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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1110-2022 (O&M)
Reserved on : 29.03.2023
Date of decision : 11.04.2023

Jarnail SinghAppellant

Versus

Dalip Singh and OthersRespondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Amit Kashyap, Advocate for
Dr. Naresh Kaushik, Advocate for the appellant.

ALKA SARIN, J.

The present appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 06.05.2022 passed by the First Appellate Court whereby the judgment and decree dated 18.03.2019 passed by the Trial Court has been set aside and the suit of the plaintiff-appellant has been dismissed.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for issuance of a decree for declaration to the effect that the plaintiff-appellant is the adopted son of deceased - Gurbax Singh - and is owner in possession of land measuring 59 Kanals 13 Marlas described in detail in the plaint situated in village Lalluwala, Tehsil Zira, District Ferozepur and that the Will dated 30.11.2015 executed by deceased - Gurbax Singh - in favour of defendant-respondent No.1 in connivance with

defendant-respondent Nos.2 and 3 was illegal, null and void and further challenged the mutation No.1259 sanctioned on the basis of the said Will. The plaintiff-appellant approached the Court averring in the plaint that he was the adopted son of deceased - Gurbax Singh - and was the owner in possession of the land left by Gurbax Singh. It was further averred that the plaintiff-appellant was taken in adoption by Gurbax Singh and his wife, Jalla Bibi. The ceremony of giving and taking took place at village Lalluwala in the presence of the relatives and respectables of the locality and since the adoption the plaintiff-appellant was residing with Gurbax Singh and Jalla Bibi and they treated the plaintiff-appellant as their son. It was further pleaded that the name of the plaintiff-appellant had also been incorporated in the ration card as son of deceased - Gurbax Singh - as also in the Aadhaar Card he was shown as son of deceased - Gurbax Singh. It was further averred that the marriage of the plaintiff-appellant was solemnized by deceased - Gurbax Singh - and his wife, Jalla Bibi, and they performed all the ceremonies as parents of the plaintiff-appellant. Further, the Will dated 30.11.2015 was challenged as being a procured one and being forged and fabricated. On notice, the defendant-respondents appeared and filed their written statement. It was submitted that the mother of the plaintiff-appellant was the sister of deceased - Gurbax Singh - and the plaintiff-appellant was a permanent resident of village Mahalam/Chak Balochan Wala, Tehsil Jalalabad, District Fazilka and the name of his father was Munsha Singh. It was further the stand taken that the plaintiff-appellant and his wife, Bhajan Kaur, were registered employees in the village Chak Balochan Wala under the Mahatma Gandhi National Rural Employment Guarantee Act i.e. MGNREGA and their Ration Card showed that they were permanent

residents of village Chak Balochan Wala and were continuously taking ration from the said Depot. The factum of adoption was denied. Qua the Will it was stated that Gurbax Singh executed a registered Will in favour of defendant-respondent No.1 and defendant-respondent Nos.2 and 3 were the attesting witnesses of the Will and further that mutation No.1259 was also entered on the basis of the said Will. Replication was not filed by the plaintiff-appellant.

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

1. Whether the plaintiff is entitled to the decree for declaration as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form as prayed for ? OPD
- 2A. Whether the Will dated 30.11.2015 is validly executed by Gurbax Singh deceased ? OPD
3. Whether the suit of the plaintiff is counter blast of the suit filed by the defendant ? OPD
4. Whether the plaintiff has not come to the Court with clean hands and has concealed true and material facts from this honourable court ? OPD
5. Relief.

The Trial Court decreed the suit holding that the plaintiff-appellant was the adopted son of deceased - Gurbax Singh - and further that the Will dated 30.11.2015 executed by Gurbax Singh in favour of defendant-respondent No.1 was illegal, null and void. The suit was accordingly decreed vide judgment and decree dated 18.03.2019. Aggrieved by the same, an

appeal was preferred by the defendant-respondent No.1. The First Appellate Court reversed the findings of the Trial Court and held that the adoption of the plaintiff-appellant had not been proved and further that the registered Will dated 30.11.2015 executed by Gurbax Singh was a valid Will. Aggrieved by the same, the present regular second appeal has been preferred by the plaintiff-appellant.

Learned counsel for the plaintiff-appellant would contend that the First Appellate Court has erred in allowing the appeal filed by the defendant-respondent No.1 and dismissing the suit of the plaintiff-appellant. Learned counsel would further contend that the adoption stood proved inasmuch as the name of the plaintiff-appellant was incorporated in the ration card showing his father's name as Gurbax Singh as also in the Aadhaar Card his father's name was shown as Gurbax Singh. A frail argument was also raised challenging the validity of the Will.

I have heard learned counsel for the plaintiff-appellant.

In the present case in the plaint dated 28.04.2017 it is stated right in the opening by the plaintiff-appellant that his age is 42 years. In his cross-examination the plaintiff-appellant as PW-3 stated that Akhand Path was held when his adoption took place which was on 10 Assu (September) 1990. The *Panchayatnama* (Ex.P1) shows that the plaintiff-appellant had been residing with the deceased - Gurbax Singh - since 1990. Therefore, in the year 1990, when the alleged adoption took place, the plaintiff-appellant would have been 15 years old. As per Section 10 of the Hindu Adoption and Maintenance Act, 1956 no person above the age of 15 can be adopted unless custom is pleaded and proved. There is no averment about any custom in the

plaint. Section 10 of the Hindu Adoption and Maintenance Act, 1956 reads as under :

“10. Persons who may be adopted - No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely :

- (i) he or she is a Hindu;*
- (ii) he or she has not already been adopted;*
- (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;*
- (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption”*

The above reproduced section clearly reveals that no person above the age of 15 can be adopted unless there is custom is pleaded and proved. The plaint does not mention any custom according to which the plaintiff-appellant is stated to have been adopted nor is there any evidence to that effect. Further, the *Panchayatnama* (Ex.P1), which has been produced as evidence of the alleged adoption, is neither signed by the adoptive parents nor by the natural parents. In the absence of the signatures of the adoptive parents as well as the natural parents on Ex.P1, the same cannot be treated as a document of adoption. There being no proof regarding the adoption of the plaintiff-appellant, he cannot be held to be the adopted son of deceased - Gurbax Singh. Still further, in the job card issued by MGNREGA (Ex.DW6/A), the plaintiff-appellant is recorded as being the son of Munsha Singh. The date of registration mentioned in the said card is 21.11.2008 which is much after the alleged adoption by the deceased - Gurbax Singh.

Ex.DW6/B is the copy of the attendance record under MGNREGA and there

also the plaintiff-appellant is performing duties at village Chak Balochan Wala. Even in his voter card, he is shown as a resident of Chak Balochan Wala and the ration card (Ex.D4) also shows the plaintiff-appellant as son of Munsha Singh and his address is shown as Chak Balochan Wala, Tehsil Jalalabad, District Fazilka. In the absence of the adoption deed and in view of the evidence led by the defendant-respondents, the plaintiff-appellant cannot be held to be the adopted son of deceased - Gurbax Singh.

The lame argument raised regarding the Will in favour of the defendant-respondent No.1 is that since the plaintiff-appellant was looking after his adoptive parents, there was no reason for the Will to be executed in favour of the defendant-respondent No.1. The Will dated 30.11.2015 is a registered Will and was duly proved by the attesting witnesses. Learned counsel for the plaintiff-appellant has not been able to point out any suspicious circumstance surrounding the said Will. Counsel for the plaintiff-appellant has reiterated the submissions that were advanced before the First Appellate Court and which submissions were rejected after due and comprehensive consideration.

In view of the above, I do not find any merit in the present appeal. No question of law, much less substantial question of law, arises in the present case for determination by this Court. The present regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

(ALKA SARIN)
JUDGE

11.04.2023
Yogesh Sharma

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