

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.4080 of 1999 (O&M)

Reserved on 20.12.2022

Date of Decision : 17.01.2023

Santosh (deceased) and others

....Appellants

VERSUS

Baljit Singh (deceased) through his LRs

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Alok Jain, Advocate for LRs of appellant nos.1 to 5.

Mr. Gurcharan Dass, Advocate for
Mr. Vijay Sharma, Advocate for the LRs of appellant no.6.

Mr. Lalit Kumar, Advocate for respondent nos.(i) (ii) (iii).

ALKA SARIN, J.

The present appeal has been preferred by the appellants against the judgment and decree dated 08.09.1999 passed by the District Judge, Sonapat whereby judgment and decree dated 21.12.1998 passed by the Trial Court was reversed and the suit for possession was dismissed. The appellants are the successors-in-interest of Jot Ram (plaintiff) while the respondents are the successors-in-interest of Baljit Singh (defendant). Both Jot Ram (plaintiff) and Baljit Singh (defendant) have died during the pendency of the litigation.

The brief facts relevant to the present *lis* are that one Jot Ram was owner of agricultural land as detailed in the plaint. The present suit was filed by the plaintiff - Jot Ram (since deceased) for possession against defendant - Baljit Singh (since deceased) - averring therein that the plaintiff,

Jot Ram, and the defendant, Baljit Singh, did not form a joint Hindu family nor the defendant, Baljit Singh, was a member of the family of the plaintiff, Jot Ram. It was further averred that by practicing fraud on the plaintiff, Jot Ram, and pretending that a Will had to be executed in favour of the daughter of the plaintiff, Jot Ram, he was brought to the Court and a collusive and fictitious decree was got passed on 30.05.1986. It was further averred that the plaintiff, Jot Ram, never adopted the defendant, Baljit Singh, nor the said defendant rendered any services to the plaintiff, Jot Ram, nor any adoption deed was ever written with any condition. The plaintiff, Jot Ram, in the present suit challenged the validity of judgment and decree dated 30.05.1986 and averred that the defendant, Baljit Singh, had forcibly taken possession of the land from the plaintiff, Jot Ram. The defendant, Baljit Singh, filed a written statement and raised a preliminary objection of maintainability as well as estoppel and that the suit was barred by the principle of *res judicata*. On merits it was contended that the defendant, Baljit Singh, was owner in possession of the entire suit land and that he was the adopted son of the plaintiff, Jot Ram. It was further averred in the written statement that the plaintiff, Jot Ram, had admitted the factum of adoption while making a statement before the Civil Court in the previous suit. It was further the stand taken that the plaintiff, Jot Ram, had suffered a decree in favour of the defendant, Baljit Singh, out of his free will and no fraud or misrepresentation was practiced upon him. Replication was filed reiterating the contents of the plaint.

On the basis of pleadings of the parties, the following issues were framed on 04.09.1987 :

1. Whether the decree dated 30.05.1986 is illegal and void, as alleged ? OPP

2. Whether the plaintiff is estopped from filing the suit ? OPD
3. Whether the suit for declaration alone is not maintainable ? OPD
4. Whether the suit is time barred ? OPD
5. Relief.

Subsequently, the following issue was framed on 11.09.1995 :

- 1-A. Whether the plaintiff is entitled for the possession of suit land from defendant, as alleged ? OPP

Thereafter, the following issue was framed on 12.03.1998 :

- 1-B. Whether the defendant is adopted son of the plaintiff Jot Ram ? OPD

The Trial Court vide judgment and decree dated 21.12.1998 decreed the suit holding that the defendant, Baljit Singh, was never adopted by the plaintiff, Jot Ram, and the judgment and decree dated 30.05.1986 passed in the civil suit titled 'Baljit Singh vs. Jot Ram' was illegal, null and void and was hence accordingly set aside and further that the plaintiff-appellants herein, who are the legal representatives of Jot Ram on the basis of Will dated 11.11.1987, were entitled to get their names incorporated in the revenue records after the death of Jot Ram. Aggrieved by the said judgment and decree dated 21.12.1998, an appeal was preferred by the defendant, Baljit Singh. The lower Appellate Court reversed the judgment and decree passed by the Trial Court holding the defendant, Baljit Singh, to be the adopted son of the plaintiff, Jot Ram, as well as holding the consent decree to be valid. Aggrieved by the judgment and decree passed by the lower Appellate Court, the present regular second appeal was filed. The present regular second appeal was allowed vide judgment dated 08.10.2003,

the judgement and decree passed by the lower Appellate Court were set aside and those passed by the Trial Court were restored. The judgment dated 08.10.2003 was challenged by the defendant, Baljit Singh, by preferring SLP No.8245 of 2004 which was later converted to CA No.810 of 2005 titled 'Baljit Singh vs. Smt. Santosh and Others'. The Hon'ble Supreme Court vide order dated 31.01.2005 remanded the matter back to this Court to decide afresh after framing the substantial question of law.

Learned counsel for the parties have stated that the following questions of law arise for determination of the present appeal :

1. Whether the judgment and decree dated 30.05.1996 (Ex.P14) was obtained by fraud ?
2. Whether Will dated 22.05.1986 (Ex.DW3/1) executed by plaintiff, Jot Ram, in favour of the defendant, Baljit Singh, is a valid Will ?
3. Whether the defendant, Baljit Singh, is the adopted son of the plaintiff, Jot Ram ?

Keeping in mind the above questions of law, learned counsel for the appellants has contended that the Will dated 22.05.1986 is alleged to have been executed by the plaintiff, Jot Ram, in favour of the defendant, Baljit Singh. Shortly thereafter, within a period of 8 days, the consent decree dated 30.05.1986 was passed. Subsequent to the passing of the consent decree dated 30.05.1986, a suit for permanent injunction was filed against the plaintiff, Jot Ram, which was dismissed upto this High Court in RSA No.1664 of 1992 vide order dated 30.10.1992 (Ex.P22). It is further the contention of learned counsel for the appellants that there is no adoption deed which was ever produced before the Courts below and that though the

record nor anywhere else the name of the adoptive father Jot Ram was mentioned. Learned counsel for the appellants has further referred to the injunction suit filed by the defendant, Baljit Singh, against the plaintiff, Jot Ram, which also referred to him as son of Rishal Singh (Ex.P2). Learned counsel for the appellants has further contended that though a Will has been allegedly executed in favour of the defendant, Baljit Singh, on 22.05.1986, however, in the plaint, wherein the consent decree was passed, it was stated that there was some compromise which had taken place between the plaintiff, Jot Ram, and the defendant, Baljit Singh, as per which all the moveable and immoveable assets of the plaintiff, Jot Ram, would go to the defendant, Baljit Singh. Learned counsel for the appellants has further pointed out that at the time of recording of mutation the defendant, Baljit Singh, had stated that he was not aware if he was adopted by the plaintiff, Jot Ram.

Per contra learned counsel for respondent nos.(i) (ii) (iii) has contended that the adoption was in accordance with the customary law of the Jat community, which stood duly proved on the record. He has further contended that the plaintiff, Jot Ram, had admitted regarding adoption at the time of passing of the consent decree and that even in the Will dated 22.05.1986 (Ex.DW3/1) the adoption has been admitted.

I have heard learned counsel for the parties.

The plaintiff, Jot Ram, himself had filed the present suit challenging the judgment and decree dated 30.05.1986 as well as the Will dated 22.05.1986 (Ex.DW3/1). The plaintiff, Jot Ram, while appearing in the witness-box as PW1 denied ever having adopted the defendant, Baljit Singh, as his son and further also denied the fact that the defendant, Baljit Singh, ever resided or served him. He further stated that he had been taken

to the Court under the pretext of getting the Will executed in favour of his daughters. However, a fraud was committed upon him and the suit land was got transferred by means of the collusive decree. The defendant, Baljit Singh, had propounded a Will dated 22.05.1986 (Ex.DW3/1) and within 8 days the collusive decree dated 30.05.1986 was passed. Once the Will had already been executed there was no question of going in for a consent decree. The plaint of the suit leading to the consent decree reveals that the ground mentioned therein was that a year back a compromise had been entered into between Jot Ram and Baljit Singh that Baljit Singh, who was the adopted son of Jot Ram, would be the owner in possession of all his moveable and immoveable assets. It does not sound reason as to where was the necessity of a consent decree being passed 8 days post the execution of a registered Will dated 22.05.1986 in favour of Baljit Singh. It is further to be noticed that the defendant, Baljit Singh, studied in school upto Class-V. He while appearing as DW1 admitted in his cross-examination that his father's name in the school was mentioned as Rishal Singh. If he actually stood adopted by Jot Ram there was no reason of his parentage being mentioned as son of Rishal Singh. Further, even when the suit for injunction was filed by the defendant, Baljit Singh, against the plaintiff, Jot Ram, he had shown himself as son of Rishal Singh and not son of Jot Ram. Even in the voters' list (Ex.P15), father's name of the defendant, Baljit Singh, had been mentioned as Rishal Singh and not Jot Ram. The said voters' list pertains to the year 1985. Further still, there are discrepancies in the statements of the witnesses of the alleged adoption. The defendant, Baljit Singh, while appearing as DW1 stated that he was adopted when he was 7-8 years of age and since then he had been serving the plaintiff, Jot Ram. He further stated

that a *Panchayat* had collected and Rishal Singh and Bharpai made him to

sit in the lap of his uncle Jot Ram after the adoption and he was always treated as son of Jot Ram and his wife and he treated them as his parents. It was further stated by him that Chandgi Ram, Deep Chand, Ramji Lal, Bhai Ram, Jai Singh and Mange, Numberdar were present at the time of adoption. He also stated that after the adoption his parentage had changed to Jot Ram and Bharpai and *laddus* were distributed. DW3, Raghbir Singh, stated that Jot Ram and his wife had taken Baljit Singh in adoption while Rishal Singh had given Baljit Singh in adoption. He further stated that Jot Ram had transferred some land through a consent decree in favour of his adopted son. DW4, Hari Singh, has stated on the same lines. DW5, Sahab Singh, has stated that at the time of adoption, *hawan* ceremony was performed and *patasas* were distributed. DW3, Raghbir Singh, in 1998 when his statement was recorded, has mentioned his age as 54 years which would mean that at the time of the alleged adoption in 1958 he was about 14 years of age. DW5, Sahab Singh, has mentioned his age as 48 year in the year 1998 which would mean that he was about 8 years of age at the time of the alleged adoption in 1958. DW4, Hari Singh, has mentioned his age as 49 years which means that at the time of the alleged adoption he was only 7 years of age. All the witnesses at the time of adoption were minors themselves.

The Will (Ex.DW3/1) set up by the defendant, Baljit Singh, would also be of no consequence since subsequently a Will dated 11.11.1987 (Ex.P21) was executed by the plaintiff, Jot Ram, in favour of his daughters being his last Will and testimony. The said Will would prevail over the previous Will. Not an iota of evidence has come on the record to show that there was any suspicious circumstances shrouding the Will dated 11.11.1987 (Ex.P21) executed by the plaintiff, Jot Ram, in favour of his natural daughters. Though the case of the defendant, Baljit Singh, was that

he had always served the plaintiff, Jot Ram, and a Will dated 22.05.1986 (Ex.DW3/1) was executed in his favour by Jot Ram, however, shortly thereafter a suit was filed by him stating therein that Jot Ram had refused to incorporate his (Baljit Singh) name in the revenue record as per the compromise which had taken place a year ago wherein Jot Ram had agreed that all his moveable and immoveable assets would come to Baljit Singh. Cumulatively, the only conclusion that can be drawn is that there was no adoption and that the consent decree dated 30.05.1986 and the Will dated 22.05.1986 were based on fraud and misrepresentation and were not executed by the plaintiff, Jot Ram, out of his own free will. An argument was raised by learned counsel for the respondents that the adoption was as per the customary law, however, neither there is any pleading nor any evidence showing prevalence of any customary law or that the adoption was in consonance with the customary law prevalent in the area. It is well established that in the matter of custom a party has to plead in specific terms as to what is the custom that he is relying on and he must prove the custom pleaded by him. He cannot be permitted to prove a custom not pleaded by him. It is incumbent upon a party to allege and prove the custom on which he relies. The reason for this rule is obvious. Anybody who puts forward a custom must prove by satisfactory evidence the existence of the custom pleaded, its continuity and the consistency with which it was observed.

In view of the discussion, the questions of law are answered as recorded above. The findings recorded by the lower Appellate Court cannot be sustained and are consequently set aside. The present regular second appeal is allowed. The judgment and decree dated 08.09.1999 passed by the lower Appellate Court is set aside and the judgment and decree dated

21.12.1998 passed by the Trial Court is restored. Pending applications, if any, also stand disposed off.

17.01.2023
jk

(ALKA SARIN)
JUDGE

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