



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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RSA-1193-2020 (O&M)
Reserved on : 10.09.2024
Date of Decision : 15.10.2024

Pritam Piara

....Appellant

VERSUS

Gurcharana Parshad (deceased) through LRs & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kushagra Mahajan, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 11.04.2018 passed by the Trial Court and the judgment and decree dated 19.11.2019 passed by the First Appellate Court whereby his suit for declaration has only been partly decreed.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a suit seeking a declaration that he was never legally and lawfully adopted by Chand Bhan alias Gian Bhanu and that he had never severed all his relations and ties with the defendant No.1 and his other family members and the plaintiff-appellant was still the son of defendant No.1 and not the son of Chand Bhan @ Gian Bhanu and as such he has a legal right to inherit the property bearing plot no.140 situated at Rani Ka Bagh, Amritsar left by his grand father Tej Ram alongwith the defendants in equal shares and the defendant No.1 has no exclusive right, title or interest in the suit property.

Jai Chand Sabharwal had a son – Tej Ram – who in turn had a son -

Gurcharana. Gurcharana had 4 sons – Gur Piara, Prem Dulara, Sudarshan Kumar and Pritam Singh (plaintiff-appellant). The defendant-respondent Nos.1 and 3 are the heirs of Gur Piara, defendant-respondent No.2 is Prem Dulara while defendant-respondent No.4 is Sudarshan Kumar. It was averred that the grandfather of the plaintiff-appellant was the owner in possession of the suit property and that after his death the plaintiff-appellant alongwith his father and brothers had inherited the same in equal shares. It was further averred that since his birth the plaintiff-appellant had resided with his natural parents and was provided all the basic necessities of life by his father Gurcharana and in the entire school record/educational certificates, ration card, voter card, etc. the father's name of the plaintiff-appellant is mentioned as Gurcharana. Even the marriage ceremonies of the plaintiff-appellant were performed by his natural father and in none of the functions/ceremonies of the plaintiff-appellant and his family members had Chand Bhan @ Gian Bhanu participated in any manner being the father of the plaintiff-appellant and that the plaintiff-appellant was never legally and lawfully adopted by said Chand Bhan @ Gian Bhanu from his real parents nor any adoption had ever taken place. As per the plaintiff-appellant he had inherited the property of his grand father alongwith his father and brothers but in order to deprive him of his share in the suit property, the defendant-respondents had started declaring that since the plaintiff-appellant was adopted by Chand Bhan @ Gian Bhanu, he had not inherited any share in suit property left by his grand father. Hence, the present suit. Defendant-respondent No.4 did not appear and was proceeded against ex-parte. Defendant-respondent Nos.1 to 3 filed written statement raising several preliminary objections and submitted that the plaintiff-appellant had earlier filed a suit titled as “Pritam Piara vs Gurcharan Parshad” which was

dismissed vide judgment and decree dated 26.05.2006 wherein it was held that defendant-respondent Bo.1 was the owner of the suit property and had the right to use and dispose off the property in any manner and thus the earlier decision would operate as res-judicata. The present suit had been filed only to harass the defendant-respondents. It was the stand of the defendant-respondents that during his lifetime Tej Ram had executed a legal and valid Will dated 12.01.1984 in favour of defendant-respondent No.1 regarding the suit property. It was further the stand taken that the plaintiff-appellant was adopted by Chand Bhan @ Gian Bhanu who was the brother-in-law of Tej Ram and, as such, the plaintiff-appellant had severed all his relations and ties with the family of the defendant-respondent No.1 and he had no right, title or interest in the suit property. The plaintiff-appellant was in possession of one portion of the suit property as a licensee only and was simply permitted to use the said portion without any right, title or interest. Replication was filed controverting the assertions in the written statement and reiterating those in the plaint.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether plaintiff is entitled for relief of declaration as prayed for ? OPP
2. Whether the suit of the plaintiff is not legally maintainable in the present form ? OPD
3. Whether the plaintiff has not come to the court with clean hands and suppressed true and material facts ?
OPD

4. Whether the plaintiff has no cause of action to file the present suit ? OPD

5. Relief.

4. The Trial Court vide judgment and decree dated 11.04.2018 partly decreed the suit of the plaintiff-appellant and declared that the plaintiff-appellant was never legally and validly adopted by Chand Bhan @ Gian Bhanu. Aggrieved by the same an appeal was filed by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 19.11.2019. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellant has vehemently contended that both the Courts have erred in not decreeing the suit of the plaintiff-appellant in toto. It is urged that once the plaintiff-appellant was held to have been not validly adopted by Chand Bhan @ Gian Bhanu, the plaintiff-appellant ought to have been granted a declaration qua his rights in the suit property.

6. Heard.

7. In the present case the defendant-respondents had set-up a Will dated 12.01.1984 (Ex.D14) executed by Tej Ram in the favour of Gurcharana. During his lifetime Gurcharana, father of the plaintiff-appellant, executed a Will dated 23.06.2003 (Ex.D30) in favour of his two sons to the exclusion of the plaintiff-appellant. The execution of the Will by Tej Ram in favour of Gurcharana was admitted by the plaintiff-appellant during his cross-examination. The Courts have held that once Tej Ram bequeathed the suit property in favour of Gurcharana, the suit property became the self-acquired property of Gurcharana. The suit property thus could be dealt with in any manner by Gurcharana who infact executed a Will dated 23.06.2003 (Ex.D30)

in favour of two of his sons to the exclusion of the plaintiff-appellant. Both the Courts have upheld the Wills. Further, vide the earlier decision dated 26.05.2006 (Ex.D1) the Trial Court had dismissed the suit of the plaintiff-appellant and upheld the ownership of his father, Gurcharana, over the suit property. The Courts were therefore justified in declining the relief qua the suit property to the plaintiff-appellant. The reasoning adopted by the Courts is sound and equitable and this Court does not find any ground to interfere with the concurrent findings recorded. No other argument has been raised by learned counsel for the plaintiff-appellant.

8. In view of the above, 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.

15.10.2024

Ankur

**(ALKA SARIN)
JUDGE**

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