

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

**RSA-4783-2017 (O&M)
Date of Decision:16.10.2018**

Sarla

... Appellant

Versus

Sri Bhagwan & others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. C.B. Kaushik, Advocate for the appellant.

...

TEJINDER SINGH DHINDSA, J. (ORAL).

CM-12739-C-2017:

Prayer in the application is for condonation of 21 days delay in filing the accompanying appeal.

In view of the reasons stated in the application which is duly supported by an affidavit of the appellant herself, prayer is allowed.

Delay of 21 days in filing the appeal is condoned.

Disposed of.

Main case:

Defendant/appellant is in second appeal before this Court.

Brief facts of the case are that the plaintiff-Sri Bhagwan filed a suit seeking a declaration that he is the descendent of Nand Ram and is owner to the extent of 1/2 share of the suit property and as described in para 1 of the plaint. It was averred that Nand Ram had two sons, namely, Richhpal @ Ram Richhpal and Mansa. Richhpal @ Ram Richhpal was adopted by Smt. Sukhma widow of Tota Ram in the year 1897. Smt.

Sukhma executed a gift deed in respect of her estate in favour of Richhpal @ Ram Richhpal on 01.06.1897. Richhpal @ Ram Richhpal was brought up and married in his adoptive family. He had two wives, namely, Smt. Bhani and Smt. Sarti. Brij Kishore was born out of the wedlock of Richhpal @ Ram Richhpal and Smt. Bhani but he expired issueless. Har Kishore was born out of the wedlock with Smt. Sarti who in turn had two sons, namely, Shyam Sunder and Prem Sunder. Both the sons had already died. In the revenue records, Shyam Sunder and Prem Sunder have been reflected to be the co-owners in the suit property. Plaintiff alleged that such revenue entries are illegal, void and not binding on his rights as the predecessor-in-interest Richhpal @ Ram Richhpal had severed his relation with the original parents. After adoption of Richhpal @ Ram Richhpal, the suit property was succeeded by Mansa only. After the death of Mansa, suit property had been inherited by Dharam Singh and the plaintiff had got the suit property from Dharam Singh on the basis of a registered Will No.676 dated 15.10.2007. It was asserted that the plaintiff came to know about the wrong revenue entries when a part of the suit property was acquired by the Central Government through DRO-cum-Collector, Rohtak. Accordingly, decree for declaration was sought with regard to the suit property being owned by him to the extent of 1/2 share and the revenue records to be rectified accordingly.

Suit was contested by the defendants taking a stand that the plaintiff is not the owner in possession of the suit property to the extent of 1/2 share and rather he would be owner in possession to the extent of 1/4 share. It was admitted that Nand Ram had two sons, namely, Mansa and Richhpal @ Ram Richhpal but Ram Richhpal had never been adopted by

Smt. Sukhma. It was further stated that the revenue records/entries are legally valid and as such the suit is without merit.

Vide judgment and decree dated 28.10.2015, the trial Court decreed the suit and held the plaintiff to be owner of 1/2 share of the suit property. The revenue entries standing in the name of the predecessor-in-interest of the defendants were declared illegal and invalid. Plaintiff was granted liberty to apply to the Revenue Authorities for getting the necessary correction. Judgment and decree of the trial Court stands affirmed in terms of judgment dated 16.08.2016 passed by the learned Additional District Judge, Rohtak.

It is against such backdrop that Smt. Sarla, defendant is in second appeal before this Court.

Mr. C.B. Kaushik, learned counsel representing the appellant has raised a solitary submission that the burden of proof was upon the plaintiff/respondent to have proved the adoption of Richhpal @ Ram Richhpal by Smt. Sukhma but in this regard not even an iota of evidence had been led and as such the impugned judgments cannot sustain.

Having heard counsel for the appellant at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant appeal and the same deserves to be dismissed.

It is a case where the plaintiff/respondent had claimed that Richhpal @ Ram Richhpal had been adopted by Smt. Sukhma in the year 1897. Clearly, there was no question of any witness coming forth or being available to prove such adoption. Accordingly, the Courts had to decide the lis on the basis of documentary evidence. A concurrent finding of fact in

favour of the adoption has been returned on the strength of copy of mutation No.753 Ex.P2 which revealed that the estate of Smt. Sukhma widow of Tota Ram was mutated in favour of Richhpal @ Ram Richhpal as per registered gift deed dated 01.06.1897. In the remarks column of 'Parat Patwar', it has been recited that Smt. Sukhma widow of Tota Ram had made a statement that she had adopted Richhpal @ Ram Richhpal and gifted her estate in his favour. Thereafter, even mutation had been entered. Smt. Sukhma had even made a statement before A.C. 2nd Grade disclosing that she had adopted Richhpal @ Ram Richhpal. The Courts have even taken notice of Form No.36 i.e. the pedigree table, Ex.P4 which revealed that Richhpal @ Ram Richhpal is the adopted son of Tota Ram. Even copy of jamabandi for the year 1909-10, Ex.P10 revealed Richhpal @ Ram Richhpal to be the adopted son of Smt. Sukhma.

The findings recorded by the Court with regard to Richhpal @ Ram Richhpal being adopted son of Smt. Sukhma is based on due appreciation of evidence.

There is no infirmity in the impugned judgments.

Appeal dismissed.

16.10.2018

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| 1. | Whether speaking/reasoned | : | Yes/No |
| 2. | Whether reportable | : | Yes/No |