

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.6049 of 2017 (O&M)

Date of Decision: May 22, 2018

Mange Ram & others

...Appellants

Versus

Parkash & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Virendra Rana, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

CM No.15851-C of 2017

For the reasons mentioned in the application, which is supported by an affidavit, delay of 46 days in filing the appeal is condoned.

CM stands disposed of.

RSA No.6049 of 2017

Appellant-plaintiffs are aggrieved of the concurrent findings, whereby the suit for declaration claiming ownership of the suit property as per Will dated 13.7.1977 registered on 14.7.1977 and correction of the revenue record and challenge laid to the adoption deed dated 26.5.1995 in favour of defendant No.1, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Appellant-plaintiffs instituted the suit on the premise that the suit property was owned and possessed by Tohfa Devi widow of Khem Singh @ Khem Chand, died issueless on 12.2.2014. Plaintiff Nos.1 to 3 were the real brothers and plaintiff No.5 being nephew, whereas defendant No.1 was the adopted son, who was arrayed as defendant No.1 for claiming

to be adopted son of Tohfa Devi. She, during her life time, executed the Will aforementioned, which was read over and explained to her and accordingly was registered with the concerned Registrar. By virtue of the Will, Tohfa Devi bequeathed both immovable and immovable properties in her ownership, but defendant No.1 got the mutation on the basis of the natural succession, i.e., mutation No.3001 dated 9.6.2004 claiming himself to be adopted son, but when he did not accede to the request for rectification, thus, suit aforementioned was filed.

The defendants contested the suit on the premise that defendant No.1 was the adopted son of Tohfa Devi through a registered adoption deed dated 26.5.1995 when he was six years old and since then he had been living with her as her son, therefore, the plaintiffs being the brothers are collateral of Tohfa Devi. The ceremonies of give and take were also performed. Even the last rites of Tohfa Devi were performed by respondent-defendant No.1. In the school record, his father's name might be got recorded as Madan Singh, but the same was without his knowledge.

Defendant Nos.2 and 3 filed separate written statement and challenged the maintainability of the suit and denied that the adoption deed was a fraudulent act. The trial Court dismissed the suit on the premise that the plaintiffs failed to prove the original Will, though secondary evidence was permitted, but yet discarded the same on the ground that there were certain suspicious circumstances. The appeal laid before the Lower Appellate Court also met with the same fate.

Mr.Virendra Rana, learned counsel appearing on behalf of the appellant-plaintiffs submitted that the judgments and decrees of the Courts below are suffering from illegality and perversity as there are contradictions

in the date of birth of respondent-defendant Parkash. The date of birth had been shown as 13.3.1975 in the birth certificate issued by the Chief Medical Officer, Bhiwani and as per that, he would have been 20 years of age and the person beyond 15 years cannot be adopted except the circumstances expressed in the proviso. Thus, the defendants failed to prove that he was adopted son. In the absence of the same, the suit property was required to devolve upon the appellant-plaintiffs being Class-II heirs, thus, the ceremonies of give and take have also not been proved and, therefore, presumption under the provisions of Hindu Adoption and Maintenance Act could not have been drawn in favour of defendant No.1. The Will has been proved through the testimony of PW-1 Rajbir Singh, PW6 Om Parkash and PW-7 Raghubir Singh. Om Parkash Deed Writer deposed that Tohfa Devi had prepared the Will in favour of the plaintiffs bequeathing the suit property in equal share and brought on record the register Ex.P1/A and, thus, urged this Court for setting-aside the findings under challenge by allowing the appeal.

I have heard the learned counsel for the appellant-plaintiffs, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel, for, there is categorical admission of the plaintiffs that at the time of execution of the Will, i.e., beneficiary of the Will, participated in its execution, which is not permissible in law. The aforementioned view of mine is derived from the ratio decidendi culled out by the Hon'ble Supreme Court in **Niranjan Umeshchandra Joshi Versus Mrudula Jyoti Rao and others, 2007 AIR SC 614.**

On the contrary, register of PW-6 Om Parkash Ex.P1/A did not decipher as to whose thumb impression was as no name was written

underneath. The adoption deed dated 26.5.1995 is a registered document, which carries presumption as per Section 16 of the Act, which reads as under:-

“16. Presumption as to registered documents relating to adoption-

Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

The appellant-plaintiffs had not been able to belie its contents and, therefore, the plea of valid adoption deed or age is neither here nor there and this is what the import of the judgment and decree of the Lower Appellate Court.

For the reasons stated above, no ground for interference is made out, much less any substantial question of law. Resultantly, the appeal is dismissed.

May 22, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No