

(2002) 07 P&H CK 0032

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 3566 of 1986 (O and M)

Lakhmi Chand and Another

APPELLANT

Vs

Tara Chand (deceased by LR) and
AnotherRESPONDENT

Date of Decision: July 22, 2002**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 100
- Hindu Adoptions and Maintenance Act, 1956 - Section 11

Citation: AIR 2003 P&H 75 : (2003) 1 RCR(Civil) 86**Hon'ble Judges:** N.K. Sodhi, J**Bench:** Single Bench**Advocate:** V.K. Jain and J.L. Malhotra, for the Appellant; M.S. Jain and Adarsh Jain, for the Respondent**Final Decision:** Dismissed

Judgement

N.K. Sodhi, J.

The sole question that arises for consideration in this plaintiffs' second appeal is whether the adoption of Hemant Kumar defendant No. 2 by Tara Chand defendant No. 1 is invalid. Tara Chand respondent" who is now dead was issueless and he adopted Sahdev Singh son of Ganpat Ram respondent No. 3 in January, 1975 and an adoption deed was executed later on 14-11-1975. This adoption was challenged by the plaintiffs who are the nephew of Tara Chand defendant in civil suit No. 520 of 1978. That suit was partly decreed and the adoption of Sahdev Singh was declared illegal, null and void. It was thereafter that Tara Chand adopted Hemant Kumar minor son of Sahdev Singh some where in the year 1980 and this adoption was challenged by the plaintiffs in the suit out of which the present appeal has arisen on the ground that Tara Chand was not in a sound disposing mind at the time of adoption and that otherwise too the adoption was illegal as against their alleged reversionary rights. The suit was contested by the defendants. It is admitted that

Tara Chand was issueless. It is also admitted that Sahdev Singh respondent was adopted by Tara Chand and that his adoption had been set aside by the Court because he was a major and married at the time of adoption. It is denied that the defendants-appellants have any reversionary right to succeed Tara Chand and the adoption of Hemant Kumar son of Sahdev Singh is stated to be valid. Pleadings of the parties gave rise to the following issues:

(1) Whether adoption of defendant No. 2 by defendant No. 1 is illegal as alleged? OPP

(2) Whether plaintiffs are entitled to inherit the property of defendant No. 1 on his death as alleged? OPD

(3) Whether the suit is not maintainable in the present form? OPD

(4) Whether the plaintiffs are estopped from filing the suit by their acts and conduct, omissions and acquiescence, laches and admission? OPD

(5) Whether the suit is speculative and has been filed on vague allegations? OPD

(6) Whether the suit is" the outcome of malice as alleged? OPD

(7) Relief.

2. Issue No. 1 was decided against the plaintiffs. In view of the finding recorded on issue No. 1, issue No. 2 became redundant and the remaining issues were decided against the defendants as not pressed. Consequently, the trial Court dismissed the suit on 30-9-1985. Feeling aggrieved by the judgment and decree, the plaintiffs filed an appeal before the District Judge, Gurgaon who affirmed the findings recorded by the trial Court and dismissed the appeal on 26-11-1986. Hence this second appeal by the plaintiffs.

3. I have heard counsel for the parties and am of the view that the appeal deserves to be dismissed. Exhibit D-1 is the registered deed of adoption executed by, Tara Chand whereby Hemant Kumar minor son of Sahdev Singh was adopted. The trial Court examined the oral and documentary evidence led by the parties and recorded a positive finding that Hemant Kumar had been adopted by Tara Chand respondent. That finding was not challenged before the lower appellate Court. It is thus, proved that Hemant. Kumar respondent was adopted by Tara Chand. The Courts below have found that the adoption satisfied all the conditions enumerated in Section 11 of the Hindu Adoptions and Maintenance Act, 1956. It was, thus, held that the adoption was valid. These findings have not been seriously disputed before me in second appeal. No meaningful argument could be advanced to show as to how the adoption of Hemant Kumar was illegal. I have, therefore, no hesitation in upholding the findings of the Courts below. There is nothing on the record to show that Tara Chand owned any property in which the plaintiffs-appellants had any reversionary interest. It is true that they are the nephew of Tara Chand but that is not enough to

inherit the property. As found by the Courts below. Tara Chand is the absolute owner of the property held by him which is his self-acquired property. The lower appellate Court was right in holding that the plaintiffs had no locus-standi to challenge the adoption as they had no Interest in the property held by Tara Chand. There is, thus, no merit in the appeal and the same stands dismissed with costs.