

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1405 of 2003 (O&M)
Date of Order:03.05.2023

Harbans Singh and others

.Appellants

Versus

Gurcharan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajinder Singla, Advocate
for the appellants.

Mr. P.S.Sekhon, Advocate
for the respondents.

ANIL KSHETARPAL, J

C.M.No.1027-C-2020

1. For the reasons mentioned in the application, which is supported by an affidavit, the delay of 317 days in filing the application is condoned.

C.M.No.1028-C-2020

2. For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed and the appeal is restored to its original number.

3. With the consent of the learned counsels representing the parties, the appeal is taken on Board.

MAIN

4. Defendant no.2, 3,and 4 are challenging the concurrent findings of fact arrived at by the courts below while decreeing the suit filed by the plaintiff for possession of the property.

5. In order to comprehend the controversy involved, the relevant facts, in brief, are required to be noticed:

6. The dispute in the present case is with regard to the inheritance of the property of late Smt. Gurnam Kaur widow of Sh. Kirpal Singh who died issueless. Previously the plaintiff (late Smt. Gurnam Kaur) and defendant no.5 filed a Civil Suit No.292/02.12.1974 against the defendant no.6 for a decree of declaration that defendant no.6 is not the adopted son of late Smt. Gurnam Kaur. In the aforesaid suit, the court recorded the following findings:-

"The claim of Mukhtiar Singh defendant No.1 that he was Kirpal Singh's adopted son has remained totally unsubstantiated. There being no plea of any customary adoption in the village before brother-hood, the claim in question was entirely dependent upon the adoption deed Ex. D-1. However, a bare perusal of Ex.D-1 shows that it has no legal force behind it because there is no party therein who has agreed to the adoption on behalf of the boy despite the fact that his real mother Smt.Bhano was admittedly alive. As matter of fact, the last sentence which to have been incorporated at the end of subsequently the writing Ex.D-1 declaring Mukhtiar Singh adoptee to be the natural son of Sat. Gurnam Kaur defendant and one Jaggar Singh, runs counter to the entire case of the defendants and, it would not be out of place to mention that the defendants seem to have contested this suit being entirely oblivious of the existence of this recital in the adoption deed Ex.D1. Consequently, the averment of Smt. Gurnam Kaur defendant as DW-4 that Mukhtiar Singh adoptee was the

son of her brother Jagar Singh is a patent lie. As a matter of fact, as will be discussed subsequently, there is very little of "grain" in her deposition the substantial portion of which is mere "chaff". As such the so-called deed of adoption is document of no significance and hence no adoption of Mukhtiar Singh defendant by Kirpal Singh deceased could be established."

6. In another suit, Sh. Mukhtiar Singh, defendant no.5 admitted that he is not related to late Smt. Gurnam Kaur. Subsequently, defendant no.5, namely Sh. Harnek Singh brother of the plaintiff became dishonest and on the basis of power of attorney given by the plaintiff permitted the civil suit filed by them to be dismissed for non-prosecution. Defendant no.5 after having been authorised by defendant no.6 executed two separate sale deeds. Thus, the plaintiff filed a suit claiming property of late Smt. Gurnam Kaur on the basis of natural succession. Sh. Mukhtiar Singh, defendant no.6 while contesting the suit claimed that he is the adopted son of late Smt. Gurnam Kaur.

7. In view of the findings arrived at by the court in the inter-party suit decided on 20.03.1976, it has been held that defendant no.6 is not son of late Smt. Gurnam Kaur and hence the plaintiff and defendant no.5 will inherit the property of late Smt. Gurnam Kaur, on the basis of natural succession.

8. The aforesaid finding has been affirmed by the First Appellate Court on re-appreciation of evidence.

9. Heard the learned counsels for the parties at length and with their able assistance perused the paper book and the photocopies of the record produced by the learned counsel representing the appellant.

10. The learned counsel representing the appellant contends that in the judgment dated 20.03.1976, it has been declared that the plaintiff is not related to late Smt. Gurnam Kaur and he is not entitled to inherit the property. On being confronted with the copy of the judgment, the learned counsel representing the appellant failed to draw the attention of the court to any such finding. He further contends that the plaintiff's previous suit was dismissed in default, and therefore, the doctrine of re-judicata bars the second suit as well.

11. It may be noted here that the doctrine of resjudicata is governed by Section 11 of the Code of Civil Procedure, 1908, which states that if a previous suit is decided on its merits, the findings of that suit will be binding on the parties to the suit and will operate as res-judicata. In the present case, it is admitted that the suit filed by the plaintiff was dismissed for non-prosecution. The appellant has not argued that the subsequent suit is barred under Order 9 Rule 9 of the Code of Civil Procedure, 1908.

12. The next submission of the learned counsel representing the appellant is that no documentary evidence has been produced to prove the relationship of the plaintiff with late Smt. Gurnam Kaur and both the courts have erred while relying upon the oral evidence.

13. This court has considered the submissions of the learned counsel representing the parties. The plaintiff has led cogent evidence to prove his relationship with late Smt. Gurnam Kaur. Both the courts have relied upon the oral evidence. In absence of perversity, interference during a second appeal would not be appropriate, especially when the concurrent findings of fact have already been arrived at. The learned counsel representing the appellants did not press any other point.

14. Keeping in view the aforesaid facts and discussion, the regular second appeal is dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

May 03, 2023
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO