

(2005) 07 P&H CK 0048

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 332 of 1987

Piara Singh Johal and Another

APPELLANT

Vs

Gej and Others

RESPONDENT

Date of Decision: July 4, 2005

Acts Referred:

- Evidence Act, 1872 - Section 50

Citation: (2005) 3 CivCC 557 : (2006) 1 CivCC 110 : (2005) 141 PLR 376 : (2005) 4 RCR(Civil) 68

Hon'ble Judges: Ashutosh Mohunta, J

Bench: Single Bench

Advocate: Tribhawan Singla, for the Appellant; Chetan Mittal, for the Respondent

Final Decision: Allowed

Judgement

Ashutosh Mohunta, J.

Piara Singh and Gurpiari Kaur plaintiffs have filed this appeal to challenge the judgments and decrees dated 13.10.1986 passed by the Additional District Judge, Jalandhar, vide which the judgments and decrees passed by the Sub Judge 1st Class, Phillaur, 7.8.1986 and dated 20.8.1983 decreeing the suit in favour of the plaintiffs and dated 7.8.1986 deciding the issue with regard to adverse possession of the defendants of the suit property against them, have been set aside.

2. The facts giving rise to the present appeal are that one Jiwan Singh, original owner of the suit property which was situated in the three villages had one daughter by the name of Chinti and no male child. He adopted one Sucha Singh son of Bhagat Singh somewhere in the year 1923. Jiwan Singh expired prior to the coming into force of the Hindu Succession Act, 1956. The suit land was inherited by said Sucha Singh. Chinti was married to Gurdit Singh of village Jandiala and out of the wedlock one son namely Piara Singh and one daughter Gurpiari Kaur were born. Chinti died during the life time of Sucha Singh. Sucha Singh died issueless and

widowless somewhere in seventies. The defendants, who are brothers of Such Singh, took possession of the property inherited by him from his adoptive father Jiwan Singh. The plaintiffs claimed themselves to be legal heirs of Such Singh and filed the present suit through their attorney Kehar Singh. The Sub Judge 1st Class, Phillaur, after hearing the Counsel for the parties and on examining the evidence adduced on record, decreed the suit in favour of the plaintiffs vide judgment and decree dated 20.8.1983 and held them to be the owners of the suit property. On appeal by the defendants, the Additional District Judge, Jalandhar, vide order dated 13.5.1986 remanded the case to the trial Court to give finding on the following additional issue:-

"Whether the defendants have become owners in possession of the land by way of adverse possession as contended by them in the written statement?"

3. The Sub Judge 1st Class, Phillaur, heard the parties on the issue and vide judgment dated 7.8.1986 held that the defendants had not become owner of the suit land. However, in appeal the Additional Distt. Judge, Jalandhar, vide judgment and decree dated 13.10.1986 set aside the judgments and decrees passed by the trial Court and it was held that the plaintiffs had failed to prove themselves to be legal heirs of Sucha Singh deceased and their mother Smt. Chinti was not proved to be the daughter of Jiwan Singh, the original owner of the suit property. The lower appellant court also found that the defendants had been able to prove themselves to have become owners of the suit property by way of adverse possession.

The following substantial questions of law arise for consideration before this Court:-

1. Whether or not the property inherited by the adopted son from his adoptive parents can be inherited by his natural brothers on his death?
2. Whether or not the plaintiff-appellants have been able to prove themselves to be the legal heirs of Sucha Singh deceased through their mother Smt. Chinti and she herself stands proved to be the daughter of Jiwan Singh, the original owner of the suit property?
3. Whether or not the defendant-respondents have become owners of the suit property by way of adverse possession?
4. With regard to the first question, it has been argued by the learned counsel for the appellants that the defendant-respondents, who are brothers of Sucha Singh deceased, have no right to inherit the property left behind by him. It has been contended by him that Sucha Singh was the adopted son of Jiwan Singh, original owner of the suit property. After adoption, Such Singh had relinquished all ties with the family of the original father and he stood transplanted in the family of his adoptive father i.e., Jiwan Singh. Mr. Tribhuwan Singla contends that the defendant-respondents, who are brothers of Such Singh in his original family, cannot inherit the property left behind by Sucha Singh, as per the provisions of the

Hindu Succession Act, 1956. Rather the plaintiff-appellants, being the son and daughter of Smt. Chinti deceased, daughter of Jiwan Singh deceased (original owner of the suit property), are entitled to inherit the property left behind by Sucha Singh deceased.

5. In order to rebut the contentions raised by Mr. Tribhawan Singla, learned counsel for the appellants, it has been argued by Mr. Chetan Mittal, learned counsel for the respondents, that Sucha Singh was not the adopted son of Jiwan Singh. Rather he was appointed as his legal heir. The learned counsel contends that the status of a legal heir is entirely different from that of an adopted son. The assertion of the learned counsel is based on the plea that the plaintiffs had failed to prove the essential ingredients of adoption, i.e., the formal giving and taking formalities etc. Mr. Mittal has placed reliance on Kehar Singh and Others Vs. Dewan Singh and Others, wherein it has been held by their Lordships of the Supreme Court that "a customary adoption in Punjab is ordinarily no more than a mere appointment of an heir creating a personal relationship between the adoptive father and the appointed heir only. There is no tie of kinship between the appointed heir and the collaterals of adoptive father. The appointed heir does not acquire the right to succeed collaterally in the adoptive father's family. The status of appointed heir is thus materially different from that of a son adopted under the Hindu Law". On this basis, it has been contended by Mr. Chetan Mittal, learned counsel for the respondents that the defendant-respondents were entitled to inherit the property of their brother who had died issueless and widowless.

6. I have heard the learned counsel for the parties and gone through the case law cited by Mr. Chetan Mittal, learned counsel for the respondents. There is no dispute with regard to the distinction created in the status of the "Legal Heir" and the "Adopted Son" with regard to the collaterals in the family of his adoptive father. However, in the present case the position is entirely different. Herein, besides the oral evidence, the plaintiffs have placed on record the statement of Jiwan Singh deceased which he had made before the Court as back as 4.4.1933 in some other case. In his statement Jiwan Singh stated that Sucha Singh was adopted by him when he was merely one and half years old. At the time he made the statement, Sucha Singh was stated to be 10 years old. Jiwan Singh stated that "adoption ceremonies were performed 2-1/2 and 3 years ago and relatives (biradri) were assembled" and sweets were also distributed. Not only this, there is an admission by Gurmej Singh defendant in his cross-examination on 8.8.1983 to the effect that "when Sucha Singh was adopted by Jiwan Singh, the age of Sucha Singh was 1-1/2 years and Jiwan Singh had taken care of him." There is also an open admission by Gurmej Singh (DW-2) when he stated in his cross-examination that "Sucha Singh did not get any share from the property of our father." Though Gurmej Singh has tried to justify the non-taking of the share by saying that Sucha Singh had died prior to the death of his father Bhagat Singh, yet it is the admitted position of the parties that Sucha Singh had died much after the death of his father Bhagat Singh. Not only

this, it has also come in the cross-examination of Gurmej Singh defendant (DW-2) that in an earlier suit filed by Labhu and Inder with regard to the adoption of Sucha Singh by Jiwan Singh, the Court has already decided that Sucha Singh was the adopted son of Jiwan Singh. This Suit was allegedly filed by Labhu and Inder against Jiwan Singh and Sucha Singh and the suit filed by Labhu and Inder was dismissed by the Court. It has also come in the statement of Gurmej Singh defendant-respondent that "the land in dispute is the same land which Sucha Singh had inherited being the adopted son of Jiwan Singh". In order to strengthen the stand of the plaintiffs, there is also the statement of Gurdit Singh which has been adduced on record as Ex.P-6, wherein it has been stated by Gurdit Singh that "Jiwan Singh has adopted Such Singh minor. I was present. Relatives (Biradri) were assembled and sweets (Halwa) was distributed and food was also served.." In view of this unflinching evidence adduced on record there can be no shadow of doubt that Sucha Singh was the adopted son of Jiwan Singh in Kehar Singh's case (supra) it has been held by their Lordships of the Supreme Court that the "adoption is formal if the parties manifest a clear intention that there should be a complete change of the family of the adopted son, so that he ceases to be a member of his natural family and loses his right of collateral succession in that family and at the same time becomes a member of the adoptive father's family and acquires a right of collateral succession in the family. The loss of the right of collateral succession in the natural family is strong evidence to show that the adoption is formal and effects a complete change in the family. On the other hand, retention of the right of collateral succession in his natural family indicates that the adoption was informal by way of customary appointment of an heir." In the present case it is the admitted case of the parties that Sucha Singh did not succeed to the property of his natural father Bhagat Singh. In case it was merely a customary appointment of a legal heir, Sucha Singh also would have got his share in the property left behind by his natural father Bhagat Singh at the time of his death. The fact that he did not succeed to the property of his natural father, is a strong piece of evidence to show that the adoption of Sucha Singh by Jiwan Singh was formal and not informal. Consequently, I do not agree with the finding of the lower appellate court that the adoption in the case of Sucha Singh was merely an appointment of an heir by Jiwan Singh and not an adoption in the real sense of the term. As Sucha Singh, was proved to be the adopted son of Jiwan Singh and thereby he had severed all the kinship with his natural father's family, his natural brothers cannot claim any right in the property left behind by him on his death on the basis of succession.

7. Coming to the next question whether the plaintiffs are the son and daughter of Smt. Chinti and also whether she herself was the daughter of Jiwan Singh, it is contended by Mr. Tribhawan Singla, learned counsel for the appellants that her relationship stands proved by the oral evidence adduced on record by the plaintiff-appellants.

8. On the other hand, Mr. Chatan Mittal, learned counsel for the defendant-respondents, contends that the plaintiffs have utterly failed to prove the relationship of daughter and father qua Chinti and Jiwan Singh deceased as well as qua the plaintiffs themselves with Chinti in accordance with the requirements of Section 50 of the Indian Evidence Act. In support of his contention, the counsel has placed reliance on Lachhmi and Ors. v. Silka Ram and Ors., (1988-2)94 Punjab Law Reporter 680. The Counsel has also made a specific reference to the pedigree-table adduced on record by the plaintiffs, wherein it has been mentioned that "Jiwan Singh died issueless, without wife." The pedigree-table had been signed by Sohan Singh Patwari on 9.10.1943. On this basis, the counsel contends that in case Smt. Chinti had been the daughter of Jiwan Singh and was alive at the time of the death of Jiwan Singh, then it would not have been written in the pedigree-table that Jiwan Singh had died "issueless".

9. After hearing the learned counsel for the parties, I do not find any merit in the contention raised by Mr. Chetan Mittal, learned counsel for the respondents. I have also gone through the case law cited by the learned counsel for the respondents wherein it has been held by a learned Single Judge of this Court "that the essential requirements of the section are; (1) there must be a case where the Court has to form an opinion as to the relationship of one person to another; (2) in such a case, the opinion, expressed by conduct as to the existence of such relationship is a relevant fact, (3) but the person whose opinion expressed by conduct is relevant must be a person so as a member of the family or otherwise has special means of knowledge on the particular subject of relationship. The pedigree table adduced on record has also been perused by me. So far as the contention with regard to the mentioning of the word "issueless" in the pedigree-table is concerned, the Court cannot lose sight of the fact that at the time when the pedigree table was prepared by the Patwari, the daughters did not have any right of succession in the property left behind by the male co-parcener. As Jiwan Singh did not have any male heir to succeed him after his death, he had adopted Sucha Singh and Smt. Chinti, being a female did not have any right in the property left behind by Jiwan Singh. Consequently, her name was not mentioned in the Pedigree-table adduced on record by the plaintiffs. In Smt. Sardul Kaur v. Parvin Kaur, (1997-3)117 P.L.R. 64, it has been held by this Court that mere stating that Parvin Kaur was not the daughter of Kabir Singh was meaningless. It was held by his Lordship that mere denial was "neither admissible in evidence nor is sufficient to disprove her relationship with Kabir Singh through Kishan Kaur. If according to the defendants, Parvin Kaur is not the daughter of Kabir Singh, it was for them to suggest and prove that she was the daughter of some person other than Kabir Singh, but at any stage of the proceedings, it was neither so suggested nor evidence was led to that effect by the defendants. On the other hand, plaintiff examined as many as six witnesses including herself as PW-6." This authority of this Court is amply applicable to the facts appearing in the present case. The defendants in the case in hand merely

stated that they did not know whether Jiwan Singh had any daughter by the name of Chinti or that the plaintiffs were the son and daughter of Chinti deceased. They did not suggest anything either with regard to the parentage of Smt. Chinti or that of the plaintiffs, namely, Piara Singh and Gurpiari Kaur. Gurmej Singh defendant (DW-2) stated, "I do not know whether plaintiff Piara Singh and Gurpiari are issues of Gurdit Singh and Chinti." Said Gurmej Singh defendant further stated in the cross-examination, "I have seen Piara Singh when he was small. Piara Singh, is the son of Gurdit Singh I have seen Piara Singh, plaintiff at Jandiala. He has shop of milk and Sodha which was run by his father Gurdit Singh. Now, I have heard that Piara Singh plaintiff had gone to Canada...." On the one hand, Gurmej Singh stated that he did not know whether plaintiff Piara Singh and Gurpiari are issues of Gurdit Singh and Chinti, on the other, he admitted that Piara Singh is the son of Gurdit Singh and he had seen him when he was small. He has even stated that now said Piara Singh had gone to Canada. In order to prove the relationship of the plaintiffs with Smt. Chinti and that of Smt. Chinti with Jiwan Singh deceased, the plaintiffs have examined Kehar Singh (PW-1), Dev Raj (PW-2), Keshav Nand (PW-3) and Kartar Singh (PW-4). They also adduced on record the School Certificate (Ex.P-8), wherein it has been certified that "Piara Singh son of Gurdit Singh attended" the school and his date of birth was 30.5.1933. Keeping in view this evidence coupled with the admission made by Gurmej Singh defendant, I do not find any shadow of doubt with regard to the relationship of Chinti with Jiwan Singh and that of the plaintiff with Chinti. Consequently, I hold that Smt. Chinti was the daughter of Jiwan Singh deceased and the plaintiffs are the son and daughter, respectively, of Smt. Chinti.

10. The last question is with regard to the adverse possession of the defendants over the suit property. It is the case of the defendants that the suit property remained in their possession since early fifties and Sucha Singh was never in possession of the same. It has further been stated on their behalf that they did not pay any rent to Sucha Singh. Thus, according to them, their possession has matured into ownership. It has been contended by Mr. Chetan Mittal, learned counsel for the defendants, that the plaintiff have failed to establish on record that the defendants have trespassed into the suit property in view of the unflinching evidence adduced by the defendants in the shape of Jamabandies and Khasra Girdawaris wherein they have been shown as tenants. It has been contended by him, that plaintiffs have not adduced any evidence to the effect that the defendants had ever paid any rent to Sucha Singh or anybody else on his behalf. Thus, the counsel contends that non-payment of rent by the defendants in lieu of the property cultivated by them, amounts to establish that the defendants had become owners thereof by way of adverse possession.

11. After hearing the counsel for the parties and on going through the evidence adduced on record, I do not find any merit in the contention raised by the learned counsel for the defendant-respondents. A look at the Jamabandies for the year 1975-76 and 1976-77 (copies at the Exhibits P-2, P-3 and P-4.) would show that in the

column of "ownership" the name of Sucha Singh has been mentioned and in Column No. 5 bearing the heading "Cultivator with description", the names of the defendants have been mentioned. In column No. 9 with the heading Rent paid by cultivators rate and amount it has been mentioned "Batai Nisfi". Even in the Jamabandies and Khasra Girdawaris adduced by the defendants, they have been shown as tenants with half share Batai. Only in the Jamabandi for the year 1981-82 the defendants have been mentioned as owners of the suit property in place of Sucha Singh. From the evidence adduced on record, it becomes quite evident that the defendants or their predecessors entered the suit land as tenants on one-half share Batai under Sucha Singh and they have failed to prove that have been in possession of the same adverse to the true owner for a period more than 12 years. In Ramlal and Others Vs. Chetu alias Chet Ram and Others, it has been held by a Division Bench of this Court that although "possession of a tenant, however full and complete, does of itself operate as an ouster of the owner, the mere fact that a person enters as a tenant does not preclude him from acquiring title against his landlord by adverse possession. It can operate as an ouster if he abandons the idea of holding as a tenant and sets up and asserts an exclusive right in himself. He must either give notice of his claim or his possession should be accompanied by some overt act asserting an ownership of such an open, notorious and hostile character as not to be easily misunderstood...." Similarly, in Peer Dia and Ors. v. Man Singh and Ors. 1976 P.L.J. 626 it has been held by this Court that "a tenant cannot claim title to land by adverse possession unless and until he proves the act of ouster. Mere non-payment of rent does not constitute adverse possession...." In a very recent authority Karnataka Board of Wakf v. Government of India and Ors. 2004(3) CCC 326 it has been held by their Lordships of the Supreme Court that the party claiming adverse possession must prove that his possession is peaceful, open and continuous. Their Lordships further held that the "possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period." In the present case, a perusal of the documentary evidence in the shape of Jamabandies, which have been adduced on record on behalf of both the parties, would show that the defendants were continued to be shown as tenants on one-half share Batai upto the year 1976-77 and only in the Jamabandi for the year 1982-83 (Ex.D-6/A) the defendants have got themselves recorded as owners after the death of Sucha Singh. The minimum statutory period of 12 years against the true owner had not elapsed in the year 1982-83 so as to entitle them to claim ownership on the basis of adverse possession. The present suit has been filed by the plaintiffs in the year 1983. The possession of the defendants against the plaintiffs can be said to have become adverse with effect from the date of death of Sucha Singh. The death of Sucha Singh can be presumed to have taken place on the date when the defendants got the mutation sanctioned in their names from the Revenue Authorities as the exact date of death of Sucha Singh remains not established on record on the basis of the

evidence adduced by both the parties. In the Jamabandi for the year 1976-77, Sucha Singh has been recorded as the owner of the suit property. As on the date of sanctioning of the mutation in the names of the defendants, the statutory period of 12 years have not elapsed, thus, it cannot be said that the defendants have become owners of the suit property on the basis of their adverse possession. In *Parwatabai v. Sonabai and Ors.*, 1997(1) R.C.R. 36 it has been held by their Lordships of the Supreme court that when the "plaintiff asserts his title on the basis of succession and defendant claims title on the basis of his adverse possession, it is for the defendant to prove as to on which date his possession became adverse...." As in the present case the plaintiffs have claimed their ownership on the basis of succession and the defendants have claimed ownership on the basis of adverse possession, it is for the defendants to prove the starting point on which their possession, became adverse to true owner. As they have failed to show the exact date when their possession became adverse to the true owner, the defendants cannot be said to have become owners by way of adverse possession.

12. In the light of the above discussion, I allow the appeal and set aside the judgment and decree dated 13.10.1986 passed by the Additional District Judge, Jalandhar. The judgments and decrees dated 20.8.1983 and 7.8.1986 passed by the Sub Judge, 1st Class, Phillaur, are hereby upheld. However, I do not make any order as to costs.