ceremonies of actual giving and taking of the child in adoption by natural parents and adoptive parents.

Counsel for the appellant has failed to point out any materials on record sufficient to establish that any such ceremonies of giving and taking of the child in adoption had actually taken place. It is also undisputed position of the case that Munish Kumar was the only son of his parents as his other brother was given in adoption to a third party. The court has taken a view and rightly so that it is difficult to accept that natural parents would have given their only son in adoption to Krishna Devi and Amrit Pal even though, there is no legal bar.

To be fair to the appellant, counsel has referred to judgment of the Andhra Pradesh High Court **Reddy Subbarao and others vs. Nunne Venkataramanna and others 2007 (32) RCR (Civil) 281**. However, he has not made any submissions as to how the referred authority is relevant in the present context. As a matter of fact, appellant has failed to raise a question of law for determination after notice to the contesting party.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

2.4.2018

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Whether speaking/reasoned: Yes

Whether reportable : Yes/No