

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

**RSA No.927 of 2016 (O&M)
Date of Decision.10.04.2019**

Meena Kumari

...Appellant

Vs

General Public and another

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Raman Chawla, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellant-plaintiff has not been successful in seeking declaration to be adopted daughter of Kishan Kaur and Basakha Singh.

It was alleged that she was adopted in the year 1980 i.e. on 25.5.1980. Kishan Kaur adopted her after death of Basakha Singh on 25.05.1980. The aforementioned adoption was registered vide Vasika No.66 dated 25.5.1982 and thereafter, she was living with Kishan Kaur, who had been treating her as daughter. Defendant No.1 was a stranger to the family living in Canada but in the year 2000 claimed to be owner and therefore, cause of action arose to file suit.

Defendant No.1 did not appear despite service and therefore, proceeded ex parte.

Defendants No.2 opposed the suit and alleged that adoption deed dated 25.5.1982 was result of fraud and misrepresentation. Suit was bad for non-joinder of parties. He was adopted by Kishan Kaur and Basakha Singh. The Canadian High Commission had declared adoption of plaintiff as null and void as on

the date of registration she was more than 15 years of age.

Plaintiff in respect of the pleadings examined 11 witnesses and closed evidence whereas defendants examined six witnesses.

Learned counsel for the appellant-plaintiff submitted that PW4 Gurdev Kaur, one of the attesting witnesses candidly supported case of the plaintiff by proving ceremony of give and take i.e. essential ingredients of adoption as per the provisions of Section 6 of the Hindu Adoption and Maintenance Act but the Courts below have erroneously discarded without any rhyme or reason, therefore, there is illegality and perversity, particularly, when defendant No.2 has not been able to disprove adoption deed. Though in previous suit filed by him against her father Mohinder Singh there was reference of the adoption deed of the plaintiff but that finding was incidental and not binding.

I am afraid aforementioned argument is not sustainable for the simple reason that the pleaded case of the plaintiff was that on 25.05.1980 after the demise of Basakha Singh, she was adopted. Concededly Basakha Singh died in December 1980. There is no evidence that she was actually adopted in 1980 except registered document of 1982 but at that time she was more than 15 years of age. The provisions of Section 10 of the Hindu Adoption and Maintenance Act prohibits adoption of a person more than 15 years of age. Her natural mother Gurdev Kaur in cross-examination admitted that at the time of adoption, Basakha Singh was alive and was living with Bishan Kaur and she was adopted only on 25.05.1982 and not before.

There is not only contradiction but stark difference between pleading and statement not in tandem with each other. In such circumstances, dismissal of the suit was inevitable.

I do not find any illegality and perversity in the concurrent finding of fact and law rendered by Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 10, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No