

In the High Court of Punjab and Haryana at Chandigarh

RSA-1651-1988 (O&M)

Date of Decision: February 27, 2019

Buta Singh

... Appellant

Versus

Swaran Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Aggarwal, Advocate
for the appellant.

Mr. Gajener Singh Nanda, Advocate,
for respondents no. 3 to 7.

Amit Rawal, J. (Oral)

Present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff for possession of land measuring 57 kanals 7 marlas and declaration to the effect that plaintiff is the owner of suit land being adopted son of Santa Singh, had been dismissed by the trial Court and affirmed in appeal.

The plaintiff asserted that Santa Singh son of Fateh Singh adopted the plaintiff when he was of very tender age as per the custom of community and till his death Santa Singh treated the plaintiff as his son and plaintiff had been treated him as his father. Defendant no. 14, namely, Kartar Kaur also admitted plaintiff as adopted son of Santa Singh, while giving power of attorney to plaintiff on 26.05.1950. Santa Singh was the owner of the suit land, however, Balwant Singh in connivance with the revenue officials introduced his name in the revenue record entered and mutation was sanctioned in his name alleging himself to be adopted son of Santa Singh. Santa Singh died in the year 1942 and plaintiff remained in

possession as legal heir of deceased and did not know about the mutation got sanctioned in favour of Balwant Singh. The defendants took the possession of the suit land from the plaintiff about three years back i.e. in the year 1983 as the suit was filed in the year 1986 alleging himself to be the owner as they had purchased the land from Balwant Singh through Gurdial Singh his attorney. Balwant Singh was not the adopted son of Santa Singh.

Defendant nos. 1 to 13 filed joint written statement denying the allegations of the plaintiff and stated that plaintiff was not adopted son of Santa Singh nor he has any relationship with him. Mutation in favour of Balwant Singh was sanctioned in the presence of the plaintiff and his father and others.

Defendant nos. 14 and 15 filed a joint written statement taking numerous pleas that suit is barred by limitation and plaintiff the adopted son of Santa Singh is also denied.

Replications to both the written statements were filed by the plaintiff reiterating the averments made in the plaint.

The trial Court, on the basis of the pleadings, framed the following issues:-

- “1. Whether the plaintiff is entitled to possession of the property in dispute, as prayed for? OPP.*
- 2. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*
- 3. Whether the suit is barred by the limitation? OPD*
- 4. Whether the suit is bad for mis-joinder and non-joinder of the parties? OPD*
- 5. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD*

6. *Relief.*”

The plaintiff in support of the aforesaid evidence, examined five witnesses i.e. PW1 Khushi Ram, PW2 Mohan Lal, PW3 Smt. Gurbachan Kaur, PW4 Pritam Singh and himself as PW5, whereas defendants examined four witnesses i.e. Kartar Kaur as DW1, Gurdial Singh PW2, Swaran Singh DW3 and Charan Singh DW4.

As per the case set up, the trial Court dismissed the suit and affirmed in the appeal.

Learned counsel appearing on behalf of the appellant submitted that Kartar Kaur, mother of Balwant Singh while appointing the appellant-plaintiff as her attorney vide Ex.P1 described the appellant as adopted son of Santa Singh. The aforementioned attorney was registered in 1985. Evidence led by the appellant-plaintiff was not properly appreciated as per the provisions of Section 32 of the Indian Evidence Act. Statement of Santa Singh made to Pritam Singh about the adoption of the appellant-plaintiff was *per se* admissible. There was no deed of adoption in favour of Balwant Singh. Mutation in favour of Balwant Singh had no legal effect on the right of the plaintiff as it was sanctioned in his absence. Appellant-plaintiff had been in possession of the suit land after death of Santa Singh as evident from khasra girdawari for the year 1970-71.

Learned counsel, appearing on behalf of the respondents submitted that appellant – plaintiff failed to lead evidence under provisions of Section 50 of the Indian Evidence Act, 1872. In fact, photographs Ex.DW3/1 and DW3/2 coupled with the oral evidence established on record that Balwant Singh was adopted son of Santa Singh, his name was effected in Khasra Girdawri record for the year 1974 to 1976 (Ex.DX). Thus, the

Lower Appellate Court dismissed the appeal.

I have heard learned counsel for the respondents and perused the paper-book, records of the Courts below and of the view that following substantial question of law arise for consideration:-

“Whether the plaintiff proved himself to be adopted son of Santa Singh?

As per the memorandum of appeal, it has been alleged that Balwant Singh remained out of India for many years which is evident from Ex.DW2/1. Plaintiff has not proved to be adopted son of Santa Singh. Appeal taken before the Lower Appellate Court was also dismissed. However, during the pendency of the appeal, plaintiff submitted application for amendment of the plaint to incorporate certain more properties to be covered by the suit and separate application regarding his parentage. Though the Hindu Adoption Act was introduced in 1956 and Section 6 provides the requisites of valid adoption. Even before commencement of the aforesaid Act, the procedure for adoption as per the common law was to prove the adoption, a person who asserts adoption required to examine his natural parents and relatives. Section 50 of the Indian Evidence Act reads as under:-

“50. Opinion on relationship, when relevant – When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecution under

sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860). ”

No such evidence except oral evidence of Gurbachan Kaur has been placed on record. The testimony of the witnesses do not reveal that they were related. On the contrary, defendants have established on record that Balwant Singh was adopted son of Santa Singh. Simpliciter suit for possession cannot be filed in absence of title. Plaintiff assumes himself to be the owner particularly when the defendant had possession on the basis of sale deed. It is obligatory to claim the declaration. Gurbachan Kaur, the real sister of the plaintiff, stated in her examination-in-chief that she was only 10 years of age at the time of adoption, but no writing with regard to the adoption took place at the time of adoption. The mutation was also effected long time back but the plaintiff did not take any step for rectification before filing of the suit in the year 1986 by alleging the dispossession take place three years back. No date, year and month has come on record qua dispossession, much less, nor any complaint to the police regarding the same.

For the reasoned afore-mentioned, I do not find any illegality and perversity in the concurrent finding of fact and law rendered by the Courts below. The substantial question of law is answered in favour of the respondents and against the appellant. No ground for interference is made out. Resultantly, the second appeal is dismissed. However, liberty is granted to the appellant to revive the case in case something survives.

February 27, 2019
vkd/Pankaj*

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No