

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**102****RSA No.2231 of 2016 (O&M)****Reserved on : 12.05.2023****Date of Decision : 01.06.2023**

Baldev Singh and Another

....Appellants

VERSUS

Ram Chander

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. S. S. Chauhan, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred against the judgments and decrees dated 27.05.2014 and 11.01.2016 passed by the Courts below dismissing the suit filed by the plaintiff-appellants.

2. The brief facts relevant to the present *lis* are that the defendant-respondent is the nephew (brother's son) of the plaintiff-appellants. The plaintiff-appellants filed a suit for declaration that they are owners in possession in equal share in land measuring 103 kanal 08 marla situated in Village Kemla, Sub-Tehsil Kanina, Tehsil and District Mohindergarh and are entitled to get their names recorded in revenue record as such. It was averred that their brother Nathu Singh son of Salhadi Singh died during life time of Salhadi Singh in 1956 and the defendant-respondent is the only legal heir of Nathu Singh. Their uncle (father's brother) Moola Ram was issueless and was the owner of chak of land and the parties to the suit were cultivating the suit land jointly and that the defendant-respondent has no share and concern with the land of Moola Ram. However, in collusion with Shishpal Lambardar and Rameshwar Joshi and to cause loss to the plaintiff-appellants, an adoption deed no.16 dated 29.05.1957 was executed whereby

the defendant-respondent was given in adoption to Moola Ram which adoption deed was liable to be set aside. It was submitted that the defendant-respondent was the only heir of Nathu Singh and thus could not be given in adoption and the adoption was not in accordance with the Hindu Adoption and Maintenance, Act, 1956. It was further submitted that on the basis of the adoption deed, mutation no.266 dated 08.12.1970 was entered and sanctioned illegally which was liable to be set aside and that the adoption deed is not valid, a result of fraud and liable to be set aside and its resultant mutation is also liable to be set aside. Hence, the suit. In the written statement the defendant-respondent took the plea that he was validly adopted by Moola Ram. As per the defendant-respondent he was only 6 years old when his natural father Nathu Singh expired and his mother Gomati was having no source of income and any assistance from any corner. Then Moola Ram took him in adoption in the presence of respectable inhabitants of the community and ceremony of giving and taking had been performed and Gur and Shakkar was also distributed. It was submitted that the defendant-respondent was considered as son of Moola Ram by the inhabitants of the village and the surrounding area. The adoption deed dated 29.05.1957 was executed and got registered on 14.06.1957 in the office of Sub Registrar, Mohindergarh about which the plaintiff-appellants were having notice and knowledge since its execution. According to the defendant-respondent he and the plaintiff-appellants were having joint khewat which they got separated by mutual consent and since then the defendant-respondent is coming as owner in possession of the estate of Moola Ram being his adopted son.

3. The Trial Court framed the following issues :

1. Whether plaintiffs are owner in possession over disputed property ? OPP
2. Whether adoption deed no.16 dated 29.05.1957 as well as mutation no.266 dated 08.12.1970 is illegal and as such liable to be set aside ? OPP
3. Whether the suit is time barred ? OPD
4. Whether the suit is not maintainable ? OPD
5. Whether the plaintiffs have no cause of action to file the present suit ? OPP
6. Whether the plaintiffs be estopped from filing the suit by their own act and conduct ? OPD
7. Whether the plaintiffs have not come before the Court with clean hands ? OPD
8. Whether the defendant is entitled for special cost under Section 35A of CPC ? OPD
9. Relief.

4. On the basis of the pleadings of the parties and the evidence on the record, the Trial Court dismissed the suit of the plaintiff-appellants vide judgment and decree dated 27.05.2014. The Trial Court inter-alia found that the plaintiff-appellants had failed to prove their possession over the suit property and also held that the plaintiff-appellants had no locus standi to challenge the adoption deed which was a registered document. The suit was also held to be time-barred. Aggrieved by the decision of the Trial Court, an appeal was preferred which appeal was also dismissed vide judgment and decree dated 11.01.2016. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants would contend that the Courts below have erred in dismissing their suit on illegal and erroneous

grounds and that the adoption of the defendant-respondent was not valid and was not established by the evidence on the record and was thus void ab-initio and as a result the mutation entered and sanctioned in pursuance thereof was also illegal and liable to be set aside.

6. I have heard learned counsel for the plaintiff-appellants.

7. In the present case both the Courts below have concurrently upheld the adoption of the defendant-respondent by Moola Ram. The natural mother of the defendant-respondent appeared as DW3 and supported the adoption. The adoption was evidenced by a registered adoption deed. Section 16 of the Hindu Adoption and Maintenance Act, 1956 lays down the rule of presumption which requires that when there is a duly registered deed of adoption the Court shall presume that the adoption has been made in compliance of the provisions of the Act unless and until it is disproved. This is no doubt a rebuttable presumption and the onus is upon the person challenging such adoption to rebut it. The plaintiff-appellants, apart from bald oral assertions, have not been able to disprove and dislodge the adoption of the defendant-respondent. Learned counsel for the plaintiff-appellants has not been able to point out any clinching evidence to prove that the adoption was a result of fraud or not in accordance with law. The burden of proof lay upon the plaintiff-appellants to prove that the adoption was illegal which they have failed to discharge. Further, no explanation is forthcoming as to why the adoption of 1957 was challenged in the suit filed in 2008. Any person challenging an adoption has to file the suit within a period of three years from the date of knowledge of adoption as is provided in Article 57 of the Limitation Act, 1963. The suit was clearly beyond limitation as held by both the Courts below.

8. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. The concurrent findings of fact recorded by both the Courts below do not call for any interference by this Court. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

01.06.2023
jk

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