

RSA-311-2017 (O&M)

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

RSA-311-2017 (O&M)

Date of decision : 05.02.2019

Gurdeep Singh

... Appellant

Versus

Lachhman Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. SPS Tinna, Advocate
for the appellants.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful in claiming declaration and permanent injunction, to be adopted son of defendant Nos.1 and 2, being given in adoption by defendant Nos.3 and 4, biological parents.

It was alleged that the plaintiff had born out of the lions of defendant Nos.3 and 4 on 01.05.1976 and given in adoption to defendant Nos.1 and 2. They treated him as a child and *vice versa* as parents. He was admitted in the Government primary school, Abohar by defendant Nos.1 and 2. The entry in the record (Ex.P1 to Ex.P8) reflected as son of Lachhman Singh, adopted father. However, a cause of action arose in 2014, when Lachhman submitted an application for correction.

Defendant Nos.1 and 2, adopted parents, filed the joint written statement and opposed that the plaintiff was never given in adoption by defendant Nos.3 & 4 and raised the objection with regard to the

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maintainability of the suit.

Defendant No.3 also filed the written statement, wherein he admitted the claim of the plaintiff.

The plaintiff examined himself as PW1, Sunder Singh as PW2 and Kulwant Kaur as PW3, whereas defendant Nos.1 & 3 have examined themselves as DW1 & DW2 and Kulbir Singh as DW3.

Learned counsel for the appellant-plaintiff submitted that both the Courts below have not noticed the fact that school certificate, educational qualifications and voter card, established the status of the plaintiff, being adopted son of Lachhman Singh. There was no cause of action for Lachhman Singh to move an application in the year 2014 or correction. No doubt the adopted parents did not come in the witness box, but the contents of written statement have totally been ignored.

I have heard learned counsel for the appellant-plaintiff, appraised the paper book and of the view that there is no force and merits in the submissions of Mr. Tinna, for, the provisions of Section 6 of the Hindu Adoptions and Maintenance Act, 1956, have laid down the requisites of a valid adoption, which read as under:-

"6 Requisites of a valid adoption. —No adoption shall be valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption;

and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter. "

The aforementioned ingredients have not been proved on record. Documents (Ex.P1 and Ex.P2) tendered by the plaintiff, have not

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been proved by summoning the concerned officer, therefore, they cannot be considered as primary evidence as it is settled law that mere exhibition of the documents does not dispense with its proof. Reference is invited to ratio decidendi culled out by Hon'ble Supreme Court in **Sait Tarajee Khim Chand and others Vs. Yelamarti Satyam and others, 1971 AIR SC 1865.**

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

05.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**