

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.216 of 2020 (O&M)

Reserved on: 25.05.2022

Date of Decision: 31.05.2022

Dalip Sah and Others

....Appellants

VERSUS

Smt. Prem Lata and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ranjit Saini, Advocate for the appellants.

ALKA SARIN, J.

The present regular second appeal has been preferred by the defendant-appellants impugning the judgments and decrees passed by both the Courts below whereby the suit for declaration with consequential relief of permanent and mandatory injunction filed by the plaintiff-respondents has been decreed.

The brief facts relevant to the present *lis* are that one Sudama Parshad s/o Hari Shankar was the owner of the suit property. He was married to one Smt. Jamuna Devi and out of the wedlock he had 5 daughters, 4 being the plaintiff-respondents and one being Kanchan, who is not a party to present *lis*. After the death of Smt. Jamuna Devi on 16.02.1999, said Sudama Parshad performed a second marriage with Smt. Nirmala Devi. No child was born out of the wedlock. The appellant No.1-defendant No.1, Dalip Sah, is brother of Smt. Nirmala Devi whereas the appellant No.2-defendant No.2, Smt. Sumriti Devi, is his wife and the appellant No.3-defendant No.3, Master Chandan, is their natural son. Sudama Parshad died on 09.11.2012 and his second wife, Smt. Nirmala Devi, died on 08.10.2014. It is the case

set up by the plaintiff-respondents that the defendant-appellants along with Smt. Nirmala Devi had an evil eye on the suit property and in order to grab the same, when Sudama Parshad was not in his senses, pressurized Sudama Parshad and forced him to put his signatures and thumb impression on a pre-prepared/typed document of Will and adoption deed. The said Will bearing document no.550 dated 30.10.2012 and adoption deed bearing document no.249 dated 30.10.2012 and subsequent entries on the basis of the Will in the revenue record have been challenged in the suit filed by the plaintiff-respondents.

In the written statement filed by the defendant-appellants, it was stated that the suit property was the self-acquired property of Sudama Parshad in which the plaintiff-respondents had no right as Sudama Parshad during his lifetime left a registered Will dated 30.10.2012 bequeathing all his properties firstly in favour of his wife namely, Smt. Nirmala Devi, and after her death in the name of his adopted son namely, Master Chandan. It was denied that the Will and the adoption deed dated 30.10.2012 were forged and fabricated documents.

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

1. Whether the plaintiff is entitled to a decree for declaration as alleged ? OPP
2. Whether the plaintiff is entitled to a decree of permanent injunction as alleged ? OPP
3. Whether the plaintiff is entitled to a decree of mandatory injunction as alleged ? OPP

4. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
5. Whether the plaintiff has no *locus standi* and cause of action to file the present suit ? OPD
6. Whether the plaintiffs have not come with clean hands before the Court to file the present suit and concealed the true and material facts ? OPD
7. Whether the suit of the plaintiff is bad for mis-joinder of necessary party ? OPD
8. Relief.

Vide judgment and decree dated 12.12.2017 the Trial Court decreed the suit of the plaintiff-respondents holding that the execution of the Will and adoption deed had not been proved by the defendant-appellants. Aggrieved by the judgment and decree passed by the Trial Court, an appeal was preferred by the defendant-appellants. However, vide judgment and decree dated 06.08.2019 the said appeal was dismissed by the lower Appellate Court. Hence, the present regular second appeal.

Learned counsel for the defendant-appellants would contend that both the documents i.e. adoption deed and the Will were registered documents and that Sudama Parshad during his lifetime had adopted defendant No.3-appellant No.3, Master Chandan, and thereafter, on the same day, Sudama Parshad had executed a Will bequeathing all his properties firstly to his wife namely, Smt. Nirmala Devi, and thereafter to his adopted son, Master Chandan. According to counsel, the Will stood duly proved by its attesting witnesses. It is further the contention of learned counsel for the

defendant-appellants that along with the appeal before the lower Appellate Court, an application for adducing additional evidence was also filed to show that defendant No.3-appellant No.3 was admitted in Jyoti High School, Indira Nagar, Faridabad by Sudama Parshad in the year 2003 and later in Aggarwal Modern Senior Secondary School, Parwartiye Colony, NIT Faridabad which proved that defendant No.3-appellant No.3 had been adopted by Sudama Parshad.

I have heard learned counsel for the appellants and perused the paper-book.

In the present case the adoption deed dated 30.10.2012 and the Will dated 30.10.2012 were challenged by the plaintiff-respondents being illegal, null and void. Defendant No.3-appellant No.3 through defendant No.1-appellant No.1, his natural guardian, being propounder of the Will had to prove that the Will was validly executed. The onus to prove the adoption deed was also on the defendant-appellants. Both the attesting witnesses, namely, Shiv Chander, Lamberdar and R.K. Rawat, Advocate were produced by the plaintiff-respondents (both numbered as PW-4 inadvertently). Shiv Chander, Lamberdar (PW-4) although identified his signatures on the adoption deed (Ex.D1) and the Will (Ex.D2), however, he could not identify the person whose photograph was affixed on the Will. The said photograph was admittedly of Sudama Parshad. He further could not tell the nature of the documents. He also did not know who the second witness was. He further candidly admitted that none of the parties to the documents Ex.D1 the adoption deed and Ex.D2 the Will appeared before the Tehsildar. He further stated that he was simply standing with the party when the

photographs were taken and after the photographs were taken and their signing was done he went away. Similar is the statement of Rajesh Kumar Rawat, Advocate who though identified his signatures on the adoption deed, which was drafted by him, and the Will but he stated that he does not know the parties personally nor any ceremony of adoption took place in his presence. The defendant-appellants failed to lead any cogent and convincing evidence, firstly, *qua* the adoption having taken place and secondly, *qua* the Will having been validly executed. Further, the additional evidence sought to be produced before the lower Appellate Court demolishes the case as set up by the defendant-appellants inasmuch as the documents sought to be produced i.e. certificate of Jyoti High School and Aggarwal Modern Senior Secondary School reveal that defendant No.3-appellant No.3 was admitted in the school in 2003 as Sudama Parshad's son. Obviously, the name of Master Chandan as the adopted son of Sudama could not have been incorporated in the certificates since the adoption deed itself is dated 30.10.2012. Further, no evidence has been led to prove the execution of the Will. Rather the attesting witnesses of the Will have been produced by the plaintiff-respondents from whose testimonies it cannot be said that the Will (Ex.D2) is a genuine document. Learned counsel for the defendant-appellants has reiterated the submissions that were advanced before the Courts below and which submissions were rejected after due and comprehensive consideration.

No question of law, much less, any substantial question of law arises in the present case. Both the Courts below have recorded concurrent findings of fact warranting no interference by this Court.

In view of the above, I do not find any illegality and infirmity in the judgments and decrees passed by the Courts below. The appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**(ALKA SARIN)
JUDGE**

31.05.2022
jk

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