

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

RSA-5689-2018 (O&M)
Decided on : 01.09.2023

ASHOK KUMAR

. . . Appellant

Versus

SATYA VATI AND OTHERS

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. R.S. Bajaj, Advocate
for the appellant.

SANJAY VASHISTH, J. (Oral)

1. Present Regular Second Appeal has been filed by the plaintiff-Ashok Kumar against the concurrent finding of dismissal of the suit, praying for a decree of declaration and possession of one-third share in the disputed land.

2. Plaintiff-Ashok Kumar was natural son of Kartar Chand and Satya Vati (defendant No.1). One Chanan Ram was related as maternal grandfather of plaintiff-Ashok Kumar and Puran Devi is maternal grandmother of plaintiff-Ashok Kumar.

After the death of Chanan Ram on 05.06.1979, his property was succeeded by his five daughters i.e. defendants No.1 to 5, as Chanan Ram had no son.

3. In the suit, plaintiff pleaded that in fact, he had been adopted by his Nana-Chanan Ram and Nani- Puran Devi as their son, during their lifetime. However, no specific date is pleaded by the plaintiff regarding the

rituals and proceedings having taken place for the purpose of his adoption by said-Chanan Ram and Puran Devi.

4. Broadly speaking, plaintiff claimed that for the land/properties left by Chanan Ram and Puran Devi, being their adopted son, he is entitled for the one-third share out of the land comprising in khewat/khatoni No.245/353, khasra No.743 (4-16), 744 (4-4), 745 (5-3), 746 (6-12), 747 (4-2) total measuring 24-17 as per Jamabandi for the year 2003-2004 belonging to the plaintiff, which is in illegal and unauthorized possession of defendant No.8 situated in village Lallina, Tehsil and District Patiala. Accordingly, mutation No.1444, in favour of defendants No.1 to 5 was also sought to be declared as null and void.

5. Said property was further sold out to defendants No.6, 7 and after that, property in dispute also got transferred in favour of defendant No.8 in turn, therefore, sale deeds dated 02.01.2006 and 23.04.2007 were also sought to be declared as null and void.

6. In the written statement filed by the defendants No.2 to 4, factum of adoption as pleaded by the plaintiff was denied. Plaintiff-Ashok Kumar had also pleaded that by way of Will dated 29.12.1972 executed by Chanan Ram and another Will dated 16.12.1983 (however, at some places, the date of Will has been mentioned as 16.12.1982 in the judgment of learned trial Court) executed by Puran Devi, the land/properties were to be mutated in the name of the plaintiff-Ashok Kumar. Both the said Wills were also disputed by the defendants.

7. Learned trial Court vide order dated 27.04.2013 framed total 11 issues:-

“1. Whether the plaintiff is entitled to recover possession of

suit land from defendant no.8, as prayed for? OPP

2. *Whether the plaintiff is entitled to decree for declaration, as prayed for? OPP*

3. *Whether the plaintiff is entitled to permanent injunction against defendant no.8 as prayed for?OPP*

4. *Whether the Will dated 29.12.12 allegedly executed by Chanan Ram in favour of plaintiff is legal, valid and genuine as prayed for? OPP*

5. *Whether the will dated 16.12.83 allegedly executed by Puran Devi wife of Chanan Ram in favour of plaintiff is legal, valid and genuine as prayed for?OPP*

6. *Whether the suit of the plaintiff is barred by limitation as alleged? OPD*

7. *Whether the suit of the plaintiff is not maintainable as alleged?OPD*

8. *Whether the plaintiff has not affixed the proper court fee as alleged? OPD*

9. *Whether the plaintiff is not adopted the son of deceased Chanan Kam as alleged?OPD*

10. *Whether the plaintiff has not approached to the Court with clean hands as alleged?OPD*

11. *Relief.”*

8. After examining the pleadings and appreciation of evidence led by all the respective parties, Court reached to the conclusion that there is not an iota of evidence available on record in regard to the adoption of the plaintiff by said Chanan Ram and Puran Devi.

9. Even, from the documentary evidence, Court found that in the Court proceedings at Delhi, plaintiff-Ashok Kumar has mentioned his natural father's name i.e. Kartar Chand and name of Kartar Chand is also

mentioned in the Income-tax returns and the PAN card prepared by the Income-tax Department.

10. Thus, the said contradictory plea has been taken by the plaintiff which does not appear to be genuine. Even, there is no evidence as to when plaintiff-Ashok Kumar was adopted by Chanan Ram and Puran Devi and what rites or ceremonies were performed, as required for the purpose of adoption. Even, there is nothing mentioned that in whose presence, the rituals/ceremonies of adoption were performed. Thus, plea of adoption was outrightly rejected by the trial Court.

11. The findings recorded in the paragraph No.14, 15 and 16 says as under:-

“14. The onus is certainly upon the plaintiff to prove the stand taken by him. The plaintiff has examined as many as five witnesses. The plaintiff-Ashok Kumar has examined himself as PW1, to support of his contentions. The other witness that has been examined by him is Ashwani Kumar Garg, who in his examination-in-chief deposed that his father namely Lajpat Rai had died on 2.1.2011 and further stated that he has seen the Will dated 29.12.79 executed by late Chanan Ram, which bears the signatures of his father. He has identified his signature on the Will Ex.P3. Another witness PW3-Chander Shekhar in his examination-in-chief has deposed that Dewan Chand was his grand-father who was working as a deed writer at Jalandhar. He has brought the original deed register of his grand father for the period 11.5.72 to 17.3.73. He has deposed that said register is having entry no.597 dated 29.12.72. He has deposed that he identifies his signature on the said Will Ex.P3 as he has seen him signing and writing, PW4-Dr. Inderjit Singh, Handwriting and Fingerprints Expert has proved on record his detailed report as Ex.P6, photographs as Ex.P7 to Ex.P10. PW5-Arjan Singh has proved on record his affidavit Ex.PW5/A and in his examination in chief has submitted that Puran Devi was his real sister who died on 15.4.85. She was married to Chanan Ram who died on 5.6.79. They had no male child and Ashok Kumar, plaintiff was taken in adoption in his childhood by them. He has further stated that share of Chanan Ram was being cultivated by him from the beginning and after the death

of Chanan Ram, Ashok Kumar has become the owner and after the death of Chanan Ram, he has been giving Batai to Ashok Kumar.

***15.** From the perusal of all the evidence led by the plaintiff, it nowhere shows that the plaintiff was adopted by Chanan Ram and there was a ceremony for giving and taking him in adoption by his natural parents and Chanan Ram and Puran Devi. Although, it has been the claim of the plaintiff that he was taken in adoption by Chanan Ram in the childhood but he has failed to examine any witness who could depose that any such ceremony of giving and taking had taken place in his presence. PW5-Arjan Singh has simply stated that both Chanan Ram and Puran Devi had taken Ashok Kumar in, adoption but he has nowhere mentioned that any ceremony of adoption had taken place in his presence. During his cross-examination, this witness has at the first instance outrightly denied having known Kartar Singh. Thereafter, he submitted that Kartar Chand is the natural father of Ashok Kumar. He has also submitted in his cross-examination that the house where Ashok Kumar lives has been received by him in inheritance from Kartar Chand, being his son. In his cross-examination, he has also stated that he cannot tell the date, month or year when the adoption had taken place nor can he tell the name of rites which were performed in the family. He has also stated that he has only heard about the, Wills and never seen the Wills in question. Interestingly, he has stated in his cross-examination while answering to query as to when Anil Kumar and Jaswinder Walia had taken forcible possession from him to which he replied that the possession was never taken from him. He has also stated that he is paying Batai to Ashok Kumar.*

***16.** Further, PW1-Ashok Kumar himself in his cross-examination has stated that there is no mention of give and take ceremony in his affidavit plaint or affidavit and he has also submitted that he did not mention as to in whose presence the adoption had taken place, in order to rely on the fact that Chanan Ram is his adopted father, he has placed on record Ex.P1, which is a middle examination certificate and Ex.PG which is declaration that he appeared in one examination. Both these documents reflect the plaintiff to be son of the Chanan Ram. On the other hand, learned counsel for the defendant has relied upon more authenticated documents rebutting Ex.P1 to Ex.P6 such as photocopy of income tax return of Ashok Kumar as Ex.D4 and photocopy of PAN Card of Ashok Kumar as*

Ex.D5 etc. It has also come on record that one suit No.723 of 2009, in the Court of Senior Civil Judge (South), New Delhi was filed against the plaintiff-Ashok Kumar and others, copy of which is proved on record Ex.D1 where the name of the father of the plaintiff' shown as Kartar Chand. and there is affidavit, written statement given by Ashok Kumar showing himself to be the son of Kartar Chand. Furthermore, the perusal of Ex.D3 which is a family settlement, it shows that the plaintiff had inherited the property of Kartar Chand being the legal heir of Kartar Chand. The plaintiff has not placed any documentary proof to rebut these documents. Further, the plaintiff has himself admitted in reply to the interrogatories dated 19.2.2015 in which all those documents such as PAN Card, Voter Card and civil Suit No.723 of 2009 have been admitted by the palintiff-Ashok Kumar in his reply to the interrogatories dated 19.2.2015 and admitted that he had filed written statement in Delhi Court where he has mentioned his father's name as Kartar Chand. He has admitted his PAN Card in which his father's name mentioned as Kartar Chand. He has also admitted income tax return where also his father's name mentioned as Kartar Chand. So, it is not proved by the plaintiff that he was ever adopted by Chanan Ram but it is a clear fact on record that he is legal heir of Kartar Chand and inherited the property of Kartar Chand by way of family partition. ”

12. Next question examined by the trial Court was in regard to the genuineness of the Will dated 29.12.1972 (Ex.P-3) and 16.12.1983 (Ex. P-4).

13. In paragraph No.19, Court concluded that none of the Wills, as pleaded and relied upon by the plaintiff has been proved, as per the provisions of the Indian Evidence Act. Rather, there is no explanation given by him that Puran Devi had expired on 15.04.1985 and the suit was instituted by the plaintiff-Ashok Kumar in the year 2009 i.e. after about 14 years.

14. Findings recorded in paragraph No.19 and 20, by trial Court is as under:-

“19. Moreover, there is no explanation coming forth for non-examination of another witness to the Will Ex.P3. PW3-Chander Shekhar has simply brought register on record showing the said Will Ex.P3 written by his grand father. PW3 who alleges to be the son of deed writer of Dewan Chander Kapur of Jalandhar who allegedly proved an entry no.597 dated 29.12.72 but in his cross-examination, he has stated that deed register does not bear the signature of any registrar or any authority. He has further stated that he has come to the Court at the instance of Ashok Kumar. He has stated that entry no.597 was not scribed in his presence nor he has seen Dewan Chand Kapur writing any document. He has also stated that the documents do not bear the signature of Dewan Chand Kapur at any place. Both the Wills Ex.P3 and Ex.P4 have not been proved according to the Indian Evidence Act. Further PW4-Dr. Inderjit Singh, Handwriting and Fingerprints Expert in his cross-examination has stated that the Will dated 4.10.57 from which he has taken standard signatures supplied by the plaintiff is not part of the judicial record and has not been admitted or proved. The marginal witnesses have not come forward to support the stand of the plaintiff. Then, the plaintiff himself has deposed in his cross-examination that he came to know about the execution of the alleged Will by Chanan ram 4 to 5 years after the death of Puran Devi. It has come in the evidence of PW5 that Puran Devi had died on 15.4.85 and the present suit has been filed in the year 2009 meaning thereby the plaintiff must have come to know about the alleged execution of Will some where in the year 1990 and he has failed to give any plausible reason for filing the present suit after the lapse of many years.

20. So, under these circumstances, it cannot be said that the plaintiff has proved any of the claims taken by him. Neither has he been able to prove that he is the adopted son of Chanan Ram and Puran Devi nor could he establish the execution of both the Wills Ex.D2 and Ex.D3. The plaintiff has miserably failed to prove his case.

Hence, all these issues are decided against the plaintiff and in favour of the defendants.”

15. Similar view has been taken by the First Appellate Court also,

while recording its findings in paragraph Nos.27 and 28 on the issue of Will and then, on the issue of adoption in paragraph No.30.

16. After going through the findings given by the First Appellate Court also, I do not find any reason to deviate from the same.

17. Therefore, after examining the complete set of evidence, the well reasoned findings of the First Appellate Court is hereby maintained.

18. Appeal stands **dismissed**.

(SANJAY VASHISTH)
JUDGE

September 01, 2023
Lavisha

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No