



RSA-730-1993 (O&M) 1

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

**(102) RSA-730-1993 (O&M)
Date of Decision : November 20, 2024**

Balwinder Kaur .. Appellant

Versus

Sukhwant Singh and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Tarundeep Kumar, Advocate, for the appellant.

Mr. K.R. Dhawan, Advocate, for respondent No.1.

Mr. Manveen Pheruman, Advocate, for
Mr. D.S. Pheruman, Advocate,
for respondents No. 8, 13 to 16.

Mr. Vishawjeet Singh, Advocate, for respondent No.10.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-14725-C-2018

As prayed for, the application is allowed.

Copy of Will dated 26.07.1985 as Annexure A-1 is taken on
record.

RSA-730-1993 (O&M)

1. Present regular second appeal has been filed challenging the judgment and decree of the lower Appellate Court dated 22.01.1993 by which, the judgment and decree of the trial Court dated 03.08.1988 whereby, the suit filed by respondent No.1-plaintiff was dismissed, has been set aside and the suit filed by respondent No.1 has been allowed.

**RSA-730-1993 (O&M) 2**

2. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

3. Respondent No.1 Sukhwant Singh filed a civil suit claiming himself to be adopted son of Karnail Singh so as to claim the benefit of the property left behind by Karnail Singh after his death on the ground that Karnail Singh son of Gurmukh Singh was un-married and he adopted respondent No.1 Sukhwant Singh prior to his death and hence, the property of Karnail Singh devolves upon him instead of the Smt. Guro, who got the property mutated in her favour claiming herself to be the wife of Karnail Singh.

4. During the pendency of the civil suit, Smt. Guro died. In the civil suit, the question was raised as to whether Smt. Guro was wife of Karnail Singh or not and whether, respondent No.1 Sukhwant Singh was the adopted son of Karnail Singh or not.

5. Keeping in view the evidence which came on record, a categoric finding was recorded by the trial Court that in an earlier litigation, family of Karnail Singh including the father of Karnail Singh as well as sister of Karnail Singh treated Smt. Guro as a wife of Karnail Singh so as to claim the benefit of the property left behind by Karnail Singh but were unsuccessful in their effort hence, once the family of Karnail Singh treated Smt. Guro as wife of Karnail Singh and keeping in view the fact that Smt. Guro died during the pendency of the civil suit filed by respondent No.1-plaintiff and no record could be produced by respondent No.1 Sukhwant Singh to prove that Smt. Guro was not wife of Karnail Singh but wife of one Teja Singh, the civil suit filed by the respondent No.1 was dismissed by the

**RSA-730-1993 (O&M) 3**

trial Court vide judgment dated 03.08.1988.

6. Feeling aggrieved against the said judgment of the trial Court dated 03.08.1988, an appeal was preferred by respondent No.1, which came to be decided by the lower Appellate Court on 22.01.1993. In the said appeal, only by writing “from the evidence on file, it is proved that the appellant-plaintiff is the adopted son of Karnail Singh”, the findings recorded by the trial Court were reversed and the suit filed by respondent No.1-Sukhwant Singh was allowed. The said judgment and decree of the lower Appellate Court dated 22.01.1993 is under challenge in the present regular second appeal.

7. Learned counsel for the appellant argues that the trial Court had recorded findings on the basis of the evidence which had come on record including the fact that the grandfather of respondent No.1 i.e. father of Karnail Singh, filed a civil suit against Smt. Guro to claim the benefit of the property left behind by Karnail Singh. In the said suit, the grandfather of respondent No.1 impleaded Smt. Guro as the wife of Karnail Singh. The said suit was dismissed keeping in view the evidence, which were brought on record. Later on, the aunt (*bua*) of respondent No.1 also initiated proceedings wherein, Smt. Guro was made party being wife of Karnail Singh. The *bua* namely Chinto was also unsuccessful in the said litigation. By placing reliance upon the said litigation, which were initiated immediately after the death of Karnail Singh by the family members of respondent No.1 i.e. grandfather as well as *bua*, Smt. Guro was treated as wife of Karnail Singh, which evidence had already come on record and was relied upon by the trial Court to dismiss the suit filed by respondent No. 1

**RSA-730-1993 (O&M)****4**

but without giving any reason as to why the said evidence was not sufficient, the finding of the trial Court has been reversed, which judgment of the lower Appellate Court is liable to be set aside.

8. Learned counsel for the appellant submits that even in the present suit, an averment has been made by respondent No.1 that the alleged adoption of respondent No.1 by Karnail Singh was with the permission of Smt. Guro. Learned counsel for the appellant further submits that once respondent No.1 has himself mentioned that his alleged adoption was with the permission of Smt. Guro, how can he challenge that Smt. Guro was not wife of Karnail Singh as otherwise, there was no requirement of permission of a “stranger” to be taken for the adoption of respondent No.1 by the Karnail Singh, which fact has totally been ignored by the lower Appellate Court to overturn the detailed finding recorded by the trial Court while dismissing the suit filed by respondent No.1 hence, the judgment and decree of the lower Appellate Court dated 22.01.1993 is liable to be set aside.

9. Learned counsel appearing on behalf of contesting respondent No.1- Sukhwant Singh submits that any factual averment made by the family of respondent No.1 in the earlier litigation with Smt. Guro will not bind respondent No.1 so as to record a finding against respondent No.1 qua his claim that Karnail Singh never married Smt. Guro.

10. Learned counsel for respondent No.1 further submits that Karnail Singh was unmarried and had adopted respondent No.1 one month before he died in a ceremony.

11. Learned counsel for respondent No.1 concedes the factum that as per the civil suit filed by respondent No.1, a fact has been mentioned that

**RSA-730-1993 (O&M) 5**

his adoption was with the consent of Smt. Guro.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. The question which arise for determination in the present appeal is whether, the findings which have been recorded by the trial Court based upon the evidence which have come on record, have been appreciated by the lower Appellate Court or not while upsetting the findings recorded by the trial Court.

14. As stated earlier, the trial Court recorded the detailed findings to come to the conclusion that the assertion of respondent No.1-plaintiff that Karnail Singh was unmarried and Smt. Guro was not the wife of Karnail Singh, has not been substantiated keeping in view the evidence which was brought on record including litigations, which were initiated by the family members of respondent No.1 immediately after the death of Karnail Singh against Smt. Guro. In all those litigations, which were initiated by the grandfather of respondent No.1 as well as by the aunt (*bua*) of respondent No.1, Smt. Guro was impleaded as respondent being wife of Karnail Singh. In all those litigations, there was no mention that Karnail Singh was unmarried or Smt. Guro was not the wife of Karnail Singh.

15. Further, it is a conceded fact that there was no mention in the said litigation that Karnail Singh ever adopted respondent No.1 i.e. son of his brother. The said evidence has been taken into consideration by the trial Court to record the finding that once the family members of respondent No.1, immediately after the death of Karnail Singh, in earlier litigation against Smt. Guro, treated her to be wife of Karnail Singh and there was no



whisper of respondent No.1 as the adopted son of Karnail Singh being unmarried, without there being any justifiable reason or giving due plausible reason, the findings recorded by the trial Court could not have been altered by the lower Appellate Court. The lower Appellate Court has only recorded following findings in paragraph 13 to set aside the judgment and decree of the trial Court, which are as under:-

“ 13. From the evidence on the file, it is proved that the plaintiff/appellant is the adopted son of Karnail Singh. The finding of the trial Court on issue No.1 is reversed and this issue is decided in favour of the plaintiff and against the defendants.”

16. Once, there was a detailed finding has been recorded by the trial Court considering the evidence which came on record, the said finding could have only been altered/modified/set aside, by giving due reasons as to why those findings were incorrect by placing reliance upon the evidence, which has come on record. The lower Appellate Court failed to do so while upsetting the findings of the trial Court which were based upon the evidence.

17. Further, the lower Appellate Court has mentioned that any litigation which had been initiated by the family members of respondent No.1 could not be used against respondent No.1 to reject his claim as he was not party to the said litigations.

18. It may be noticed that once a particular finding of fact has been recorded in the earlier litigation initiated by the family members of respondent No.1 on the same aspect with regard to the property of Karnail

Singh where Smt. Guro was treated as wife of Karnail Singh, merely that

**RSA-730-1993 (O&M) 7**

respondent No.1 was not party to the said litigation will not vitiate the said

finding especially when the same is a finding of fact.

19. Even otherwise, on being asked to point out any evidence which has come on record to show that Smt. Guro was not wife of Karnail Singh, learned counsel for respondent No.1 has not been able to point out any such evidence hence, the trial Court on the basis of the evidence which has come on record, rightly recording the finding that Smt. Guro was wife of Karnail Singh keeping in view the finding of fact in the earlier litigation that family members of respondent No.1 i.e. his grandfather as well as his aunt (*bua*) initiated against Smt. Guro as wife of Karnail Singh so as to claim the same property which was being claimed by respondent No.1, but were unsuccessful.

20. Not only this, the lower Appellate Court ignored a particular assertion raised on behalf of respondent No.1 himself in the civil suit where, he has mentioned that the alleged adoption of respondent No.1 by Karnail Singh was with the permission of Smt. Guro. In case, respondent No.1, is treating Smt. Guro as stranger to Karnail Singh, why the permission of Smt. Guro was sought for adoption of respondent No.1 by Karnail Singh. Once respondent No.1 has accepted that the permission was taken for his adoption from Smt. Guro, he is accepting Smt. Guro as wife of Karnail Singh, which fact has gone un rebutted.

21. Learned counsel for respondent No.1 concedes that as per the averments made in the civil suit, it has been mentioned that “permission of Smt. Guro was taken before adoption of respondent No.1” hence, the assertion that Karnail Singh was unmarried at the time of his death and was

**RSA-730-1993 (O&M) 8**

not married to Smt. Guro, as held by the lower Appellate Court, is without any basis and the said finding is perverse keeping in view the evidence

which has come on record hence, the judgment of the lower Appellate Court cannot be upheld.

22. Further, from the facts, it transpires that after the death of Karnail Singh, the family members of Karnail Singh wanted to save the land of Karnail Singh so that the same does not devolve upon Smt. Guro. The earlier two efforts initiated by the grandfather as well as bua of respondent No.1 failed and ultimately, the present suit was filed by respondent No.1 claiming himself to be adopted son of Karnail Singh by raising an averment that Karnail Singh was unmarried. With regard to the adoption deed, a categorical finding has been recorded by the trial Court on the basis of the evidence that the said document is antedated and has been prepared after the death of Karnail Singh. Learned counsel for respondent No.1 has not been able to rebut that as per evidence on record that the stamp papers which were purchased in the name of Karnail Singh to record adopted deed, have never been signed by Karnail Singh.

23. Learned counsel for respondent No.1 has not been able to vitiate the said factual position even qua the so called adoption deed of respondent No.1 by Karnail Singh.

24. Once, the details reasons have been given by the trial Court based upon the evidence which have come on record to record finding of facts, reversing the findings recorded by the trial Court, without even discussing the evidence on record, allowing of the suit of respondent No.1 by the lower Appellate Court, is perverse and cannot be sustained.



RSA-730-1993 (O&M) 9

25. No other argument was raised on behalf of the parties concerned.

26. Keeping in view the above, the judgment and decree of the lower Appellate Court dated 22.01.1993 being perverse to the evidence which has come on record, cannot be sustained and is accordingly set aside and the judgment and decree of the trial Court dated 03.08.1988 is made operational and the civil suit filed by the respondent No1. is dismissed.

27. Present appeal is allowed.

28. Civil miscellaneous application pending if any, also stands disposed of.

November 20, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No