

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

RSA No.551 of 2017 (O&M)

Date of decision:15.05.2019

Gurmeet Singh (since deceased) through LRs ... Appellant

Vs.

Jagdeep Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. D.S.Brar, Advocate
for the appellant.

AMIT RAWAL J.

The appellant-plaintiff has not been successful before both the Courts below in seeking declaration to be owner in possession of land measuring 1/15th share of land out of land measuring 237 kanals 17 marlas situated in the revenue estate of Kotkapura, Tehsil and District Faridkot by laying challenge to the mutation of inheritance qua estate of Sukhdev Singh to be null and void with a consequential relief of injunction as well.

It was alleged that Sukhdev Singh son of Santokh Singh was owner of the suit land to the extent of 1/3 share and in 1965, alongwith his wife Patwant Kaur and daughters Daljit Kaur and Raminder Kaur went to England. The natural parent of the plaintiff were Ajit Singh and Sukhwinder Kaur. Ajit Singh and Sukhdev Singh were the first brothers. Ajit Singh had four sons and two daughters whereas Sukhdev Singh as stated above had two daughters. Since then Sukhdev Singh had been treating the plaintiff as

his son. The suit aforementioned was filed in 2009. Ajit Singh died before that.

The defendants contested the suit and denied that plaintiff was ever adopted as son of Sukhdev Singh or the alleged adoption ceremony. The plaintiff even forged and manipulated so many documents. Even FIR bearing No.221 dated 25.09.2008 was also registered against him in police station city Kotkapura, manipulated the date of birth in 1962 whereas he was born in 1959 and this fact was verified from the record of Govt. Senior Secondary School (Boys) Kotkapura. It was alleged that Sukhdev Singh during life time had executed a valid Will dated 23.06.1990 in their favour for which mutation of inheritance was sanctioned.

The plaintiff in support of the aforementioned pleadings examined PW1-Gurdial Singh, PW2-Baldev Singh son of Santokh Singh, brother of Sukhdev Singh, PW3-Avtar Singh, PW4-Gurmit Singh, plaintiff himself, PW5-Rajiv Kumar Clerk, DAV High School, PW6-Gurpreet Singh, computer clerk, office of the District Registrar Birth and Death, PW7-Sukhbir Singh, PW8-Sukhdev Singh and brought on record the documents Ex.P1 to Ex.P37. On the other hand, defendants examined DW1-Randeep Kaur Pannu, DW2-Sukhmandar Singh, DW3-Bhajan Singh, DW4-Surinderpal Kaur Sen, DW5-Parminder Kaur, DW6-Karamjit Singh SLA, DW7-Rajesh Kumar, Additional Ahlmad, DW8-Deepak Bajaj Copyist, DW9-Satnam Singh Office Kanungo, DW9- Satnam Singh and brought on record the documents Ex.D1 to Ex.D8.

The trial Court while noticing all the documents extensively

dismissed the suit and appeal taken before the Lower Appellate Court was also dismissed.

Mr.D.S.Brar, learned counsel appearing on behalf of the appellant-plaintiff being represented by legal representatives submitted that adoption ceremony had been proved through the testimony of PW1 to PW4 which was in consonance with the provisions of Sections 6 and 11 of Hindu Adoption and Maintenance Act, 1956. The age of the appellant at the relevant point of time was 07 years. The formal ceremony of giving and taking had taken place which is enough requirement of law. The un-registered Will propounded by the defendants was not brought on record, nor the witnesses were examined. All 37 documents except one as noticed above revealed not only the school certificates but also various other documents i.e. register of birth and death to prove the adoption. PW2 is also brother of father of the plaintiff and therefore, there was compliance of the provisions of Section 50 of Indian Evidence Act and thus, urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant, appraised the judgments and decree of the Courts below and of the view that there is no force and merit in the submissions of Mr. Brar.

This Court appreciated that the trial Court examined each and every documents spanning from Ex.P1 to Ex.P33 i.e. birth certificate of defendant no.1 Jagdeep Singh which had no relevancy, Ex.P3 to Ex.P7, the correspondence by Dr. Gurdial Singh-PW1, Ex.P8 copy of the passport of the plaintiff but the same was not proved on record as it was only tendered,

Ex.P9 to Ex.P13 nor related to the adoption as there was letter written by him to get the copies of decree of divorce of Sukhdev Singh and Patwant Kaur, Ex.P14 and Ex.P15, certificates issued by the Principal Sacred Heart Senior Secondary School to defendant no.2-Daljit Kaur, Ex.P16 marriage certificate of Sukhdev Singh with defendant no.4-Mohinder Kaur, Ex.P17 death certificate of Patwant Kaur, Ex.P18 marriage certificate of defendant no.2 Daljit Kaur, Ex.P20, death certificate of Sukhdev Singh, Ex.P21 school leaving certificate of plaintiff showing his date of birth as 01.06.1958 and father's name as Sukhdev Singh but the said documents were not sufficient to prove alleged adoption. Ex.P22 letter issued by District Registrar, Births and Death reflecting that application was allegedly submitted by Santokh Singh but Gurmeet Singh admitted that he had no record of application. Ex.P23 letter written by District Registrar Births and Deaths Amritsar; Ex.P24 another letter written by Additional District Registrar Births and Deaths Amritsar but Ex.P21 and Ex.P22 did not reveal the record of birth of the plaintiff in village Dhotia and various other documents.

The best possible evidence for the plaintiff was to examine the biological mother who as per the argument of Mr. Brar, died only in 2018. Even biological sisters could have also been examined. Had such efforts been made, burden as per the provisions of Section 50 of Indian Evidence Act, could have been duly discharged.

Owing to the closeness of the family, a person or immediate family member, as noticed above who actually participated in the proceedings is the best witness to prove the adoption.

It is a matter of record that Gurmeet Singh has also died and being represented by legal representatives.

The findings of fact and law declining the relief qua the estate of Sukhdev Singh, adopted father cannot be said to be suffering from illegality and perversity. No ground for interference is made out.

Resultantly, the regular second appeal is dismissed.

May 15, 2019

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No