

**RSA No.471 of 2017(O&M) and
Cross Objection No.8 of 2021**

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

**RSA No.471 of 2017(O&M) and
Cross Objection No.8 of 2021
Date of decision: 13.09.2021.**

Davinder Kaur

...Appellant

Versus

Gurpreet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Amit Jhanji, Sr. Advocate, with
Ms. Priyanka Bansal, Advocate
for the appellant.**

**Mr. Sanjiv Gupta, Advocate,
for the applicant/cross-objector/respondent no.1.**

**Mr. Piyush Aggarwal, Advocate
for the applicants (in CM No.3263-64-C-2021)**

ANIL KSHETARPAL, J.(Oral)

The hearing of the case was held through video conferencing
on account of restricted functioning of the courts.

C.M.No.2745-C-2021

In view of the prayer made in the application, which is
supported by an affidavit, the delay of 1395 days in filing the cross-
objections is condoned.

The application stands disposed of.

C.M.No.2746-C-2021

Allowed as prayed for.

C.M.No.3264-C-2021

In view of the prayer made in the application, which is supported by an affidavit, the application is allowed and Surinder Kaur, Gurmeet Kaur and Parvinder Kaur are impleaded as co-appellants No.2 to 4, respectively.

The amended memorandum of the parties is taken on record.

MAIN

By this judgment, the Regular Second Appeal as well as the cross-objections filed by the plaintiff and the defendant shall stand disposed of.

The dispute in the present case is with regard to the inheritance to the property left behind by late Sh. Baldev Singh, who died on 28.07.2010. From the pleadings, it is clear that late Sh. Baldev Singh left behind a residential house as well as a kurari in Village Saketri. The plaintiff Gurpreet Singh claims that he being the adopted son of late Sh. Baldev Singh is entitled to half share of the property. Late Sh. Baldev Singh died intestate. However, it is being denied by the defendant. Smt. Davinder Kaur-defendant No.1. She does not dispute the adoption of the plaintiff-Gurpreet Singh but submitted that since after the death of late Sh. Baldev Singh, natural parents of Gurpreet Singh have taken him back, therefore, the plaintiff is not entitled to any share.

The learned first appellate Court, on the appreciation of evidence, has found out that there is no dispute between the parties about the valid adoption of Gurpreet Singh, hence, he continues to be the adopted son of late Sh. Baldev Singh.

This Bench has heard the learned counsel for the parties at

length and with their able assistance perused the paper book and the record of the Courts below which has been requisitioned.

The learned counsel representing the appellant contends that as the natural parents of Gurpreet Singh have taken him back after the death of late Sh. Baldev Singh, consequently, his relationship with the family has been severed. Hence, he cannot claim any right, title or interest in the property left behind by late Sh. Baldev Singh.

Per contra, the learned counsel representing the respondent-(cross objectors) submits that once Gurpreet Singh was uprooted from his family and transplanted in the family of late Sh. Baldev Singh, he would continue to be the son of late Sh. Baldev Singh and therefore, entitled to the property. He further submits that as Davinder Kaur is 100% disabled, therefore, she has been illegally kept in wrongful confinement.

As per the Hindu Succession Act, 1956, son and widow are class-I heirs of the Hindu male dying intestate. The word “son” includes the “adopted son”. Moreover, there has been a valid adoption. Gurpreet Singh's ties from the natural family were severed and were replaced by the adoptive family of late Sh. Baldev Singh as he became a member of the family of late Sh. Baldev Singh. Furthermore, the mere fact that after the death of late Sh. Baldev Singh, Gurpreet Singh started residing with his natural parents, is not sufficient to hold that he ceases to be the son of late Sh. Baldev Singh. Section 12 of the Hindu Adoptions and Maintenance Act, 1956 clearly states that on adoption, the adopted child becomes the member of the family in which he has been adopted for all purposes with effect from the date of adoption, which is extracted as under:-

“12 Effects of adoption. —An adopted child shall be

deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.”

Even Section 15 of the Hindu Adoptions and Maintenance Act, 1956 states that a valid adoption cannot be cancelled, nor the adopted child can renounce his status afterwards and return to the family of his or her birth which is extracted as under:-

15. Valid adoption not to be cancelled.—*No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.*

In such circumstances, learned First Appellate Court has correctly held that Gurpreet Singh and Davinder Kaur being Class-I heirs of late Sh. Baldev Singh are entitled to equal share in the property.

As regards the argument of learned counsel representing the cross-objector, it may be noted that the contention sought to be raised in the cross-objections is beyond the scope of the suit.

Mr. Piyush Aggarwal, the learned counsel representing the applicants submits that the suit itself was not maintainable as the plaintiff did not seek consequential relief of possession.

It is evident that on the death of late Sh. Baldev Singh, the parties being the Class-I heirs, succeeded to the property jointly. Thus, they are co-sharers. Every co-sharer is deemed to be in possession of every part of the joint property. The plaintiff can pray for delivery of actual physical possession in a partition proceedings. Hence, proviso to Section 34 of the Specific Relief Act, 1963 shall not be applicable.

Keeping in view the aforesaid facts, the regular second appeal as well as cross-objections are dismissed.

September 13, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No