

104.

2023:PHHC:115486

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4272-2018 (O&M)

Date of decision: 01.09.2023

Amritpal Kaur

.... Appellant

Versus

Bachittar Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Amarpreet Singh, Advocate,
for the appellant.

GURBIR SINGH, J.

CM-11390-C-2018

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 52 days in filing the present appeal.

For the reasons stated in the application, same is allowed. Delay of 52 days in filing the appeal is condoned.

RSA-4272-2018

1. The present appeal has been filed against the judgment and decree dated 10.10.2017 passed by learned District Judge, Mansa vide which the appeal filed by the appellant-plaintiff against the judgment and decree dated 17.05.2016 passed by learned Additional Civil Judge (Senior Division) Mansa, in a suit seeking mandatory injunction, was dismissed with costs.

2. Brief facts as culled out from the case are that the plaintiff is adopted daughter of Mukhtiar Singh (since deceased). She was adopted during her childhood in the presence of relatives and respectables as per rites

and rituals. She had been resided with Mukhtiar Singh as his daughter. She was brought up by Mukhtiar Singh and married by him also. Mukhtiar Singh had bank account with Oriental Bank of Commerce, Branch Mansa. Mukhtiar Singh died on 22.03.2011 and as per plaintiff, he executed an unregistered Will dated 20.02.2011 in favour of the plaintiff and defendant No.3-Karam Singh, respondent No.3 herein. After the death of Mukhtiar Singh, she is the only legal heir to inherit his estate. The plaintiff is entitled to recover a sum of Rs.2,07,434/- along with interest which defendant No.1-Bachittar Singh, respondent No.1 herein, withdrew from the Bank after misstating the facts and got issued succession certificate dated 20.07.2012. On the basis of evidence led on the file, the learned trial Court came to the conclusion that the plaintiff failed to prove that she was the adopted daughter of Mukhtiar Singh. She also failed to prove that Mukhtiar Singh executed Will dated 20.02.2011 (Ex.PX). The plaintiff was required to file suit for recovery against defendant No.1-Bachittar Singh. The suit of the plaintiff was dismissed. The appeal against the said judgment was also dismissed by the learned Appellate Court upholding the judgment of the court below.

3. Learned counsel for the appellant-plaintiff has submitted that Mukhtiar Singh used to call the appellant-plaintiff as his daughter and she used to call and treat him as her father. All the relatives and villagers also used to treat them as daughter and father. PW3-Hari Singh, who is brother-in-law of Mukhtiar Singh, has also corroborated the version of the plaintiff. Learned court below has wrongly held that the plaintiff has failed to prove that she is adopted daughter of Mukhtiar Singh. PW4-Prem Kumar, an attesting witness of the Will, has duly proved the Will. On the basis of the

Will, the plaintiff and defendant No.3-Karam Singh are entitled to inherit the estate of the deceased. Defendant No.1 has got issued succession certificate by misstating facts. Defendant No.1 is class-II heir of Mukhtiar Singh, so he is not entitled to inherit the estate of Mukhtiar Singh (since deceased).

4. I have heard the submissions of learned counsel for the appellant and have gone through the file.

5. No evidence has been led by the appellant-plaintiff about ceremonies performed at the time of adoption. The learned trial Court appreciated the evidence in its true letter and spirit. It was found that the plaintiff failed to tell the name of her maternal grandparents. She could not tell the date and month of death of Smt. Surjit Kaur, her adopting mother. There is a contradiction in the statement of the plaintiff and brother of Surjit Kaur regarding the date of her death. The plaintiff studied in the school but she failed to produce the school record to show the name of the parents written in the school record. No document regarding adoption was proved on the file, though PW3 stated that the adoption of plaintiff was put down in writing and the document was got registered. The learned trial Court found that in the Will (Ex.PX), the relationship of plaintiff with Mukhtiar Singh is not mentioned. Mukhtiar Singh was a literate person and freedom fighter, who used to put his signatures on documents, but it was not acceptable why Mukhtiar Singh put his thumb-impression on the Will. Defendant No.1 has already obtained succession certificate and the order passed in that succession certificate is judgment in rem and binding on the parties. Moreover, the plaintiff has not challenged the said succession certificate.

6. The learned courts below correctly appreciated the evidence and there is no misreading of the evidence. No question of law is involved in this appeal much less substantial question of law. The appeal is without merit and the same is, accordingly, dismissed.

(GURBIR SINGH)
JUDGE

September 01, 2023

sanjeev

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No