



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-102-1991 (O&M)

Reserved on: 03.12.2024

Date of Decision: 09.12.2024

SARBATI AND OTHERS

... APPELLANTS

Vs.

RAMESH AND OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued by:- Mr. Rajinder Goel, Advocate, for the appellants.

Mr. Amit Jain, Advocate, for the respondents.

DEEPAK GUPTA, J.

Suit for declaration was filed by sole plaintiff - Raghbir against two defendants namely, Ramesh and Tirkha in respect of the suit property. During the pendency of this suit, defendant No.2 - Tirkha died and his legal representatives were brought on record. Plaint was got amended and then in the amended plaint, the relief of possession of the suit property was claimed by the plaintiff - Raghbir. Later on, Raghbir also died and his legal representatives were brought on record.

2. Suit was decreed by the Ld. trial Court vide judgment dated 11.10.1989. However, the appeal filed by defendant No.1 - Ramesh succeeded and was accepted by the Appellate Court of Ld. District Judge, Gurgaon vide judgment dated 10.10.1990, consequently dismissing the suit. Against this reversal, the plaintiff (*through his LRs*) has brought this Regular Second Appeal. To avoid confusion, parties shall be referred as per their status before Ld. Trial court.

3. Admittedly, two brothers Dhani Ram and Tirkha sons of Bohru were owner in possession of 85 kanal 19 marla of land to the extent of 1/2 share each. Tirkha was unmarried and did not have any natural issue. Dispute is regarding 1/2 share in this land of said Tirkha. Dhani Ram had two sons namely, Raghbir and Runia, and three daughters namely, Chandrawali, Mishri

and Devi. Defendant No.1 Ramesh is the natural son of Runia and as per original defendants, is adopted son of Tirkha.

4.1 Plaintiff-Raghubir brought the suit asserting that the suit property was ancestral in the hands of Tirkha qua the plaintiff. Parties are Ahirs by caste and governed by the customs in the matter of alienation, succession etc. He challenged the legality and validity of the consent decree dated 09.02.1983 Ex.P1, suffered by Tirkha in favour of Ramesh on various grounds. He further alleged that Ramesh was never adopted by Tirkha and that no ceremony had taken place in this regard. He claimed that he had 1/5th share in the suit property. Accordingly, he prayed for a decree of declaration to the effect that adoption of Ramesh by Tirkha is illegal, null and void and that judgment & decree dated 09.02.1983 passed in Civil Suit No.59 of 1983 titled as *Ramesh vs. Tirkha* was also illegal, null and void and not binding on his rights.

4.2 Both the defendants i.e. Ramesh and Tirkha filed a joint written statement, categorically asserting that adoption of Ramesh had taken place in 1976 on the eve of Dusshera festival by Tirkha. Ever since then, defendant-Tirkha had been treating defendant-Ramesh to be his adopted son. Defendants further defended the decree dated 09.02.1983 to be legal and valid by submitting that said decree is nothing but acceleration of succession and that plaintiff had no right whatsoever in the suit property. They prayed for dismissal of the suit.

4.3 After the death of Tirkha, his legal representatives were brought on record and the plaint was got amended. Plaintiff this time claimed that he was also entitled to the possession of the suit land to the extent of his share therein.

4.4 Defendant No.1 Ramesh in his amended written statement took the same stand to the effect that he had been validly adopted by Tirkha and that he had become owner of the suit property by virtue of the decree dated 9.2.1983 in his favour.

4.5 Sisters of Raghbir i.e., Defendant No. 2(b) - Mishri and No. 2(c) - Devi filed written statement admitting the claim of the plaintiff. The 3rd sister Chandrawali i.e. defendant No.2(a), also adopted this written statement.

5.1 Necessary issues were framed. Evidence produced by the parties was taken on record.

5.2 The trial Court came to the finding that suit property was ancestral in the hands of Tirkha. It was further found that the parties were *Ahir* by caste and governed by the customs in the matter of succession etc. Adoption of Ramesh by Tirkha was held to be not proved and it was held that adoption deed dated 03.03.1983 (Ex. D1) was a sham transaction. It was further held that the impugned decree dated 09.02.1983 could not be held to be as a result of acceleration of succession, as the adoption had not been proved. Consequent to all these findings, suit was decreed vide judgment dated 11.10.1989. Decree for possession in respect of 1/5th share in the suit land was passed in favour of the plaintiff. Further a decree of declaration was passed to the effect that alleged adoption of Ramesh by Tirkha was illegal, null and void and not binding on the rights of the plaintiff. The judgment dated 09.02.1983 in suit No.59 of 1983 titled as *Ramesh vs. Tirkha* was held to be illegal, null and void.

5.3 In the appeal filed by contesting defendant No.1 - Ramesh, the Appellate Court, upheld the findings to the effect that the suit property was ancestral in nature. However, it was found that there was no custom that adoption could not take place amongst the *Ahirs*. Ld. Appellate Court referred to the revenue excerpt regarding the suit property in order to come to the findings that even in the family of the parties, there were earlier instances of the adoptions having taken place. Appellate Court further held that adoption of Ramesh by Tirkha in 1976 was dully proved, which was further fortified by adoption deed dated 03.03.1983. Ld. Appellate Court also referred to the joint written statement initially filed by Ramesh and Tirkha, in which adoption had been admitted. The Appellate Court not only held the adoption to be valid but further held that decree dated 09.02.1983 was

validly suffered by Tirkha in favour of Ramesh. Consequent to these findings, the appeal was accepted and the suit filed by Raghbir (*now through his LRs*) was dismissed.

6. Against the aforesaid reversal, the original plaintiff - Raghbir (*through his LRs*) has now filed the present appeal.

7.1 Assailing the findings of the Appellate Court, it is contended by learned counsel for the appellants that well-reasoned judgment of the trial Court has been wrongly upset by the Appellate Court. Learned counsel draws attention towards the testimony of DW1-Chandrawali, the own witness of the defendants, who clearly stated that no adoption of Ramesh by Tirkha had taken place. Learned counsel further draws attention towards the testimony of DW3-Runia, the natural father of Ramesh, who stated in his cross examination that Bhanu Pandit had performed the ceremonies of adoption, which is so stated even by DW2-Ramesh. DW3 also disclosed that Dharma and Ganeshi were present at the time of adoption. Learned counsel contends that though it is admitted by DW3 that all these persons i.e. Bhanu Pandit, Dharma and Ganeshi are alive but none of them have been examined. Still further, it is argued that though the alleged adoption had taken place in 1976, but the adoption deed was got executed and registered on 03.03.1983 i.e. after filing of the suit, which had been filed on 02.03.1983.

7.2 Still further, it is contended by learned counsel that though the adoption had allegedly taken place in 1976 and at that time, Ramesh was 13 years of age, but neither in his matriculation certificate, nor in the military service, where he was serving, his father's name was mentioned as Tirkha and rather, his father's name has been mentioned as Runia i.e. his natural father, which shows that adoption was never acted upon. Learned counsel contends that photographs (Ex.D3) relied by the defendant does not prove the ceremony of adoption. Learned counsel contends that in the absence of proving the ceremony of giving and taking in adoption, the trial Court was justified in holding that the adoption was not proved and that the Appellate Court has committed error in reversing this finding.

7.3 Learned counsel also contends that since Ramesh is not proved to be adopted son of Tirkha, therefore, consent decree cannot be upheld, as it is stated to have been suffered by Tirkha due to acceleration of succession. Since, Ramesh is not proved to be son of Tirkha, therefore, it could not be result of acceleration of succession.

7.4 With above contentions, prayer is made for setting aside the judgment of appellate court and to restore the judgment of trial court.

8.1 Refuting the aforesaid contentions, learned counsel for the contesting respondent/defendant-Ramesh contends that DW1-Chandrawali is the real sister of plaintiff-Raghibir. His interest is common to that of the plaintiff, as she is also staking claim of 1/5th share in the suit property. She had even filed admitted written statement and in these circumstances, her testimony to the effect that no adoption had taken place, cannot be taken as an admission on behalf of the contesting defendant.

8.2 Learned counsel further draws attention towards the testimony of DW3-Runia, who stated that apart from Dharma and Ganeshi, there were many other persons present at the time of ceremony of adoption in 1976. Learned counsel further draws attention towards the testimony of DW7-Ram Kumar, who proved that he was present at the time, when adoption ceremony had taken place in 1976.

8.3 Learned counsel further points out that as per Section 16 of the Hindu Adoption and Maintenance Act, once a registered deed is produced evidencing the adoption, it is to be presumed that all ceremonies had taken place. Learned counsel then draws attention towards registered adoption deed 03.03.1983 (Ex.D1), which is duly proved not only by DW3-Runia, DW2-Ramesh, but also by one of the attesting witness namely, DW4-Ram Narayan. Even DW5-Surrender Singh, the grandson of Jamunadas, who was the deed writer of the adoption deed, also proved the signature of his grandfather on the said adoption deed. Attention is also drawn towards the photograph (Ex.D3), wherein the adoptive father placed his hand on the head of Ramesh as a mark of taking him in adoption. It is also pointed out that adoption deed

is thumb marked not only by the adoptive father-Tirkha but duly thumb marked by the natural parents i.e. Runia and his wife Chandro. Learned counsel contends that in these circumstances, adoption is rightly held by learned Appellate Court to be duly proved.

8.4 Learned counsel for the respondent further points out that as per the plaint (Ex.PX) of the earlier suit, in which the impugned consent decree was passed, it was specifically mentioned that after the adoption, the suit land had been given by Tirkha to Ramesh on account of the services rendered by him to Tirkha and as acceleration of succession in family arrangement and, therefore, the said consent decree is legal and valid.

8.5 With these submissions, prayer is made for dismissal of the appeal.

9. I have considered submissions of both the sides and have appraised the record, including trial court record, carefully.

10. The finding of the two Courts below to the effect that suit property was ancestral in the hands of Tirkha is not disputed. It is also not disputed that parties are agriculturalists and *Ahir* by caste and that they are governed in the matters of alienation and succession by the custom.

11. However, it is important to notice the provisions of Section 4 of the Hindu Adoption and Maintenance Act, 1956 (for short 'the Act'), which reads as under:-

"4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

12. It is, thus, clear that any custom, which is contrary to the provision of the Act shall cease to have any effect.

13. The main issue involved in this case is as to whether Ramesh was duly adopted by Tirkha or not?

14. As per the evidence on record, Ramesh was adopted by Tirkha in October 1976 on the eve of Dusshera. There is testimony of DW2-Ramesh, DW3-Runia i.e. natural father to support it. Besides, DW7-Ram Kumar is witness, who proved the adoption. Apart from this, Ex.D1 is the registered adoption deed dated 03.03.1983 duly thumb marked by Tirkha i.e. adoptive father and thumb marked by both the natural parents i.e. Runia and his wife Chandro. Even the adoptive son i.e. Ramesh had put his signatures on the said adoption deed. DW4 Ram Narain is one of the attesting witness, who also proved Ex.D1.

15. Section 11 of the Act provides about the conditions for a valid adoption. It reads as under:

“11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:—

- (i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;
- (iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;
- (iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption:

Provided that the performance of datta homam shall not be essential to the validity of an adoption.”

16. In the present case, it has consistently come in evidence that in 1976, the age of Ramesh was 13 years. Tirkha did not have any natural child. As such, these essential conditions for valid adoption are duly proved. Coming to the ceremony of giving and taking in adoption, Section 16 of the Act, which is relevant, reads as under:-

“16. Presumption as to registered documents relating to adoption.—Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.”

17. It is, thus, clear in view of the aforesaid provision that once the registered document is produced evidencing the adoption, it is to be presumed that adoption had taken place as per the provisions contained in the Hindu Adoption and Maintenance Act, unless and until it is disproved.

18. In present case, the plaintiff has utterly failed to disprove the adoption. Simply because adoption deed was executed and got registered after long time of more than 6 years, or the name of adoptive father i.e. Tirkha is not mentioned in the service record of Ramesh or his matriculation certificate, cannot be a reason to rebut the presumption to the registered adoption deed. This point has been duly considered by the learned Appellate

Court. It will be relevant to refer to the observations made by learned Appellate Court in this regard, which read as under:

“6. Much ado was made as to why Tirkha had deferred the execution and registration of the adoption deed Ex. D1 dated 3 March, 83. The learned trial court expressed its misgivings regarding its genuine-ness on the ground that the adoption was made in 1976 but the execution and registration of the same was delayed to 1983 by about seven years. I view it differently. I feel that the adopter had confirmed the adoption of defendant No. 1 which had been made by him by execution and the registration of the adoption even after the lapse of 7 years to make assurance regarding it doubly sure. Further, the learned trial court expressed doubt regarding the validity of the adoption for the reason that the evidence as to the subsequent conduct/treatment of the adoptee by the adopter as son was not forth coming. A lot of emphasize was laid on the cross- examination of defendant No. 1 dated 2 Dec. 1987 wherein he admitted that he had passed his matriculation examination on as also joined the army service by recording his father's name as Rania instead of Tirkha his adoptive father. I do not take it an object of scathing criticism as made by the trial court to the validity of the adoption of defendant No. 1 by Trikha defendant No. 2 on this ground. Forgotten was the fact that Tirkha adoptive father of defendant No. 1 was impleaded as defendant No. 2 and they had filed a joint WS in the suit available at Pg. 27 to 31 of the trial court file. Both the adopter and the adoptee were at one in taking the line of defence to the action brought against them. They stated with one voice that defendant No.1 had been adopted by defendant No. 2 and that the impugned consent decree in CS No. 59 of 83 titled Ramesh Kumar vs Tirkha in regard to his property had been validly passed by the court on 9 Feb. 83. Attention was also invited to the title of the suit in the plaint, written statement, statement of defendant No.2 Tirkha dated 9 Feb. 83 order passed by the court and the decree sheet Exs. P1 & P2 available at PP51 to 55 of the trial court file, wherein defendant No. 1 was recorded as the adopted son of defendant No. 2.”

19. This Court has absolutely no reason to differ with the abovesaid conclusions drawn by the First Appellate Court, which are based upon proper appreciation of evidence produced by the parties. It has been rightly

concluded by the Appellate Court that defendant No.1-Ramesh is proved to be validly adopted by respondent No.2-Tirkha as his son and as such, in that capacity, he was entitled to succeed to his land and property both on the basis of registered adoption deed (Ex. D1), to which the presumption of having been executed is attracted as per Section 16 of Hindu Adoption and Maintenance Act; as well as by virtue of decree dated 09.02.1983 passed in Civil Suit No.59 of 1983 (Ex. P1 & P2). There is no reason to interfere in said findings of facts as recorded by the first appellate court.

20. On account of the entire discussion as above, this Court finds absolutely no merits in the present appeal.

Dismissed with costs.

09.12.2024

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No