

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107

RSA No.4342 of 2018 (O&M)
Reserved on : 19.03.2024
Date of Decision : 01.04.2024

Smt. Parwati & Anr.

....Appellants

VERSUS

Rajender & Ors.

....Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rahul Vohra, Advocate for the appellants.

Mr. Jagdish Manchanda, Advocate and
Mr. Nischal Chetanya Manchanda, Advocate
for the caveator-respondent No.1.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff-appellants against the judgment and decree dated 13.03.2015 passed by the Trial Court and the judgment and decree dated 05.02.2018 passed by the First Appellate Court whereby their suit for declaration and permanent injunction has been dismissed.
2. The brief facts relevant to the present case are that the plaintiff-appellant No.1 and the defendant-respondent No.3 are the daughters of one Manohari while the plaintiff-appellant No.2 is the granddaughter of Manohari being daughter of the plaintiff-appellant No.1. Manohari did not have any son. As per the plaintiff-appellants Manohari was the owner in possession over the suit property and died intestate leaving behind the

plaintiff-appellants and proforma defendant-respondent No.3 as his Class I legal heirs and the suit property devolved upon them in equal shares. According to the plaintiff-appellants the defendant-respondent No.1 was distantly related to Manohari and managed the affairs of the suit property after the death of Manohari. It was alleged that defendant-respondent No.1 had procured a registered adoption deed no.10 dated 9.4.1984 regarding his alleged adoption by Manohari and upon the death of Manohari the defendant-respondent No.1 had got himself recorded as owner of the suit property. Subsequently the defendant-respondent No.1 relinquished the suit property in favour of his son, the defendant-respondent No.2. The plaintiff-appellants had also come to know that in the month of March 2010 the defendant-respondent No.1 had procured a compromise decree dated 24.07.1997 which was illegal, null and void and had been obtained by exercising undue influence. On these broad averments the suit for declaration and permanent injunction was filed to challenge the adoption deed, mutation entries, compromise decree and relinquishment deed. The defendant-respondent No.1 filed a written statement raising several preliminary objections regarding maintainability, locus-standi, cause of action, non-joinder of parties, etc. On merits it was pleaded that after the demise of Manohari the defendant-respondent No.1 being the adopted son of Manohari had become owner in possession of the suit property. According to the defendant-respondent No.1, since Manohari had no son he adopted the defendant-respondent No.1 and that at the time of adoption the defendant-respondent No.1 was 12 years old. The adoption had taken place with all the necessary formalities of giving and taking in the presence of parents of

defendant-respondent No.1 and an adoption deed was executed and registered on 19.04.1984. As per the defendant-respondent No.1 he rendered all the services and managed all the affairs of Manohari till his death and after his death the plaintiff-appellants and the defendant-respondent No.1, being the successors of Manohari, entered into an oral family settlement whereunder the land situated in village Mindkola fell to the share of defendant-respondent No.1 while the residential house and shop situated at Palwal fell to the share of the plaintiff-appellants and proforma defendant-respondent No.3 and mutation no.8732 was entered with the consent and free will of the parties. It was pleaded that earlier the plaintiff-appellants and proforma defendant-respondent No.3 had filed Civil Suit No.299 on 28.04.1997 against the defendant-respondent No.1 challenging the adoption deed and mutation entry which matter was compromised and a compromise judgment and decree dated 24.07.1997 was passed. As per the defendant-respondent No.1 since he was the owner of the suit property he had legally relinquished the same in favour of his son, the defendant-respondent No.2.

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

“1. Whether the plaintiffs are entitled to a decree for declaration to the effect that they are owners in possession of the suit land and the impugned adoption deed, dated 19.4.1985, mutation no.8732 and subsequent entries in the revenue records, reflecting the defendant no.1 as owner, the impugned compromise decree, dated 24.7.1997, passed in civil suit no.299 of

1997 and the impugned haque tyag patra, dated 13.1.2010 in favour of defendant no.2 are null and void, ineffective and are liable to be set aside ? OPP

2. Whether the plaintiffs are entitled to a decree of declaration in the alternative that if the defendant no.1 is held to be proved an adopted son of the plaintiff no.1 and said Shri Manohari, even then he is entitled to 1/4th share in the suit land and the entries in the revenue records are liable to be corrected accordingly ? OPP

3. Whether the plaintiffs are entitled to a decree of permanent injunction restraining defendant no.1 from dispossessing the plaintiffs from the suit land and from alienating the same by unlawful means ? OPP

4. Whether the plaintiffs are entitled to a decree for possession or for joint possession, if during the pendency of this suit, the plaintiffs are dispossessed ? OPP

5. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD

6. Whether the plaintiffs have no locus standi and cause of action to file the present suit ? OPD

7. Whether the plaintiffs are estopped by their own act and conduct from filing the instant suit ? OPD

8. Relief.”

4. The Trial Court vide judgment and decree dated 13.03.2015 dismissed the suit of the plaintiff-appellants. Aggrieved by the said judgment and decree dated 13.03.2015 an appeal was preferred by the plaintiff-appellants which appeal was also dismissed vide judgment and decree dated 05.02.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants has contended that the impugned judgments and decrees are illegal and erroneous and that the Courts have wrongly dismissed the suit of the plaintiff-appellants. It was submitted that the adoption of the defendant-respondent No.1 by Manohari was not established or proved and therefore the defendant-respondent No.1 could not have succeeded to the estate of Manohari. It was further contended that the judgement and decree dated 24.07.1997 set up by the defendant-respondent No.1 was a result of fraud and that the plaintiff-appellants were not bound by the same. According to counsel the suit of the plaintiff-appellants should have been decreed.

6. Heard counsel for the plaintiff-appellants and perused the paperbook.

7. Both the Courts have reached concurrent findings of fact and have dismissed the suit of the plaintiff-appellants. It has been found that the registered adoption deed Ex.DW2/A also bears the thumb impression of the plaintiff-appellant No.1. The adoption of the defendant-respondent No.1 by Manohari has been accepted by both the Courts. Further, it has also come on record that the property of Manohari which came to the plaintiff-appellant No.1 in the family settlement has been sold by her. The First Appellate Court found that *“Apart from this, the plaintiff Parwati has examined herself*

as PW1, who in her cross-examination has admitted that in Dher mohalla, she having a shop and the same has been sold by her to Khem Singh and the house, situated near Bangali Nursing Home had also been sold to Shimla wife of Balbir and also admitted that Manohari was having no son. In the revenue record name of Rajender Singh is entered and the shop and residential house left by Manohari in Palwal had been sold by her. Shyam Wati plaintiff no.2 (daughter of Parwati) has also appeared as PW2 and reiterated the version of their plaint, but admitted in her cross-examination that Manohari had no son and was having only two daughters i.e. Somwati and Premwati and Somwati is also known as Shyam Wati. She also admitted that her mother had sold the plot to Khem Singh on 28.2.2002 for Rs.40,000/- and the sale deed Mark A bore the photograph of her mother and the land in dispute being cultivated by defendant Rajender. She does not know from how many years, he is cultivating the suit land and she also does not know if her father adopted Rajender on 19.4.1984 and in the revenue record, name of Rajender defendant is lying recorded and Rajender had transferred the land in the name of his son Anil. Bijender Singh has been examined as PW5, who stated that Rajender was not adopted by Manohari in their presence and admitted in his cross-examination, that he knows defendant Rajender, who used to visit Parwati and Manohari and who used to call Manohari as his father and he is cultivating the land of Manohari and one daughter of Parwati is called as Savita, whose sisters names are Memwati and Shyamwati and after the death of Manohari, Smt. Parwati had sold the house at Palwal. The above evidence of the plaintiffs has failed to rebut the fact that earlier the plaintiffs had filed a suit, which was

compromised, vide judgment and decree, dated 24.7.1997 and no iota of evidence has come on the file to prove that the adoption deed and mutation no.8732 are illegal, null and void. When on the one hand the plaintiffs have admitted the adoption deed and mutation no.8732 in civil suit no.299 of 1997, then no question of challenging the same again arises”. In the earlier suit the statements of the parties to the effect of having reached a compromise were recorded and on that basis the suit was decreed as compromised vide judgment and decree dated 24.07.1997. The parties were identified by counsel before the Court. The dispute having already reached a judicial decision cannot be reopened. Counsel for the plaintiff-appellants has not been able to show anything on the record to displace the earlier judgement and decree dated 24.07.1997 on the plea of fraud. No other point was argued.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The regular second appeal is accordingly dismissed. Pending applications, if any, also stand disposed off.

01.04.2024
Ankur

(ALKA SARIN)
JUDGE

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