

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6121-2023 (O&M)
Date of Decision: February 15, 2024

Harpreet Singh
...Petitioner

Versus

Gurnam Singh and another
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rishav Jain, Advocate
for the petitioner.

Mr.Harish Goyal, Advocate
for respondent No.1.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 14.09.2023 (Annexure P-6) passed by learned Court below, whereby, the application filed under Order 22 Rule 4 CPC, filed by the petitioner, for substitution as legal representative of deceased Sukhwinder Singh, being his adopted son, was dismissed.

The facts germane, to be noticed, are as follows:-

That, initially, Gurnam Singh-respondent No.1 (plaintiff before learned Court below) through his attorney, had filed a suit for issuance of mandatory injunction to restrain defendant-Sukhwinder Singh, who is real brother of Gurnam Singh, to deliver vacant possession of Kothi, constructed

on the suit land.

The plaintiff-Gurnam Singh asserted himself to be owner of the suit property and he is residing in Japan since the year 2008. He also alleged that Sukhwinder Singh-defendant to be having possession of the property, being licensee. As plaintiff was in need of the Kothi, he revoked the licence orally and sought the vacant possession of the Kothi in question and thus, filed the suit.

The written statement was also filed, copy whereof, has been placed on record today, whereby, besides taking preliminary objections, on merits, Sukhwinder Singh has taken the plea that he is owner-in-possession of the Kothi in question, which, he had purchased with his own funds. However, with his service benefits, he had purchased a plot in the name of the plaintiff, who is his younger brother and he raised the Kothi. The defendant along with his wife, is living in the Kothi, in dispute, from the very date of completion of its construction.

However, during the pendency of the suit, Sukhwinder Singh had died and his wife Dalip Kaur was impleaded as legal heir. However, Dalip Kaur also died, during the pendency of the suit and resultantly, by way of filing of an application under Order 22 Rule 4 CPC, copy whereof is Annexure P-3, Gurnam Singh-plaintiff had sought impleadment of Daljinder Singh, his other brother, thereby, stating about him to have entered into the possession of the disputed property, alleging himself to be legal heir of Sukhwinder Singh. The said application was allowed and the Daljinder Singh, was impleaded as defendant No.1(b).

Thereafter, an application under Order 1 Rule 10 CPC was filed by Manjit Kaur, who is wife of Daljinder Singh, who had already been impleaded as defendant No.1(b) and the same was partly allowed.

However, challenge was made to the order passed on an application under Order 1 Rule 10 CPC, filed by Manjit Kaur. Rival revision petitions were filed. However, CR-1358-2023 filed by Gurnam Singh was allowed and the impugned order of impleadment of Manjit Kaur was set aside and resultantly, the application under Order 10 Rule 1 and 2 CPC, was dismissed. The connected CR-3209-2022, filed by Manjit Kaur, was dismissed, vide order dated 25.08.2023 by this Court.

Anyhow, from the aforesaid order, Special Leave to Appeals were filed, which were taken up by the Hon'ble Supreme Court on 13.12.2023 and the same were dismissed, while making observations, as herein given:-

“We do not find any merit in these Special Leave Petitions. The Special Leave Petitions are hence dismissed.

However, liberty is reserved to the petitioner or the caveator to seek clubbing of both the suits, so that there could be common evidence let in and a common judgment passed in the said suits.

If so advised, such an application could be filed, either by the petitioner herein or by the caveator.

Pending application(s) shall stand disposed of.”

Thereafter, Harpreet Singh, son of Daljinder Singh and Manjit Kaur had filed an application under Order 22 Rule 4 CPC, for him being

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impleaded as legal heir of Sukhwinder Singh s/o Virsa Singh, as defendant.

Copy of the said application is Annexure P-4.

In the aforesaid application, besides making mention of the Civil Suit dated 30.07.2018, for mandatory injunction, filed by Gurnam Singh, through attorney against his real brother Sukhwinder Singh, the applicant (who is petitioner before this Court) had asserted that on 23.08.2019, Sukhwinder Singh had expired and thereafter, his wife Dalip Kaur was impleaded as LR but on 01.07.2020, said Dalip Kaur also expired. The last rites of Sukhwinder Singh and Dalip Kaur were conducted by Harpreet Singh. Now, Sukhwinder Singh and Dalip Kaur are survived by Harpreet Singh, who is the legal heir.

Further, it is averred in the said application that since Sukhwinder Singh and Dalip Kaur were issueless, they adopted Harpreet Singh, vide adoption deed dated 26.05.1990 (his date of birth is 15.11.1987), from Daljinder Singh s/o Virsa Singh. Also, it is mentioned that Daljinder Singh is the real brother of deceased Sukhwinder Singh. Daljinder Singh and Manjit Kaur are biological parents of Harpreet Singh. In pursuance of the adoption made, Sukhwinder Singh and Dalip Kaur, the present petitioner is the adopted son of deceased Sukhwinder Singh and in this context, a prayer was made to allow the application and he be impleaded as defendant.

However, the said claim was resisted by Gurnam Singh.

After hearing learned counsel for the parties and considering the copy of the adoption deed, coming on record, vide impugned order dated 14.09.2023, the said application was dismissed.

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Being aggrieved by the aforesaid order of dismissal of the application, petitioner Harpreet Singh has filed the present revision petition.

In pursuance of the notice issued, contesting respondent-Gurnam Singh made appearance through counsel.

Learned counsel for the parties heard.

At the very outset, it submitted by learned counsel for the petitioner that since Harpreet Singh is the adopted son, on the basis of the adoption deed, coming on record, therefore, he ought to have been impleaded as LR of defendant Sukhwinder Singh (since deceased), but however, erroneously, learned Court below, while considering the application under Order 22 Rule 4 CPC, had stepped over its jurisdiction and had made observation, vis-a-vis, validity of the adoption deed dated 26.05.1990.

However, learned counsel for respondent No.1 submits that application has been filed only for causing delay in the disposal of the suit before learned Court below. In the given circumstances, he has no objection, if the present revision petition is accepted and Harpreet Singh is impleaded as LR of Sukhwinder Singh.

In the given circumstances, it is pertinent to mention that observations made by the Court below, with regard to the adoption deed, coming on record, to be unregistered document, is erroneous. Besides, vernacular copy of the adoption deed, there is also, copy coming forth, with regard to the said adoption deed, having been registered. No doubt, it was beyond the purview of the Court below to make observation, with regard to

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the validity of the adoption deed, as necessary rituals had not been performed and it is an unregistered document. Besides the same, also observed that Harpreet Singh was 19 years old, at the time of being given in adoption. However, these observations are contrary to the facts, as put forth. The so called adoption deed is dated 26.05.1990. Harpreet Singh was born on 15.11.1987, as evident from the matriculation certificate (Annexure P-8). Considering the same, wrong observation is made with regard to the petitioner to be 19 years old, at the time of adoption. May it be so, that the adoption deed, as such, may raise any kind of suspicion, as it was got registered, after a long time of its execution. But anyhow, it is pertinent to mention that copies of various documents, have been placed on record by Harpreet Singh, wherein, he is reflected to be son of Sukhwinder Singh, who was defendant, in the main case. There are particulars mentioned in HDFC Bank Ltd. account, copy whereof is Annexure P-7, where, he is reflected to be son of Sukhwinder Singh and in Ex.P8, which is copy of matriculation examination, held in March, 2008, Harpreet Singh has also been reflected as son of Sukhwinder Singh and Dalip Kaur. Besides the same, there is also Annexure P-9, which is copy of the passport, wherein, the parentage of Harpreet Singh has been mentioned as Sukhwinder Singh and Dalip Kaur.

Suffice to consider the aforesaid documents, at this stage, which were made, much before the institution of the suit in hand. Even, besides the adoption deed, these documents, as such, can be taken into consideration.

Sukhwinder Singh-defendant, during the pendency of the suit, had died and thereafter, his wife Dalip Kaur was impleaded as his legal

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representative. She had also died and thereafter, another brother Daljinder Singh was brought on record, as LR, on the basis of the application filed by respondent-plaintiff Gurnam Singh. Copy of the said application is Annexure P-3. Perusal of the same reveals that it was on account of the plaintiff, having come to know about Daljinder Singh, to have entered into possession, that he was prayed to be made as LR of deceased defendant Sukhwinder Singh. Learned Court below had allowed the same and in this manner, Daljinder Singh, stepped into the shoes of Sukhwinder Singh. But however, till date, nowhere Harpreet Singh had filed an application for being impleaded as LR. Said Daljinder Singh is the natural father of Harpreet Singh. He had, though, joined the proceedings, but there was total silence, with regard to Harpreet Singh, being adopted son of Sukhwinder Singh. Not only this, it is also required to taken note that Manjit Kaur, wife of Daljinder Singh, had filed an application under Order 1 Rule 10 CPC, to become party to the pending civil suit, filed at the instance of Gurnam Singh, but however, the same was allowed with some rider of pursuing the suit, from that stage. Feeling aggrieved, as already observed aforesaid, Manjit Kaur as well as Gurnam Singh had filed revision petitions, which were taken up by this Court and the application under Order 1 Rule 10 CPC filed by Manjit Kaur was dismissed by this Court. In the same, she had also made mention of Harpreet Singh, her son to have been adopted by Sukhwinder Singh. Precisely, on this account, in the judgment dated 25.08.2023 passed by this Court, an observation was given therein, about the option available with son of Manjit Kaur to file an application for being impleaded as LR of

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Sukhwinder Singh, being adopted son. The SLP filed to challenge the order passed by this Court in CR-3209-2022 was dismissed by the Hon'ble Supreme Court.

In the given circumstances, the impleadment of Daljinder Singh was purely, on the basis of the application, filed at the instance of Gurnam Singh, who was brother of Daljinder Singh. As compared to rights of Daljinder Singh, Harpreet Singh, who has placed on record, besides adoption deed, various other documents, wherein, he is reflected to be son of Sukhwinder Singh and Dalip Kaur, much prior to the institution of the suit, has an edge and ought to be impleaded as legal heir of Sukhwinder Singh.

Since, a doubt is definitely created in the mind of this Court, while making observation that Daljinder Singh, had quietly became legal heir of deceased Sukhwinder Singh and did not disclose about his natural son Harpreet Singh, to have been adopted by Sukhwinder Singh, by way of adoption deed, but however, it shall not be appropriate for this Court to make a comment, such being the circumstances, coming forth.

But anyhow, weighing the rights of the parties, without prejudice to the rights to be adjudicated on merits, qua deceased Sukhwinder Singh, the impugned order is set aside and the application under Order 22 Rule 4 CPC is hereby accepted and Harpreet Singh is impleaded as LR of deceased Sukhwinder Singh. But however, these observations are circumscribed, only for the purpose of pursuing the suit, vis-a-vis, rights of Sukhwinder Singh and shall not be taken to be an observation, with regard to Harpreet Singh, being adopted son of Sukhwinder Singh, for any purposes,

to have gainful right over the estate of Sukhwinder Singh, by projecting him to have been impleaded in the case in hand.

In view of the aforesaid terms, the present revision petition stands allowed.

February 15, 2024
Vgulati

Whether speaking/reasoned
Whether reportable

(ARCHANA PURI)
JUDGE
Yes
Yes/No