

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

RSA No. 1022 of 2018 (O&M)

Date of decision : March 05, 2019

Ram Avtar and others

.....Appellants

Versus

Ishwar (deceased) through LR's and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Sharmila Sharma, Advocate
for the appellants.

LISA GILL, J.

Appellant - plaintiffs are aggrieved of judgment and decree dated 28.01.2013 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 28.02.2017 passed by the learned Additional District Judge, Rohtak and consequential dismissal of their suit.

Brief facts necessary for the adjudication of the case are that the plaintiffs filed a suit for permanent injunction restraining the defendants from asserting themselves as co-sharers in the suit land and interfering in the possession of the plaintiffs. It was further prayed that in case defendants are held to be in joint possession in view of the revenue entries a decree for exclusion of the defendants from their joint possession and vesting of their disputed 1/3rd share, recorded in the name of Hari Singh, be passed in favour of plaintiff No. 1 to the extent of half share and in favour of plaintiffs No. 2 to 8 to the extent of rest of the half share.

It was pleaded that the suit property belonged to Neki Ram son of Shiv Lal as karta of the Hindu undivided family comprising of Neki Ram

and his three sons i.e. Hari Singh (father of defendants No. 1 to 4), Sat Narain (father of plaintiff no. 1), and Same Ram (father of plaintiffs No. 2 to 7 and husband of plaintiff No. 8). It is averred in the plaint that maternal grandfather of Hari Singh, Sat Narain and Same Ram, namely Gokal son of Udmi, had no son. Therefore, he adopted Hari Singh with the consent of Neki Ram and his wife Smt. Dakhan. Adoption deed dated 28.04.1943 was executed and registered on 01.05.1943. Therefore, after his adoption, Hari Singh had no concern with the property of his natural father Neki Ram as he had succeeded to the estate left by his adopted father Gokal. Furthermore, Sat Narain and Hari Singh, predecessor-in-interest of the plaintiffs, were claimed to be in cultivating possession of the suit property even during the time of Neki Ram. After Neki Ram's death, Sat Narain and Hari Singh continued to be in exclusive possession of the suit property and thereafter the plaintiffs claimed to be in possession of the suit property. Mutation of inheritance of Neki Ram was, however, wrongly sanctioned in favour of Sat Narain, Same Ram and Hari Singh in equal shares i.e. $1/3^{\text{rd}}$ share each. Revenue entries continued in the joint names of all the three. The defendants started interfering in the possession of the plaintiffs on the basis of revenue entries. They did not desist despite request. Hence, the suit was filed.

Suit was resisted by the defendants, who admitted that Neki Ram was the owner in possession of the suit property but denied that the Neki Ram was *karta* of any Hindu undivided family. It is further stated that Neki Ram was the absolute owner of the suit property. It is admitted that Hari Singh father of the defendants was adopted by his maternal grandfather Gokal but the said adoption was invalid as Gokal could not have adopted his daughter's son under the customary law. It is further stated that

adoption of Hari Singh by Gokal was challenged by collateral of Gokal through Civil Suit bearing No. 286 of 1947 titled as 'Hari Ram etc. versus Gokal' and in the said civil suit adoption of Hari Ram by Gokal was held to be illegal, null and void being against the customary law vide judgment and decree dated 22.04.1988 passed by the then learned Senior Sub Judge, Rohtak. The said judgment and decree was upheld in appeal by the learned Additional District Judge vide judgment and decree dated 28.07.1950. Pursuant to the said judgment and decrees, Hari Singh had severed all his ties with Gokal and had started residing with his natural parents. Hari Singh it is claimed, cultivated the suit property alongwith his father and after the death of Neki Ram, Hari Singh alongwith his brother Sat Narain and Same Ram inherited the suit property in equal shares. Mutation of inheritance was accordingly, sanctioned. Subsequently, by way of a mutual settlement all of them started the cultivating the suit property separately. It is further stated that Sat Narain and his son Ram Avtar i.e. plaintiff No. 1 sold their share in the suit property and at that time they had specifically stated their share in the property to be 1/3rd only. A suit for partition was also filed by the plaintiffs against the defendants which was dismissed. Inheritance of Neki Ram was sanctioned in the year 1950, therefore, it was stated that the plaintiffs had no right to challenge the same. Defendants claimed to be lawful owners in possession of the suit property. Dismissal of the suit was prayed for.

Replication was filed.

Following issues were framed by the learned trial Court on the basis of the pleading:-

- i) Whether the defendants have no right, title or concern with the suit land as alleged in the plaint?OPP.

ii) If issue No. 1 is proved, whether the plaintiffs are entitled to the injunction as prayed for on the grounds alleged in the plaint? OPP

iii) Whether suit is not maintainable in the present form? OPD.

iv) Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, facts and circumstances concluded that the plaintiffs failed to prove their case. It was concluded that adoption of Hari Singh by Gokal was declared null and void by the Court of competent jurisdiction. Consequently, mutation of inheritance of Neki Ram was rightly sanctioned in equal shares in favour of Neki Ram's three sons including Hari Singh. It was further observed that Hari Singh succeeded to the property of Gokal on the basis of a gift deed and not by way of inheritance. Suit filed by the plaintiffs was accordingly, dismissed. Appeal filed by the plaintiffs was also dismissed by the Additional District Judge, Rohtak vide judgment dated 28.02.2017. Aggrieved therefrom, present appeal has been filed by the plaintiffs.

Learned counsel for the appellants vehemently argues that both the learned courts below have grossly erred in law and on fact, in dismissing the suit filed by the plaintiffs. It is submitted that the plaintiffs have duly proved on record that Hari Singh son of Neki Ram was in fact adopted by his maternal grandfather Gokal. Learned counsel for the appellants submits that the defendants have duly admitted adoption of Hari Singh by his maternal grandfather Gokal, therefore, in view of the specific admission of the defendants, plaintiff's suit should have been decreed. Moreover, it is only the registered adopted deed which has been declared null and void by the courts vide judgments and decrees Ex.DW7/B to DW7/E. Adoption of

Hari Singh is not in doubt. Hari Singh succeeded to the properties of Gokal, therefore, there is no question of Hari Singh still having a share in the property of his natural father Neki Ram. Learned counsel for the appellants contends that mutation of inheritance sanctioned in the year 1950 after the death of Neki Ram in three equal shares is incorrect, null and void qua the rights of the plaintiffs. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated 28.01.2013 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 28.02.2017 passed by the learned Additional District Judge, Rohtak be set aside, consequently suit filed by the plaintiffs be decreed throughout.

I have heard learned counsel for the appellants and have perused the file with her assistance.

A perusal of the file reveals that the defendants have admitted that Hari Singh was adopted by his maternal uncle Gokal vide registered adoption deed but the same was declared illegal, null and void vide judgments and decrees Ex.DW7/B and Ex.DW/D. Therefore, once adoption of Hari Singh by Gokal vide the registered deed was set aside and held to be invalid, Hari Singh obviously reverted back to his original status in his natural family. Admittedly, Neki Ram is the natural father of Hari Singh. Consequently, mutation of inheritance of Neki Ram was rightly sanctioned in favour of his three sons Hari Singh, Sat Narain and Same Ram in equal shares. As far as the argument regarding the succession of Hari Singh to the estate of Gokal is concerned, it is a matter of record that a gift deed in respect to 03 bighas 10 biswas of land was executed by Gokal in favour of Hari Singh and this gift deed was duly upheld vide judgment and decree Ex.DW7/A and Ex.DW7/E. Therefore, Hari Singh's succession to the said

property of Gokal was on the basis of a gift deed and not by way of any inheritance. The same cannot be of any benefit to the plaintiff – appellants. It is relevant to note that execution of the sale deed of his share of the property by Sat Narain vide sale deed Ex. DW7/1 is not in dispute. Sat Narain has asserted his share in the suit property to be 1/3rd only. It is a matter of record that Sat Narain or Same Ram did not challenge the mutation of inheritance of Neki Ram during his life time, despite having knowledge of the sanction of mutation, revenue entries etc. The suit for partition filed by the plaintiffs also reveals that the plaintiffs had admitted the defendants as co-sharers in the suit property at that stage. It is sought to be explained by learned counsel for the appellants that filing of the said suit is not indicative of any particular stand of the plaintiffs as the said suit for partition was not decided on merits. Be that as it may, the entire factual matrix as discussed above does reveal that the plaintiffs have failed to prove their case by way of leading clear and cogent evidence and they are not entitled to the relief as prayed for. Both the learned courts below have rendered concurrent findings of fact based on a wholesome and proper appreciation of evidence on record which does not call for any interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument has been addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 28.01.2013 passed by the learned Civil Judge (Senior Division), Rohtak as well as judgment and decree dated 28.02.2017 passed by the learned Additional District Judge, Rohtak which calls for any interference by this

Court in second appeal.

Accordingly, this appeal is dismissed with no order as to costs.

March 05, 2019
rts

Whether speaking/reasoned :
Whether reportable

:

(Lisa Gill)
Judge

Yes/No
Yes/No