

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

-.-

RSA 3109 of 2014 (O&M)
Date of decision: 29.01.2019

Amit Kumar (minor) @ Gopi through her mother Ram PiariAppellant

Versus

Ramesh Lal

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present : Mr. Surinder Mohan Sharma, Advocate
for the appellant

Mr. Vivek Sharma, Advocate
for the respondent

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Rekha Mittal, J. (Oral)

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit filed by Amit Kumar alias Gopi, minor through his mother Smt. Ram Piari for grant of maintenance under Section 20 of the Hindu Adoptions and Maintenance Act, 1956 (in short 'the Act') was dismissed by the trial Court and appeal preferred by the minor came out to be unsuccessful before the first Appellate Court *i.e.* Additional District Judge, Gurdaspur.

The appellant/plaintiff claims maintenance from Ramesh Lal-respondent on the premise that he is adopted son of Ramesh Lal, therefore, he is entitle to get maintenance from his father under Section 20 of the Act which lays down that a Hindu is bound, during his or her life time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

Counsel for the appellant, in response to a pointed query by the Court, has fairly informed that there is no evidence on record to prove that Amit Kumar, minor was given adoption by his natural parents to Shri Ramesh Lal to prove actual giving and taking in adoption in compliance with condition (vi) of Section 11 of the Act. He has also conceded that plea of the appellant in respect of his adoption by respondent is not based upon a registered deed to which a presumption is available under Section 16 of the Act. However, it is argued that in the service record of the respondent/defendant, Amit Kumar, minor is mentioned as adopted son of respondent and minor cannot be made to suffer even if he has failed to prove actual giving and taking in adoption who was of young age when he was adopted by the respondent.

Counsel representing the respondent, on the contrary, has supported consistent findings recorded by the Courts whereby plea of the appellant that he is the adopted son of respondent Ramesh Lal, thus, entitle to assert his claim for maintenance against his alleged adoptive father has been rejected.

I have heard Counsel for the parties, perused the paper book and records.

Be that as it may, there cannot be any dispute that the Hindu Adoptions and Maintenance Act, 1956 applies to any person who is a Hindu by religion in any of its forms or developments. Chapter II of the Act deals with adoption and Section 6 thereof provides for requisites of a valid adoption. Section 11 of the Act deals with other conditions for a valid adoption and starts with words “in every adoption, the following

conditions must be complied with”. Condition No. (vi) of Section 11 of the Act, relevant in the present context read, thus:-

“(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption.

Provided that the performance of datta homan, shall not be essential to the validity of an adoption.”

Section 16 of the Act raises a presumption as to registered documents relating to adoptions.

As has been noticed herein-before, counsel for the appellant has fairly conceded that there is no evidence on record to satisfy the requirements of condition (vi) of Section 11 of the Act with regard to the child to be adopted being actually given and taken in adoptions by the parents or guardian concerned. Indisputably, the appellant does not assert his claim of adoption on the basis of a registered document. As the appellant has failed to prove the requisites of a valid adoption coupled with other conditions for a valid adoption provided in Section 11 of the Act, he cannot derive any advantage to his contention to prove his adoption merely on the basis of an entry in the service record of respondent wherein the appellant is stated to be son of Shri Ramesh Lal. The said entry would have been used as a corroborative piece of evidence, had the appellant

otherwise been able to establish his being validly adopted by Shri Ramesh Lal. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts warranting intervention.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

29.01.2019
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