

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

RSA-3126-2013(O&M)

Date of decision:-16.5.2019

Subhash Chander and another

...Appellants

Versus

Smt.Surjit Kaur and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Amit Dhawan, Advocate
for the appellants.

Mr.Sanjay Gupta, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff –
Smt.Surjit Kaur wife of late Sh.Amru, resident of village Chandeli,
Tehsil Garhshankar, District Hoshiarpur had brought a suit against
defendants i.e. Subhash Chander son of Sh.Rama Kant, his wife
Smt.Raj Rani and their minor son Tilbagh, aged about 10 years,
residents of Mohalla Jalation, Nakodar, District Jalandhar seeking a

declaration that defendant No.3 - son of defendants No.1 and 2 is not related to the plaintiff and there exists no relationship of adoptive mother and adopted son between her and defendant No.3 and further the alleged adoption deed dated 31.3.1998 relating to the alleged adoption of defendant No.3 by her is a void, sham, inoperative and ineffective document and is a result of fraud, undue influence played upon her by defendants No.1 and 2 etc. and the same is liable to be set aside. The plaintiff further sought a consequential relief for permanent injunction restraining the defendants from claiming any sort of relationship with her personally and with regard to her properties during her life time or thereafter.

As per the version of the plaintiff, she along with her husband had been permanent settled in England for a long time; that whenever they visited India, they used to stay in village Maldi, Tehsil Nakodar in the house of the brothers of the plaintiff; that the defendant No.1 is a taxi driver; that in the year 1992, during their visit to India, plaintiff and her husband hired the taxi of defendant No.1; that on subsequent visits also they used the services of defendant No.1 taxi driver, who would pick-up the plaintiff and her husband from the Airport and he used to be at their service during their stay in India; that subsequently close relations developed between the two families; that the plaintiff and her husband were issue-less and they started treating defendant No.1 and 2 as their relations; that the husband of the plaintiff died on 28.2.98 in England and his body was brought to India for cremation in his native

village Chandeli on 8.3.98; that the Bhog ceremony of the husband of the plaintiff was performed at village Chandeli on 16.3.98; that during the said period, the defendants No.1 and 2 alongwith defendants No.3, stayed with the plaintiff; that the plaintiff was under great shock and stress on account of untimely death of her husband; she was indecisive and confused regarding her future life; that during that period, defendants No.1 and 2 prevailed upon the plaintiff and they tried to give solace to the plaintiff by stating that she should not feel alone and she might treat defendant No.3 as her own son; that the defendants No.1 and 2 prevailed upon the plaintiff to prepare some documents and they succeeded in getting a writing from the plaintiff on 31.3.98. According to the plaintiff, she being an illiterate woman in state of shock did not understand the pros and cons of the document and had put her signatures under the influence of defendants Nos.1 and 2; that the defendants No.1 and 2 had obtained signatures of the plaintiff by keeping her in dark and they claimed that since certain facilities were available to Non Resident Indians, therefore, if defendant No.3 was recorded as NRI in the document, then it might be easy for him to go abroad in the future. According to the plaintiff, there was never any intention to legally adopt defendant No.3 as her son; that the defendant No.1 and 2 had made misrepresentations to her and played fraud with her using undue influence in getting the document executed from her. According to the plaintiff when she came to India about a month back prior to filing the present suit, the defendants No.1 and 2 openly proclaimed to her that defendant No.3 was her adopted son and was her legal heir and they also disclosed that defendant No.3 has been taken in

adoption by her vide adoption deed dated 31.3.98. According to the plaintiff she had not taken defendant No.3 in adoption inasmuch as no ceremonies of adoption were ever performed and no relationship of adoptive mother and adopted son came into being between the plaintiff and defendant No.3. Feeling aggrieved by such conduct of the defendants, the plaintiff filed the suit in question.

On notice, defendants No.1 and 2 had appeared and filed a joint written statement *inter alia* raising preliminary objections to the effect that the plaintiff had no locus standi and cause of action to file the present suit; that the suit was not within time; that the defendant No.3 is a minor and his relations with defendants No.1 and 2, who were his natural parents, stood severed after adoption by the plaintiff, therefore, the plaintiff is guardian of the defendant No.3. On merits, the answering defendants admitted that defendant No.3 was residing with them, though stating that all the relations of defendant No.3 with them stood severed from the date of adoption; that the plaintiff is therefore, the natural guardian of defendant No.3 being his adoptive mother. The answering defendants claimed that defendant No.3 is residing with them, as plaintiff is residing abroad. The answering defendants admitted that plaintiff and her husband used to stay at village Maldi near Nakodar and defendant No.1, who was working as a taxi driver, came in contact with the plaintiff and her husband. According to them it was in the year 1988 and thereafter, they had been in regular contact after relations between the plaintiff and her brothers became strained; that the plaintiff started treating defendant No.1 as his brother; that there developed a relationship of love and faith

between them; that defendant No.1 even pursued the legal case on behalf of the plaintiff and her husband in District Hoshiarpur; that the plaintiff and her husband were issue-less, whereas the answering defendants had already had two sons and two daughters; that the plaintiff and her husband requested the answering defendants to give birth to a child for them on the ground that they were willing to adopt the child; the answering defendants claimed that they already had children to their satisfaction, but they succumbed to the requests of the plaintiff and her husband and on 29.12.1994, defendant No.2 gave birth to defendant No.3; that the plaintiff and her husband were jubilant on getting news of birth of defendant No.3 and they visited the house of defendants just 22 days after the birth of defendant No.3 and they showered great love and affection upon the child and treated him as their own son; that the plaintiff and her husband made it clear that they would adopt the child legally in the future after the plaintiff would get the citizenship of U.K.; that the plaintiff and her husband, thereafter, continued to visit India regularly for seeing the child; that unfortunately the husband of the plaintiff had died on 28.2.98 before defendant No.3 could be adopted; that after the death of her husband, plaintiff told the answering defendants that her late husband had expressed his desire for the adoption of defendant No.3 stating that in case of his death, the plaintiff should adopt the defendant No.3 after his death. The answering defendants claimed that the funeral pyre of husband of plaintiff was lit by defendant No.3, who also performed his last rites; that the plaintiff treated the defendant No.3 as her own son. According to the answering defendants, after two days of the Bhog ceremony of the

husband of the plaintiff i.e. on 18.3.98, a formal adoption ceremony was held in the Gurudwara Sahib at village Chandeli, where defendant No.3 was adopted by the plaintiff in presence of holy Shri Guru Granth Sahib; that the answering defendants formally gave defendant No.3 in adoption to the plaintiff. According to the defendants, the plaintiff was very sorrowful and sad due to death of her husband but she was not under mental shock and stress and she at the time of adoption ceremonies had stated that she was fulfilling last wish of her late husband; subsequently on 31.3.98 a registered adoption deed was executed between the plaintiff and answering defendants regarding adoption of defendant No.3; that the adoption deed was registered in the office of Sub Registrar. According to the defendants, the plaintiff and the entire world, after the execution of the adoption deed, started treating defendant No.3 as son of the plaintiff; that the plaintiff thereafter departed for England; that the defendant No.3 was left in the care and custody of his natural parents i.e. answering defendants; that the plaintiff took the photographs and other papers of the minor for getting his passport issued; that later on, the plaintiff informed the answering defendants that passport of the child was to be prepared in India; that the answering defendants claimed that plaintiff continued to visit their house for seeing the child at regular intervals and she also paid sufficient amount to the answering defendants for bearing the expenses for bringing up of the child; that on 16.4.98 the plaintiff herself got defendant No.3 admitted in Sant Kirpal Singh Sewa Panthi School at village Neelon, Ludhiana; that the plaintiff signed the admission application as mother of minor defendant No.3 and she paid the necessary fee and charges for the

education, boarding and lodging of defendant No.3; that she continued to visit India thereafter, for seeing the child; that the defendant No.3 stayed in the hostel for two years and in the 3rd year, the plaintiff directed the answering defendants to withdraw the defendant No.3 from the said school at village Neelon, District Ludhiana and to keep him with them at Nakodar and since then, the defendant No.3 was staying with defendants No.1 and 2 at Nakodar; that the plaintiff continued to visit her adopted child and she also continued sending money for meeting expenses of bringing up of the child and his education expenses. According to the answering defendants, the plaintiff and the entire world treated defendant No.3 as adopted child of the plaintiff; they denied that no ceremonies of adoption were performed as alleged by the plaintiff; they also denied that any fraud, misrepresentation or undue influence was practised upon the plaintiff for getting adoption deed dated 31.3.98 executed. The defendants claimed that the plaintiff had signed the adoption deed and the endorsement of the Sub Registrar, after understanding the contents of the document. The answering defendants, therefore, claimed that plaintiff was well aware of the contents of the documents and she knowingly executed the same.

The trial Court had appointed Sh.P.P. Singh, Advocate as Court Guardian for minor defendant No.3, who appeared and filed separate written on behalf of minor defendant contesting the suit and coming up with a version almost identical to the one put forward by defendants No.1 and 2 in their written statement.

Refuting the remaining allegations, all the defendants prayed

for dismissal of the suit.

The plaintiff had filed replication controverting the allegations in the written statements whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether adoption deed dated 31.3.98 is illegal, null and void inoperative and ineffective document? OPP
2. Whether plaintiff is entitled to relief of declaration as prayed for?
3. Whether plaintiff is entitled to relief of permanent injunction as prayed for? OPP
4. Whether plaintiff has no locus standi and cause of action to file the present suit? OPD
5. Whether suit is not maintainable? OPD
6. Whether suit is time barred? OPD
7. Whether plaintiff is estopped from filing the present suit by his own act and conduct? OPD
8. Whether defendant No.3 has not been properly sued, if so, its effect? OPD
9. Whether plaint is not drafted as per provisions of Order 7 CPC? OPD
10. Relief

In order to prove her case, the plaintiff Smt.Surjeet Kaur had got recorded her statement besides tendering certain documents.

On the other hand, the defendant No.1 Subhash Chander got his statement as DW3 and the defendants further examined Smt.Narinder Kaur as DW1, Sh.Joga Singh as DW2, Sh.Chaman Lal

Chauhan as DW4, Sh.Paramjit Singh as DW5 and Sh.Mewa Singh as DW6.

After hearing the learned counsel for the parties, the trial Court decided issues No.1, 2, 3 in favour of the plaintiff and against the defendants, issues No.4 to 9 against the defendants and in favour of the plaintiff. Resultantly, the trial Court vide judgment and decree dated 13.4.2010 decreed the suit with costs holding that defendant No.3 has no relationship of adopted son with the plaintiff and adoption deed dated 31.3.1998 was also clearly the result of undue influence played upon the plaintiff by defendants No.1 and 2; it was therefore set aside being void, sham and inoperative document holding that the adoption deed dated 31.3.1998 therefore did not confer any status of adopted son of the plaintiff on defendant No.3. By way of granting relief of permanent injunction, the defendants were restrained from claiming any sort of relationship with the plaintiff or her properties during here life time or thereafter.

Feeling aggrieved by the said judgment and decree, the defendants No.1 and 2 had filed an appeal before District Judge, Hoshiarpur, which was assigned to Additional District Judge (Ad hoc), Fast Track Court, Hoshiarpur, who vide judgment and decree dated 18.4.2013 dismissed the appeal and upheld the impugned judgment and decree passed by the trial Court.

Still feeling dissatisfied with the judgments and decrees

passed by the Courts below, the defendants Nos.1 and 2 have filed the present regular second appeal before this Court, notice of which was issued and the respondent No.1 - plaintiff appeared through counsel.

I have heard learned counsel for the parties besides going through the records and I do not find any merit in the appeal.

The trial Court in view of the factual and legal position has come to the conclusion that there was no relationship between the plaintiff and her husband on one side with defendant No.1, after sudden death of husband of plaintiff taking advantage of vulnerable mental condition of the plaintiff, defendants No.1 and 2 had taken her signatures on adoption deed dated 31.3.1998; however, the plaintiff did not have any genuine intention to adopt defendant No.3, otherwise she would not have left him in India and would have rather taken him along with her to U.K.; that as a matter of fact the plaintiff and her husband never made any effort to adopt the child from the time of his birth on 29.12.1994 till death of husband of the plaintiff on 28.2.1998 and rather defendants No.1 and 2 continued to treat defendant No.3 as their son; that no ceremonies of adoption are proved to have been performed; that the child was never shifted to the care and custody of the plaintiff, therefore, it is not apparent that any adoption was intended to be effected and adoption deed dated 31.3.1998 did not appear to witness the creation of any legal bond

between the plaintiff and defendant No.3 of adopted son and adoptive mother; rather it was executed to facilitate the settlement of defendant No.3 in U.K. and further the defendants had failed to establish that defendant No.3 was duly adopted by the plaintiff. The Trial Court has found that the suit was within limitation, if limitation is reckoned from the date defendants No.1 and 2 started asserting the relationship between the plaintiff and defendant No.3 and not from the adoption deed dated 31.3.1998, as such suit was within time.

Learned Additional District Judge (Ad hoc), Fast Track Court, Hoshiarpur has agreed with the observations made by the trial Court. He has observed that defendants had not examined any attesting witness of the adoption deed to prove that it was executed validly and without any pressure upon the plaintiff and depositions made by DW1 to DW3 are contradictory to each, rebutting the presumption created under Section 16 of Hindu Adoption and Maintenance Act. It was further observed that if a document is not validly executed, no presumption can be raised for the same.

The concurrent findings recorded by both the Courts below do not suffer from any irregularity or illegality. The findings are affirmed. No fault is found with the judgments and decrees passed by the Courts below. Those are upheld.

No substantial question of law arises in this appeal.

It being so and in view of the concurrent findings

returned by the Courts below with which I do not see any reason to disagree, I conclude that the appeal is without merit and is dismissed accordingly.

16.5.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable : Yes/No