

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2288 of 2022 (O&M)

Sarabjit Kaur and Another
... Appellant(s)

Versus

Dalip Singh and Others
... Respondent(s)

AND

2. Regular Second Appeal No. 2302 of 2022 (O&M)

Sarabjit Kaur and Another
... Appellant(s)

Versus

Dalip Singh and Others
... Respondent(s)

DATE OF DECISION: 19.03.2024

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Naresh Kaushik, Advocate
for the appellant(s).

Anil Kshetarpal, J.

CM-7941-C-2022 IN RSA-2288-2022

1. For the reasons stated in the application, the same is allowed
and delay of 75 days in filing the appeal is condoned.

CM-7974-C-2022 IN RSA-2302-2022

2. For the reasons stated in the application, the same is allowed
and delay of 75 days in filing the appeal is condoned.

RSA-2288-2022 And RSA-2302-2022

3. The Regular Second Appeal in the States of Punjab and

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Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

4. With the consent of the learned counsel representing the appellants, two connected regular second appeals filed by Sarabjit Kaur and Gurmit Kaur shall stand disposed of by this common order.

5. Civil Suit No. 49 dated 28.04.2017 was filed by Jarnail Singh claiming himself to be the adopted son of late Sh.Gurbax Singh. The appellants herein are claiming the property being purchased from Jarnail Singh through various intermittent sale deeds.

6. Another Civil Suit No. 47 dated 27.04.2017 was filed by Dalip Singh for grant of decree of permanent injunction against Jarnail Singh and others with respect to the same property.

7. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be narrated. Sh.Gurbax Singh son of Sh.Harnam Singh was the owner of the property. The name of his wife is Smt. Jalla Bibi who died on 24.11.2015. Jarnail Singh claimed himself to be the adopted son of Sh.Gurbax Singh. Whereas defendant No.2 and 3 in the suit filed by Janail Singh, namely Jarnail Singh, Sarpanch and Sukhchain Singh claimed the property on the basis of the registered Will executed by Sh.Gurbax Singh in their favour. The Trial Court decreed the suit filed by Jarnail Singh, whereas the First Appellate Court has reversed the judgment

and decree passed by the Trial Court in the injunction suit. The Trial Court

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dismissed Dalip Singh's suit which has also been reversed by the First Appellate Court.

8. The First Appellate Court has recorded the following findings of fact upon re-appreciation of evidence:-

- i) Jarnail Singh has failed to prove that there was any custom in the community to adopt a child beyond the age of 15 years.
- ii) The entire official record proves that Jarnail Singh is the son of Sh. Munsha Singh and not Sh. Gurbax Singh. There is no entry in any official record to prove that Jarnail Singh was ever adopted by Sh. Gurbax Singh.
- iii) The deed of adoption is neither signed by the natural parents of Jarnail Singh nor the adopted parents. No date, month or year of adoption has come on record.
- iv) The registered Will has been proved by examining Jarnail Singh, Sarpanch who was the attesting witness and Mehal Singh, Scribe, who appeared as DW.3.

9. Heard the learned counsel representing the appellants at length and with his able assistance, perused the paper-book.

10. The learned counsel representing the appellants submits that the registered Will was not produced before the Patwari and the mutation was sanctioned on the basis of natural succession. He further submits that the defendants were required to produce the aforesaid Will before the Patwari.

11. This Court has considered the submissions of the learned

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counsel representing the appellants.

12. In this case, the defendants have propounded the registered Will executed by Sh.Gurbax Singh which has been proved by examining the attesting witness as well as the Scribe. Jarnail Singh has not proved that Sh.Gurbax Singh did not execute the registered Will. The photograph of Sh.Gurbax Singh and others along with the Sub Registrar has been printed on the aforesaid registered Will. Jarnail Singh does not dispute that the photograph is of Sh.Gurbax Singh.

13. Moreover, Jarnail Singh has failed to prove that he was ever adopted by Sh.Gurbax Singh. The learned counsel representing the appellants does not press any other argument.

14. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of fact arrived at by the First Appellate Court. Hence, both the appeals are dismissed.

15. The miscellaneous application(s) pending, if any, in both the appeals shall stand disposed of.

**(Anil Kshetarpal)
Judge**

March 19, 2024

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No