

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.612 of 1989 (O&M)
DATE OF DECISION:11.05.2020

Shiv Lal (since deceased) represented by Smt. Chameli Devi (now deceased) now represented by Raghu Nandan Sharma and others, etc.

....Appellants

versus

Mohan Lal s/o Mallu son of Gurdayal s/o Dhan Singh son of Lal Man represented by Smt. Santra and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. O.P. Goyal, Senior Advocate with
Mr. Sanjeev K. Sharma, Advocate for the
appellants

Mr. Sudhir Aggarwal, Advocate for the
respondents

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ALKA SARIN, J.

The defendants are in appeal against the judgments and decrees passed by both the Courts below.

The plaintiff-respondents filed a suit praying *inter-alia* for "(a) a decree for permanent injunction restraining the defendants from getting the mutation of succession of Attar Chand, adopted son of Dina recorded in their favour in respect of entire suit land mentioned in para no.1 of the plaint to the exclusion of the plaintiffs and more than their share and from getting forcible possession of the suit land more than their 1/3rd share; (b) in the alternative, if the defendants take forcible possession of the suit

land then a decree for joint possession to the extent of 2/3rd share with defendants who are heirs to the extent of 1/3rd share may be passed in favour of the plaintiffs".

It was averred in the plaint that Attar Chand was the son of Ram Nath but was adopted by Dina who had executed an adoption deed-cum-gift deed on 29.8.1950 and vide the said deed Dina had bequeathed his agricultural land to his adopted son Attar Chand. It was further averred that after the death of Attar Chand on 3.9.1982 the defendants had started claiming themselves as exclusive owners of the suit land being the real brothers and real mother of Attar Chand. According to the plaintiffs since Attar Chand had died issueless the suit land was to devolve upon all the agnates since Attar Chand ceased to be a member of the family of Ram Nath, his real father, and had come to the family of Dina, the adoptive father. According to agnatic succession the plaintiff nos.1 and 2 became heirs to the estate of Attar Chand to the extent of 1/3rd share, plaintiff nos.3 to 9 became heirs to the extent of 1/3rd share and the defendants also became heirs to the extent of 1/3rd share. The plaintiffs and defendants traced their lineage to a common ancestor, Lalman.

In their written statement the defendants (the real brothers and real mother of Attar Chand) denied that Attar Chand was ever adopted by Dina and

also denied that the deed dated 29.8.1950 was a deed of adoption. According to them the deed was merely a gift deed whereby Dina gifted his properties in favour of Attar Chand. The defendants also claimed that they were the only heirs of Attar Chand and inherited the suit land after his death and were in possession thereof.

The Trial Court framed seven issues as under:-

1. Whether Attar Chand was the adopted son of Dina son of Khiali, as alleged ?
2. Whether the suit land was gifted by said Dina son of Khiali. If so, to what effect ?
3. Whether the plaintiffs are heirs of said Attar Chand. If so, to which extent ?
4. Whether the plaintiffs are entitled to the injunction prayed for ?
5. Whether the suit is not maintainable in the present form ?
6. Whether the suit is barred by time ?
7. Relief.

The Trial Court took up issue nos.1 and 2 together. It examined a certified copy of the deed dated 29.8.1950 (Ex.P1). The deed was signed by Dina the adoptive father and Ram Nath the natural father of Attar Chand. This deed was scribed by Ram Chand (PW1) and witnessed by Girdhari Lal, Chiranjilal and Chander Bhan of which Girdhari Lal appeared in the witness box

as PW4. The other witnesses produced by the plaintiffs also supported their case that Attar Chand was adopted by Dina. The Trial Court also noted that after the death of Ram Nath, the natural father of Attar Chand, his estate was mutated in the names of his sons and widow (the defendants) and daughters to the exclusion of Attar Chand. The Trial Court thereupon held that Attar Chand was the adopted son of Dina and that the suit land was gifted to him. On issue no.3 the Trial Court held that plaintiff nos.1 to 3 and the defendant nos.1 to 5 are related to Attar Chand in the same degrees and entitled to inherit the properties of Attar Chand in the following manner i.e. plaintiff nos.1 and 2 1/3rd share, plaintiff no.3 1/3 share and defendant nos.1 to 5 1/3rd share. On issue no.4 the Trial Court found that the plaintiffs were not proved to be in possession of the suit land. Issue nos.5 and 6 were decided against the defendants holding that the suit was maintainable and within time. Vide judgement and decree dated 6.3.1987 the Trial Court decreed the suit of the plaintiffs holding that plaintiff nos.1 and 2 are entitled to 1/3rd share, plaintiff no.3 is also entitled to 1/3 share and defendants are also entitled to 1/3rd share. The defendants were also restrained from getting the mutation of succession of Attar Chand recorded in their favour more than their share. The Trial Court also granted a decree for joint possession in favour of the plaintiffs to the extent of 2/3rd share.

The defendant nos.1 to 3 i.e. the real brothers and the real mother of Attar Chand filed an appeal against the judgement decree of the Trial Court. They assailed the findings of the Trial Court contending that the deed dated 29.8.1950 had wrongly been treated as an adoption deed as Attar Chand had never been adopted by Dina. It was also contended that a presumption under Section 16 of the Hindu Adoption and Maintenance Act, 1956 could not have been drawn as the alleged adoption had taken place prior to the said enactment. The deed of 29.8.1950 was a gift deed only and that the estate of Attar Chand was to be succeeded by his real mother alone or in the alternative by his real mother and real brothers (appellants before the lower Appellate Court).

Vide judgement and decree dated 7.11.1988 the lower Appellate Court dismissed the appeal of defendant nos.1 to 3. The lower Appellate Court, while examining the findings of the Trial Court on issue nos.1 and 2, observed that the deed dated 29.8.1950 contained a statement of Dina that he had adopted Attar Chand, there was an unexplained delay on the part of the appellants to impeach the deed dated 29.8.1950, Attar Chand had all along been treated as having been adopted by Dina and infact on the death of Ram Nath (natural father of Attar Chand) Attar Chand was excluded from his natural succession. The lower Appellate Court also drew an adverse inference against the appellants for not examining the natural mother

(Jamna) of Attar Chand. The lower Appellate Court upheld the findings of the Trial Court on issue nos.1 and 2 and ultimately dismissed the appeal. Hence, the present regular second appeal by the defendant nos.1 to 3.

Before this Court the learned senior counsel appearing for defendant nos.1 to 3 has argued that there was no occasion for the Courts below to hold that Attar Chand was adopted by Dina. The deed dated 29.8.1950 cannot be treated as an adoption deed as it does not fulfil the legal requirements in as much as it does not record any ceremony of adoption. The provisions of the Hindu Adoption and Maintenance Act, 1956 have not been complied with to prove a valid adoption. He also argued that the onus of proving that Attar Chand was validly adopted by Dina was on the plaintiffs and therefore non-production of the natural mother (Jamna) by the defendant nos.1 to 3 could not have been taken as a mitigating circumstance against them. It was also contended that the revenue documents produced on the record all show Attar Chand as being son of Ram Nath, his natural father.

Per contra, the learned counsel appearing for the plaintiffs supported the findings recorded by both the Courts below. He relied upon a decision of this Court reported as **1985(1) PLR 142 [Mohammad Shafi vs. Tallai Ram & Ors.]** to contend that if in an adoption deed the executor of the deed rests content by merely

saying that so and so is being adopted by him as his son and shall be his son and after his death shall perform Kriya ceremony like a son and shall also succeed him like a son, then such a deed cannot be construed to be a deed whereby executor intended to make a testamentary disposition of the property in favour of the adopted son after his death by mentioning that after his death he shall succeed like a natural son, he merely spells out one of the consequences of adoption that he was making.

Sections 6, 7 and 11 of the Hindu Adoption and Maintenance Act, 1956 lay down the conditions for an adoption to be treated as valid. There are no pleadings or evidence about the ceremony of actual giving and taking in adoption of Attar Chand and there is also no pleading in the plaint regarding the adoption being in accordance with the provisions of the Act. There was, however, no requirement for any such pleading since as per the deed dated 29.8.1950 the adoption of Attar Chand took place many years before the enactment of the Hindu Adoption and Maintenance Act, 1956. The lower Appellate Court also mentions in its judgement that *"There is a recital in the said deed Ex.P1 that Dina had adopted Attar Chand about 10 years back and the deed was written in the year 1950 when Attar Chand was 19 1/2 years old"*. Thus, we are dealing with a case where the alleged adoption of Attar Chand took place before the coming into force of the Act.

The Supreme Court in the matter of **L. Debi Prasad v. Tribeni Devi** [(1970) 1 SCC 677] while dealing with ancient transactions, held that "In the case of all ancient transactions, it is but natural that positive oral evidence will be lacking. Passage of time gradually wipes out such evidence. Human affairs often have to be judged on the basis of probabilities. Rendering of justice will become impossible if a particular mode of proof is insisted upon under all circumstances. In judging whether an adoption pleaded has been satisfactorily proved or not, we have to bear in mind the lapse of time between the date of the alleged adoption and the date on which the concerned party is required to adduce proof. In the case of an adoption said to have taken place years before the same is questioned, the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son; the latter treated the former as his father and their relations and friends treated them as father and son. There is no predetermined way of proving any fact. A fact is said to have been proved where after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Hence if after taking an overall view of the evidence adduced in the case, we are satisfied that the adoption pleaded is true, we

must necessarily proceed on the basis, in the absence of any evidence to the contrary, that it is a valid adoption as well".

Again, in the matter of **Kamla Rani v. Ram Lalit Rai [(2018) 9 SCC 663]** the Supreme Court held that *"We cannot lose sight of the principle that though the factum of adoption and its validity has to be duly proved and formal ceremony of giving and taking is an essential ingredient for a valid adoption, long duration of time during which a person is treated as adopted cannot be ignored and by itself may in the circumstances carry a presumption in favour of adoption"*. The earlier decision in L. Debi Prasad case (supra) was also referred to in this decision.

In the present case the adoption of Attar Chand took place in around 1940. Though there is no document recording the adoption ceremony, the other evidence available and the circumstances all point towards Attar Chand having been adopted by Dina. The deed dated 29.8.1950 Ex.P1 itself records that Dina had adopted Attar Chand as his son about 10 years back. Ram Nath, the natural father of Attar Chand, was a signatory to this deed. Neither he nor the defendant nos.1 to 3 ever challenge this document at any point of time. Even in their written statement the deed itself has not been challenged but it is sought to be interpreted as a gift deed. The testimony of Girdhari Lal, PW4 who was a witness of the deed dated 29.8.1950

also corroborated the version of the plaintiffs that Attar Chand was adopted by Dina. The said Girdhari Lal is an old Lamberdar and an elderly respectable whose deposition cannot be ignored. Further, the defendant nos.1 to 3 have not been able to satisfy the conscious of the Court as to why Attar Chand was excluded from the succession of his natural father Ram Nath. The mutation Ex.P10 sanctioned upon the death of Ram Nath is only in favour of the defendant nos.1 to 3 with no mention therein of Attar Chand. The real mother of Attar Chand, Jamna, also did not step into the witness box to depose that her son Attar Chand had not been adopted by Dina. Bansi PW3 and Chuni Lal PW5 also deposed about Attar Chand having been adopted by Dina and about Attar Chand residing with Dina. Though the adoption of Attar Chand is around 1940 and cannot be termed as ancient, human affairs often have to be judged on the basis of probabilities and that the most important evidence is likely to be that the alleged adoptive father held out the person claiming to have been adopted as his son and the latter treated the former as his father and their relations and friends treated them as father and son, as held by the Supreme Court in **L. Debi Prasad case** (*supra*). Applying this yardstick, in view of the facts and circumstances of the case, and the ratio of the decisions by the Apex Court referred to above, one cannot but hold that Attar Chand was adopted by Dina. The deed dated 29.8.1950 Ex.P1 is titled as a Hibanama i.e. a gift deed. It is

a registered document and is signed by the Donor (Dina) and the Donee (Attar Chand) and by witnesses. By this document Dina gifted his properties to Attar Chand. In view of the discussion above, the findings recorded by the lower Appellate Court on issue nos.1 and 2 are affirmed.

A perusal of the judgment of the lower Appellate Court reveals that defendant nos.1 to 3 only contested the findings recorded by the Trial Court on issue nos.1 and 2. There were no arguments raised and recorded about the findings on the other issues. As such, they cannot challenge the findings on the remaining issues in second appeal.

Finding no merit, the regular second appeal is dismissed.

(ALKA SARIN)
JUDGE

11.05.2020
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES