

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.728 of 2018 (O&M)

Date of Decision : 30.08.2022

Manpreet Kaur

....Appellant

VERSUS

Sukhwinder Kaur and Another

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gourav Verma, Advocate for
Mr. Manpreet Singh Longia, Advocate for the appellant.

ALKA SARIN, J. (Oral)

The present appeal has been preferred by the plaintiff-appellant against the judgments and decrees dated 04.12.2014 and 09.03.2017 passed by the Trial Court and the lower Appellate Court, respectively whereby her suit has been dismissed.

In brief, the facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for declaration to the effect that defendant-respondent no.1 and proforma defendant-respondent no.2 are co-sharers and co-owners and in joint possession of the share of late Rajinderjit Singh and the plaintiff-appellant was having 1/3rd share and the proforma defendant-respondent no.2 was also having 1/3rd share in the suit property, as also for perpetual injunction restraining defendant-respondent no.1 from alienating the suit property in any manner. It was averred in the plaint that late Rajinderjit Singh and defendant-respondent no.1 were husband and wife and were issueless and since they could not give birth to any child even after 12 years of their marriage, the plaintiff-appellant, who is the daughter of Randeep Singh, real brother of Rajinderjit Singh, was adopted by Rajinderjit Singh when she was aged 7½ years before the *Gram Panchayat* on 15.04.1994 and

a resolution to the said effect was passed by the *Gram Panchayat* and the same was duly recorded in the proceedings book of the *Gram Panchayat*. It is further averred that Rajinderjit Singh brought the plaintiff-appellant to his house and started treating her as his daughter. Further, it was averred that after the death of Rajinderjit Singh, defendant-respondent no.1 changed her attitude towards plaintiff-appellant and that defendant-respondent no.1 left her house and started living at her parental house. It is further averred that the property of Rajinderjit Singh would be inherited by plaintiff-appellant and defendant-respondent no.1 in equal shares.

Upon notice, defendant-respondent no.1 appeared and filed her written statement raising the objections *qua* maintainability of the suit. It was admitted that the plaintiff-appellant is the daughter of Randeep Singh, real brother of Rajinderjit Singh. It was further stated in the written statement that the present suit had been filed in connivance and with the conspiracy of defendant-respondent no.2 to get a share of the valuable property left by Rajinderjit Singh. It is further denied that the plaintiff-appellant was the adopted daughter of Rajinderjit Singh.

Defendant-respondent no.2 filed her separate written statement admitting the claim of plaintiff-appellant.

On the basis of the pleadings of the parties, the following issues were framed :

1. Whether Manpreet Kaur is the adopted daughter of Rajinderjit Singh and Sukhwinder Kaur defendant no.1 ? OPP

2. If issue no.1 is proved, whether the plaintiff is entitled to the relief of declaration as prayed for ?
OPP
3. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
4. Whether the suit of the plaintiff is not maintainable ? OPD
5. Whether the plaintiff is estopped by her act and conduct to file the present suit ? OPD
6. Whether the plaintiff is guilty of suppression of true and material facts and has not come to the court with clean hands ? OPD
7. Relief.

The Trial Court, vide the impugned judgment and decree, dismissed the suit of the plaintiff-appellant holding that she had failed to prove the adoption. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred which also met the same fate. Hence, the present regular second appeal by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant would contend that the plaintiff-appellant had proved her adoption by producing in evidence the resolution passed by the *Gram Panchayat*. It is further the contention of learned counsel for the plaintiff-appellant that both the Courts below have totally ignored the said resolution (Ex.P7).

I have heard learned counsel for the plaintiff-appellant.

In the present case both the Courts below have concurrently found that in the school certificates the name of the father of the plaintiff-appellant had been mentioned as Randeep Singh and mother as Harbans Kaur. It has further come in the cross-examination of the plaintiff-appellant that she never moved any application for change of name. The natural father of the plaintiff-appellant also admitted in his cross-examination that the name of the father of the plaintiff-appellant was mentioned as Randeep Singh in the school and college records. It has further come in his cross-examination that at the time of adoption on 15.04.1994, he along with his brother and brother-in-law were present and except for the writing of the *Gram Panchayat* no other ceremony was conducted. From the cross-examination of Randeep Singh it is further revealed that Rajinderjit Singh was 28 years of age at the time of the alleged adoption and the plaintiff-appellant was 7½ years of age which depicts that the adoptive father was not 21 years older than the plaintiff-appellant at the time of the said alleged adoption. It is further not a disputed fact that the natural mother of the plaintiff-appellant was also not present at the time of the alleged adoption. In fact no giving and taking ceremony has also been proved in accordance with the law.

Section 11 of the Hindu Adoptions and Maintenance Act, 1956 reads as under :

“11 Other conditions for a valid adoption - In every adoption, the following conditions must be complied with :

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or child whose parentage is not known,

from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of adoption.”

Section 11(iii) of the Hindu Adoptions and Maintenance Act, 1956 clearly lays down that the adoptive father should be 21 years older than the person to be adopted where the adoption is by a male or a female. The opening sentence of Section 11 states that the conditions set out in clauses (i) to (vi) ‘must be complied with’ in every adoption. The words ‘must be complied with’ appearing in Section 11 necessarily mean mandatorily required to be complied with. Therefore, one of the conditions for a valid adoption is the difference in ages prescribed by clause (iii). This is not merely a directory provision but something which is mandatory and the violation whereof results in the invalidity of the adoption.

Learned counsel for the plaintiff-appellant has not been able to show that in the present case the adoptive father was older than 21 years than the plaintiff-appellant at the time of the alleged adoption. There is thus no compliance of Section 11(iii) of the Hindu Adoptions and Maintenance Act, 1956 in so far as the alleged adoption of the plaintiff-appellant by Rajinderjit Singh is concerned. There is also no cogent and conclusive evidence on the record to prove the adoption of the plaintiff-appellant.

Keeping in view the totality of the circumstances, I do not find any illegality or infirmity in the impugned judgments and decrees passed by both the Courts below. No question of law, much less any substantial

question of law, arises for determination in the present case. The present regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**(ALKA SARIN)
JUDGE**

**30.08.2022
jk**

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO