

(1995) 08 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 2524 of 1979

Kehar Singh

APPELLANT

Vs

Dharam Singh and Another

RESPONDENT

Date of Decision: Aug. 9, 1995

Acts Referred:

- Hindu Adoptions and Maintenance Act, 1956 - Section 16

Citation: (1995) 111 PLR 490

Hon'ble Judges: N.K. Kapoor, J

Bench: Single Bench

Advocate: H.L. Sibal and Reeta Kohli, for the Appellant; Sarwan Singh and H.L. Bhatia, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Kapoor, J.

This is plaintiffs regular second appeal against the judgment and decree of the Additional District Judge, whereby the appeal of the defendants has been accepted, thereby dismissing the suit of the plaintiff.

2. The plaintiff filed suit for possession of land to the extent of one half share of the land as per details given in the plaint, situate in village Bhanohar, Tehsil and Distt. Ludhiana on the basis of inheritance.

3. As per the case of the plaintiff, one Chanan Singh son of Bishan Singh, real brother of the plaintiff, was owner of one half share of the land described in the heading of the plaint. That Chanan Singh died intestate issueless and widowless on 15.11.1975 Charan Singh had executed a gift deed of land in favour of Dharam Singh, defendant. This gift was challenged by the plaintiff. The court vide judgment and decree dated 11.7.1968 granted the declaration sought for holding that gift in dispute will not affect the right of reversioners including that of the plaintiff after the death of Chanan Singh. Thus the gift had been set aside by the competent court

and there is no preferential heir to succeed to estate of Chanan Singh, the plaintiff, has become owner of the suit land.

4. The plaintiff further alleged that Bhajan Singh obtained a collusive decree from the court of Sh. G.C. Suman, Sub Judge, dated 19.9.1973 to the effect that Bhajan Singh had become the owner of the disputed property by way of private partition and family adjustment. The decree was challenged to be illegal, void ab initio and without jurisdiction. The plaintiff further claimed relief of possession as according to him the defendants had forcibly occupied the land after the death of Chanan Singh. Defendant No. 1 - Bhajan Singh denied the allegations made by the plaintiff. According to Bhajan Singh, Chanan Singh, deceased, left behind his adopted son Harchand Singh son of Pishora Singh, brother of defendants' wife. Defendants further alleged that decree dated 19.9.1973 passed by Sub Judge Ist Class, Ludhiana, was based on a family settlement and, therefore, it is binding. In any case, the plaintiff has nothing to do with the property in dispute and so the suit be dismissed with costs.

5. Dharam Singh, defendant No. 2, in his written statement stated that Chanan Singh was issueless and to fulfil his religious sentiments had adopted Harchand Singh son of Pishora Singh. Harchand Singh was given in-adoption by Pishora Singh and Smt. Hardial Kaur, her mother, and was actually taken-in-adoption by Chanan Singh, deceased. All ceremonies were completed i.e. handing over of the child by parents of Harchand Singh and taking over by Chanan Singh. This way, Chanan Singh left behind his adopted son Harchand Singh, who alone succeeds. Accordingly, the plaintiff has no locus standi to file the present suit. The defendants also denied his knowledge about the decree dated 19.9.1973. He further alleged that he is in possession of the property since the date of gift.

6. On the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff is entitled to the possession of the property in dispute, if so, from whom ? OPP.

2. What is the effect of decree passed by Sh. G.C. Suman, Sub Judge Ist Class, Ludhiana dated 19.9.73 upon the rights of the plaintiff ? O.P.D.

The trial Court decided issue No. 1 in favour of the plaintiff holding that the plaintiff is entitled to take possession of the property in dispute from the defendants. Under issue No. 2 the court held that decree dated 19.9.1973 will not affect the reversionary right of the plaintiff Kehar Singh to succeed to the estate of Chanan Singh, deceased, Resultantly, the suit of the plaintiff was decreed against the defendants, as prayed for.

7. In appeal, the appellate Court vide order dated 30.3.1978 framed two additional issues and referred the same to the trial Court for its finding thereon under Order 41, Rule 25, Civil Procedure Code. Issues are -

"2-A : Whether Chanan Singh had adopted Harchand Singh as his son? OPD.

2-B : If issue No. 2-A is proved, whether Kehar Singh, plaintiff, has locus standi to file the suit ? OPP.

After recording additional evidence, the trial Court vide its report dated 20.4.1978 found issue No. 2-A against the defendants and did not give any finding on issue No. 2-B, as it was not thought necessary in view of its finding on issue No. 2-A. Thereafter, an application under Order 41, Rule 27, Civil Procedure Code, was given on behalf of Kehar Singh, plaintiff-respondent for recording evidence of handwriting expert. This application was opposed by Bhajan Singh, appellant. The Court vide order dated 20.11.1978 directed the thumb impression of Chanan Singh on the alleged adoption deed to be compared with the admitted thumb impression of Chanan Singh from the Director, Finger Prints Bureau, Phillaur, who vide his report submitted that disputed thumb impression of Chanan Singh on the adoption deed and the admitted thumb impression on the gift deed are identical and are of one and the same person. It is thereafter that the court heard the parties as to the merit of the appeal.

8. The counsel for Bhajan Singh, appellant, assailed the correctness of the finding of the trial Court in respect of issue No. 2-A stating that the court could not ignore that decree dated 19.9.1973 passed in favour of Bhajan Singh. The appellate Court found no merit in this contention of the counsel for the appellant. The appellate Court came to the conclusion that since Chanan Singh has already gifted his property to Dharam Singh by registered gift-deed dated 20.8.62 (Exhibit D-1), Chanan Singh could not give the property to Bhajan Singh by way of family arrangement. In fact after the gift deed dated 20.8.1962 Chanan Singh had no title over the property in dispute and, therefore, he could not give the property to Bhajan Singh. According to the appellate Court, this decree came into existence merely to get over the decree dated 11.7.68 vide which it was held that the gift dated 20.8.1962 shall not affect the reversionary rights of Kehar Singh. Accordingly, the finding of the trial Court in respect of issue No. 1 was affirmed. Resultantly, the appeal filed by Bhajan Singh was dismissed.

9. As regards, the appeal filed by Dharam Singh, the court came to the conclusion that adoption deed dated 10.3.69 was a registered document. As per its recital, Harchand Singh was adopted by Chanan Singh on 9.3.1969. Pishora Singh, father of Harchand Singh has appeared as D.W.S and deposed that he had given his son in adoption. This witness also makes reference to the other ceremonies performed. The Court came to the conclusion that Chanan Singh had adopted Harchand Singh. Accordingly, the appellate Court came to the conclusion that since Dharam Singh has been able to prove that Chanan Singh had adopted Harchand Singh, Kehar Singh had no locus standi to file the suit. Resultantly, the appeal of Dharam Singh was accepted thereby dismissing the suit of plaintiff Kehar Singh.

10. Challenging the judgment and decree of the Additional District Judge terming it to be wholly illegal and also otherwise unwarranted on facts and law, the counsel for the appellant once again made reference to the decrees "suffered by Chanan Singh in favour of the plaintiff. Since Chanan Singh during his life time suffered this decree in favour of Kehar Singh, the same could not be ignored by the courts below and that too on wholly untenable grounds. Elaborating, the counsel urged that Harchand Singh has not come forward to contest the suit. There was no pleading by the defendants that Harchand Singh is a necessary/proper party. At best, his claim could be contested by Harchand Singh alone. This being the position, the impugned judgment and decree deserves to be set aside.

11. Broad facts are not in dispute, i.e. that suit-land was owned and possessed by Chanan Singh who initially made a gift in favour of Dharam Singh. This gift was challenged by the plaintiff and vide judgment and decree dated 11.7.68, a declaration was granted by the court that the gift will not affect the right of reversioners including that of the plaintiff after the death of Chanan Singh. It so happened that in the year 1969, Chanan Singh adopted one Harchand Singh as per registration adoption deed dated 9.3.1969 which the court below on the basis of evidence has held to be a valid document. Plaintiff was, however aggrieved by a decree dated 19.9.1973 suffered by Chanan Singh in favour of the defendant. It is with a view to get rid of this decree that the present suit was filed. The defendant resisting the suit on the ground of its maintainability set up a plea that in the presence of Harchand Singh i.e. adoption of son of Chanan Singh, the plaintiff has no right to challenge the decree. It is precisely for this reason that the appellant has primarily directed his attack to the adoption deed. Almost same arguments have been addressed, which did not find favour with the lower appellate Court. Having heard the learned counsel for the appellant, I am also of the view that the objections sought to be raised have in fact no merit.

12. To prove the adoption, the respondents have examined the scribe as well as the attesting witnesses in the deed. In addition thereto, Pishora Singh has appeared as D.W.5 and deposed that he gave his son to Chanan Singh in adoption. According to this witness, it was in consultation with his wife and brother. Ceremony of actually giving/handing over the child in adoption was performed in the presence of the near relations of the parties and the occasion was celebrated by distributing Ladoos. The adoption deed also bears thumb impression of Hardial Kaur wife of Pishora Singh. Thus, there has been a compliance of Section 16 of the Hindu Adoption and Maintenance Act, in all material particulars.

13. It was next contended by the counsel that right of the plaintiff to succeed could only been resisted by a person having a better title in the instant case Harchand Singh and since he has not come forward, the courts below erred in non-suiting the plaintiff. This objection too is devoid of any substance. Plaintiff, no doubt succeeded in getting a declaration that Gift-deed will not affect his reversionary rights; yet such

a declaration ensures for the benefit of all heirs and since it so happened that Hardial Singh was taken in adoption by Chanan Singh; in the presence of son; the plaintiff is rightly not held entitled to seek the declaration prayed. Thus, finding no merit in this appeal, the same is dismissed. No costs.