

RSA-3426-2017 (O&M)

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

**RSA-3426-2017 (O&M)
Date of decision : 04.12.2018**

Mahabir

... Appellant

Versus

Ramautar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manish Mehta, Advocate
for the appellant.

AMIT RAWAL, J.

CM-8241-C-2017

For the reasons stated in the application, the delay of 12 days in
refiling the appeal is condoned.

CM stands disposed of.

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The appellant-plaintiff has not been successful in seeking
declaration and prohibitory injunction in respect of land measuring 75
kanals 5 marlas.

It was alleged that defendant Nos.1 to 7 are the predecessors-
in-interest of Jai Narain as Jai Narain was adopted son of Sardara and had
no relation with his late natural father Umda. The plaintiffs asserted the
claim regarding estate of Umda, their grand father, who had four sons, Duli
Chand, Jai Narain, Banwari and Ganga Ram. It was further alleged that Jai
Narain, vide adoption deed of 1946, was adopted by Sardara Singh, thus, he

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had severed relation with his natural/biological parents as well as siblings. On demise of Umda, mutation could not have been entered in favour of all four sons, but only in favour of Dhuli Chand, Banwari and Ganga Ram, for, Jai Narain was actually adopted in the year 1946, but the adoption deed was executed in 1955.

The defendants opposed the suit by denying the adoption of 1946.

Learned counsel for the appellant-plaintiff submitted that as per contents of the adoption deed coupled with testimonies of the witnesses, it has been proved on record that Jai Narain was living with Sardara Singh for the last ten years. In fact, he had already severed relation with biological parents and therefore, could not stake the claim in the estate of his grand father (Umda). Mutation should have been confined to 1/3rd share instead of 1/4th.

I am afraid the aforementioned argument is not sustainable for the reasons, which are not one, but many :-

1. The witnesses of the adoption deed have not been examined.
2. No school record of Jai Narain establishing the mess and stay with Sardara 10 years' prior to 1955 has been brought on record.
3. The attesting witnesses of the adoption deed have not been examined for the reasons best known to it.

In such circumstances, the plaintiff could not stake the claim and seek the declaration that Jai Narain had no link or inherited his share from his grand father (Umda). The plaintiff miserably failed to discharge the onus.

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In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

04.12.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**