

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

Date of decision: 27.2.2020

1. **RSA No. 3614 of 2018(O&M)**

Hardeep SinghAppellant

VERSUS

Mahla Singh and othersRespondents

Present: Mr. Tarun Sharma, Advocate for the appellant.

2. **RSA No. 3844 of 2018(O&M)**

Hardeep SinghAppellant

VERSUS

Naginder Singh and othersRespondents

Present: Mr. Kulbhushan Raheja, Advocate for the appellant.

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

REKHA MITTAL, J. (Oral)

This order will dispose of RSA Nos.3614 and 3844 of 2018 as decision of RSA No.3844 of 2018 has a strong bearing for determination of controversy raised in RSA No.3614 of 2018.

RSA No.3844 of 2018

Naginder Singh filed the suit seeking declaration that adoption deed dated 07.03.2002 executed by defendants No.1 and 2 in respect of

adoption of Hardeep Singh by the plaintiff is illegal, null and void and ineffective against right of the plaintiff. It is averred that Hardeep Singh is not legally adopted son of the respondent/plaintiff and prayed for cancellation of adoption deed dated 07.03.2002.

Indisputably, Surti Singh, brother of Naginder Singh and Ms. Malkiat Kaur wife of Surti Singh are the natural parents of Hardeep Singh (appellant herein). Naginder Singh challenged the adoption deed on the allegations that he refused to adopt Hardeep Singh as his son. Surti Singh offered liquor and under influence of intoxication took him to scribe, got the adoption deed prepared on a stamp paper and obtained his signatures. He never appeared before the Sub Registrar nor contents of the document were read-over to him. Hardeep Singh was 22 years old at the time of alleged adoption deed dated 07.03.2002 and was not competent to be taken in adoption under the Hindu Adoptions and Maintenance Act, 1956 (in short 'the Act').

The Courts have recorded concurrent findings in favour of the respondent/plaintiff that adoption deed dated 07.03.2002 in respect of adoption of Hardeep Singh by the plaintiff is invalid, null and void and accordingly the same was set aside.

To assail consistent findings recorded by the Courts, counsel would argue that natural parents of the appellant appeared in the witness box and stated on oath that Hardeep Singh was adopted by Naginder Singh in the year 1990, though the adoption deed has been prepared in the year 2002. It is argued that as Hardeep Singh was adopted when he was less than 15 years of age, findings of the Courts with regard to there being no

valid adoption of Hardeep Singh by Naginder Singh – respondent cannot sustain.

Another submission made by counsel is that in the State of Punjab, there is no bar to adopt a child who is aged more than 15 years. For this purpose, reliance has been placed upon judgment of this Court **Mohar Ram Vs. Bhim Singh and others, 2018(5) RCR (Civil) 806.** In addition, it is argued that there is presumption attached to registered document relating to adoption under Section 16 of the Act.

Section 10 of the Act deals with persons who may be adopted.

A relevant extract therefrom reads as follows:-

“No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely-

- (i) xx xx
- (ii) xx xx
- (iii) xx xx
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.”

Counsel for the appellant, in response to a query, has fairly informed that no such custom or usage has been pleaded by the appellant and natural parents of Hardeep Singh under which adoption of a child more than 15 years of age is permissible. Rather, natural parents of Hardeep Singh had raised a plea in the written statement that Hardeep Singh was adopted by Naginder Singh at the time of his birth. That being so, the

appellant cannot derive any advantage to his contention from the referred authority which deals with adoption under general customs of Punjab.

Defendants Nos.1 and 2 (natural parents of Hardeep Singh) raised a plea in the written statement that Hardeep Singh was adopted by Naginder Singh immediately after his birth. During the course of evidence, they changed their stance and sought to prove that Hardeep Singh was adopted in the year 1990 when he was less than 15 years of age. The appellant and his natural parents have relied upon the adoption deed dated 07.03.2002 wherein there is no reference that Hardeep Singh was adopted by Naginder Singh either immediately after his birth or in the year 1990. Counsel for the appellant has sought to derive benefit of presumption available to a registered document relating to adoption under Section 16 of the Act. Since the appellant himself has relied upon the adoption deed, he is precluded from taking benefit of any such plea raised by his natural parents that he was adopted immediately on his birth or in the year 1990, for want of any such recital in the registered document. Analyzed from any angle, I find myself unable to accept contention of the appellant that consistent findings recorded by the Courts setting aside the adoption deed dated 07.03.2002 suffer from an error much less perversity that would call for intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, applications for condonation of delay are of academic relevance.

RSA No.3614 of 2018

Hardeep Singh claiming himself to be adopted son of Naginder Singh assailed sale deed dated 17.01.2003 executed by defendant

No.1 in favour of defendant No.2, sale deed dated 17.01.2003 executed by defendant No.1 in favour of defendant No.4, sale deed dated 06.06.2003 by defendant No.2 in favour of defendant No.5, another sale deed dated 06.06.2003 executed by defendant No.2 in favour of defendant No.6, detailed in headnote of the plaint.

Hardeep Singh filed the suit by claiming himself to be adopted son of Naginder Singh. Naginder Singh challenged adoption of Hardeep Singh and suit filed by him was decreed by the Courts and findings in this regard have been affirmed by this Court while disposing of RSA No.3844 of 2018. That being so, Hardeep Singh can neither claim himself to be adopted son of Naginder Singh nor could seek any such declaration by asserting himself to be son of Naginder Singh. This apart, the Courts have rightly held that during lifetime of Naginder Singh, Hardeep Singh otherwise is not competent to maintain suit for declaration.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay is of academic relevance.

FEBRUARY 27, 2020

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no