

(1960) 03 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : First Appeal No. 45 of 1952 (with Cross Objections)

Deoki Nandan Ajudhia Parshad and Others

APPELLANT

Vs

Rikhi Ram and Others

RESPONDENT

Date of Decision : 24-03-1960

Acts Referred:

Limitation Act, 1963 — Article 119

Citation : AIR 1960 P&H 542

Hon'ble Judges : I.D. Dua, J; Bishan Narain, J

Bench : Division Bench

Judgement

Inder Dev Dua, J.—The following pedigree-table would be helpful in understanding the controversy which has arisen in the present litigation:

SALIG RAM

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Smt. Badami Daughter 1 Daughter 2 Narain Das = Smt. Darpodi

= Joti Parshad | | |

Devki Nandan Asa Ram |

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Rikhi Ram Kaka Ram

(2) On 18th of October 1904 Joti Parshad is alleged to have adopted Rikhi Ram and executed a deed of adoption which was registered on 10th of February, 1905. Sometime in 1914 Joti Parshad died. On 11th of April 1947 Smt. Badami executed a gift-deed in favour of one Sadhu Ram Brahman, who has been

impleaded as defendant No.3 in the present suit. On 4th of June 1947 she made another gift in favour of Devki Nandan and Asa Ram. The subject-matter of this gift are items of property 1 to 13 as given in the plaint.

(3) On 26th of March 1949 Rikhi Ram instituted the present suit for a declaration that he is the sole owner of the properties mentioned in para 1 of the plaint and for a permanent injunction restraining the defendants from interfering with his possession; in the alternative a declaration has been claimed to the effect that after the death of defendant No.4 (Smt. Badami) both the gift-deeds in question shall be null, void and ineffective as against his reversionary rights and shall not be binding on him. I may here mention that Devki Nandan and Asa Ram are defendants Nos.1 and 2 and Sadhu Ram and Smt. Badami are defendants, Nos.3 and 4. The suit was resisted by all the defendants, but the trial Court is fairly exhaustive judgment dismissed his suit for a declaration that the plaintiff was the owner of the property in suit, while declaring that the gifts in question would not affect his reversionary rights as an adopted son of Joti Parshad on the death of Smt. Badami.

(4) The defendants have preferred the present appeal from the decree granted in favour of the plaintiff, whereas Rikhi Ram has preferred cross-objections claiming a declaration that he is the exclusive owner of the property mentioned in the plaint. The plaintiff has also claimed costs of the suit. Before us, however, arguments have been confined only to the question of the factum and validity of the adoption and of limitation.

(5) Before dealing with the contentions of the parties, it may be mentioned that on 28th of April 1942 Smt. Badami executed a will in favour of Rikhi Ram giving him the entire property in dispute. In this document she has expressly recited that Rikhi Ram had been adopted as a son by her husband by means of a deed of adoption registered on 10th of February, 1905 and that since then he had been living with them and that he had been behaving in a very obedient manner and had been of great help to her in her old age. On 16th of January 1944 the lady further executed a duly registered release-deed, also in favour of Rikhi Ram, and in this deed it was again recited that her deceased husband, Lala Joti Parshad, had adopted Rikhi Ram as his son by a deed of adoption registered on 10th of February 1905. This release-deed related to agricultural land which had been mutated in her name on the death of Lala Joti Parshad.

(6) The learned counsel for the defendant-appellants has concentrated his attack mainly on the factum and validity of the adoption. In so far as the question of factum of adoption is concerned, it has been emphasised that the adoption-deed does not expressly recite the performance of the ceremony of giving and taking; it merely declares Rikhi Ram as Joti Parshad's adopted son and just recites that all the ceremonies of the brotherhood had been performed. The counsel then took us through the evidence inter alia of Gita Ram P.W. 17, Sadhu Ram P.W. 19, Nandan Ram, P.W. 20 and Devi Chand P.W. 21, and contended that the evidence of these witnesses is not worthy of credence and is, therefore, not sufficient to

establish the performance of the ceremonies of giving and taking". I am afraid it is not possible for us to accede to this contention. Gita Ram is a Gaur Brahman and is 70 years of age.

He has expressly sworn that on the day when Rikhi Ram was adopted by Joti Parshad, hawan was performed by Gard Dhawaj Shastri and that the plaintiff's natural father Narain Das made over the plaintiff to Joti Parshad by placing him in his lap. He has also deposed that Joti Parshad then got Rikhi Ram admitted in some school and also later got him married. In cross-examination nothing material has been elicited which would adversely affect his credibility. Sadhu Ram P.W. 19, who is also 60 years old, has corroborated Gita Ram. His cross-examination is equal unfruitful. Nandan Ram P.W. 20, a purohit of Thanesar, is also about 70 years old, and he has similarly deposed from personal knowledge about the adoption ceremony having been performed, including the ceremony of giving and taking. Devi Chand P.W. 21, is also 63 years of age and has fully corroborated the version of adoption as given by the aforesaid witnesses.

I may at this stage mention that Gita Ram P.W. 17 has stated in his evidence that Rikhi Ram was adopted on the Dussehra Day. I have checked up from the calendar for the year 1904 and I find that Dussehra did actually fall on the 18th of October 1904. This circumstance too has corroborative value, and, in my opinion, it does suggest that the witness is most probably telling the truth. I need hardly refer in detail to the testimony of Mangal P.W. 22, Baij Nah P.W. 23, Matu Ram P.W. 24 and Rikhi Ram plaintiff P.W. 32, who have also deposed in support of the factum of adoption and whose trustworthiness had not been shaken, because the witnesses already discussed by me are by themselves quite enough to establish the factum of adoption.

(7) The contention that the deed of adoption does not contain express recitals with respect to giving and taking has merely to be stated to be rejected, because the assertion with respect to the performance of all the ceremonies of the brotherhood, does, in my opinion, cover all the essential ceremonies, including those of giving and taking. What actually clinches the matter, however, is the evidence with respect to the admission of Rikhi Ram in the schools of Thanesar soon after the adoption. On 11th of April 1905 Rikhi Ram, described as the adopted son of Joti Parshad, was admitted into M. B. Primary School No.1. Thanesar, and he is stated to have attended this school up to 11th of July 1905 vide Exhibit P. 37. It appears that again on 22nd of July 1905 he was got admitted in this school and he attended the 5th primary class up to 7th of November 1905 vide Exhibit P. 38.

Master Anant Ram P.W. 4, a teacher in the Municipal Board Primary School, Thanesar, has appeared as a witness and produced these two documents stating that the relevant entries in the registers were made in accordance with the Education Code. This witness was cross-examined by the defendants and all that they elicited from him is that on 6th of August 1904 there was an entry relating to Rikhi Ram, son of Narain Das, of Kaithal. This, in my opinion, instead of

helping goes against the defendants, because it shows that before the alleged adoption, Rikhi Ram was being described as son of Narain Das of Kaithal, whereas, after his adoption by Joti Parshad in the school registers the name of his father was changed from that of "Narain Das" to "Joti Parshad".

The evidence discussed above has not been successfully assailed by the learned counsel for the appellants. His contention, however, is that keeping in view the subsequent conduct of Rikhi Ram and of Smt. Badami, this Court should hold that the deed of adoption was a mere paper transaction and the evidence with respect to the factum of adoption untrustworthy. In support of his contention the counsel has, to begin with, placed reliance on the mutations effected in favour of Smt. Badami on Joti Parshad's death; the contention being that if Rikhi Ram had actually been adopted as son by Joti Parshad he (Rikhi Ram) and not Smt. Badami would have succeeded to the estate of his deceased adoptive father.

The argument as stated is undoubtedly attractive and does strike at first sight to be somewhat plausible, though on deeper probe the fallacy underlying it becomes quite apparent as will be shown a little later. The counsel has also drawn our attention to a fairly agree number of documents in which even Rikhi Ram has been describing himself as the son of Narain Das. Some of these documents are plaints filed in Courts. These documents no doubt cover a fairly long period and do suggest that during that period of time Rikhi Ram was actually giving himself out as son of Narain Das of Kaithal town. But this is after all only evidence of conduct and, in my view, if facts are ascertained, presumptions arising from conduct cannot establish a right which the ascertained facts disapprove, nor can they negative the right which the facts establish.

Had the evidence with respect to the factum of adoption and the performance of requisite ceremonies not been as trustworthy as we actually find on the present record, the above documents might well have induced us to incline and to presume against the adoption having ever in fact taken place. But in view of the registered document and the oral testimony of almost unimpeachable character, coupled with the school-leaving certificates, the authenticity of which has not been successfully challenged, it is not possible for us to hold that Rikhi Ram had not in fact been adopted by Joti Parshad.

Once this finding is arrived at, the subsequent conduct becomes wholly irrelevant, because it is well settled, and indeed has been conceded, that once a valid adoption takes place, it immediately becomes irrevocable and neither the adopter nor the adoptee can either cancel the adoption or renounce the status of the adopted son so as to restore his pre-adoption position in his natural family, i.e., the family of his birth. Adoption once completed has, therefore, the effect of irrevocably transferring the adopted boy from his natural family to the adoptive family and to confer upon the adoptee the same rights and privileges in the family of the adopter as the natural legitimate son, except in certain cases like those relating to marriage, adoption, etc.

It is undoubtedly open to the adopted son to renounce his right of inheritance in the adoptive family, but his status as adopted son can never be renounced by him. As soon as the adoption takes place, the ties between the adopted son and the natural family are severed and fresh ties are created between the adoptee and the adopting family. In view of this legal position it is equally fruitless to discuss at any length the evidence-including reliable documentary evidence" as Mr. Kaushal describes it-showing that after Joti Parshad's death both urban property and agricultural land were dealt with by Smt. Badami as if she was the heir of her deceased husband.

This factor, it is emphasised, is inconsistent with Rikhi Ram being the validly adopted son of Joti Parshad, but, as stated a little earlier, the subsequent events cannot, in law, adversely affect the status of Rikhi Ram as the adopted son of Joti Parshad, once we hold, as we do in the present case, that the former had been adopted by the latter as suggested in the deed of adoption. For the same reason the allegation stressed by Mr. Kaushal that the kirya karam of Joti Parshad was performed by Asa Ram and not by Rikhi Ram, even if true, is of no consequences and I need not express any considered opinion on its correctness.

(8) This brings us to the question of validity of Rikhi Ram's adoption. It has been contended that under strict Hindu Law a sister's son cannot be adopted, though it is conceded that such an adoption may be recognised by custom. The counsel has contended that there is no plea and no evidence on the present record suggesting custom varying Hindu Law with respect to adoption of sister's son.

(9) The counsel further contends that there is no such well-established custom which has become so notorious that Courts should take judicial notice of its existence. Reference has in this connection been made to para 480 of Principles of Hindu Law by D. F. Mulla, sub-para (3) of which lays down that the adoptee must not be a boy whose mother the adopting father could not have legally married. It is in this very sub-para that it is laid down that an adoption, though prohibited under this rule, may be valid if sanctioned by custom. The counsel has emphasised that this rule of Hindu Law is mandatory and therefore, not subject to the doctrine of *factum valet*.

(10) Reference has also been made by the counsel to the following passage in Hindu Law (Principles and Precedents) by N. R. Raghavachariar at page 135:

"As regards the eligibility of the boy within the caste of the adopter, there is a rule of Sutherland that the boy to be adopted should not be the son of the woman whom the adopter could not have married in her maiden state."

Great stress has been laid by the counsel that the plaintiff must establish all ingredients of a valid adoption including custom varying Hindu Law, if such a custom is to be relied upon for validating an otherwise invalid adoption according to the strict principles of Hindu Law. It has further been urged that in 1904 Hindu Law was in all probability not varied by usage so as to permit adoption of a sister's son. In support of his contention the counsel has referred to a large

number of Privy Council and High Court decisions.

(11) *Mt. Sundar v. Mt. Parbati* ILR All. 51 is a Privy Council decision in which the following sentence is relied upon:

"If it were necessary to determine the point, their Lordships would probably have little difficulty in accepting the opinion of the High Court that a Hindu Brahman cannot lawfully adopt his own sister's son."

This was a case from the High Court of North Western Provinces in the year 1889 and being a case of Brahmans is of practically no assistance in the present case.

Bhagwan Singh v. Bhagwan Singh ILR 21 All. 412 (PC) is another Privy Council decision where again in 1898 in a case from the same High Court the adoption of a mother's sister's son by a Hindu of any of three regenerate classes, equally with the adoption of a daughter's or a sister's son, was held to be contrary to law and void. This precedent is equally unhelpful.

Lali v. Murlidhar ILR All. 488, was a case from Allahabad High Court in which also adoption of a sister's son was held to be invalid, family custom which would have validated such adoption not having been established.

The decision in *Kanhai Lal v. Brij Lal* AIR 1918 PC 70, to which also the counsel made a passing reference, at page 74 is not relevant, there being no decision by the Judicial Committee on the point before us. In the very report there is a decision printed at page 81, *Venkata Mahipati Gangadara Rama Rao Bahadur v. Raja of Pittapur* AIR 1918 PC 81, where it is observed that when a custom or usage is repeatedly brought to the notice of the Courts, it may be held that the custom or usage has been introduced into the law without the necessity of proof in each individual case, and this in the end becomes truly a matter of process and pleading.

(12) Reliance is next placed on *Hari Das Chatterji v. Manmatha Nath* ILR (1937) Cal 265, in which a Division Bench held that a Hindu of the regenerate classes cannot adopt a person whose mother the adopter could not have legally married. In particular, under the Bengal School of Hindu Law, the adoption of a brother's daughter's son is invalid. It is further laid down that the marriage rule is not merely recommendatory and the doctrine of *factum valet* does not apply even to cases outside the three cases specifically prohibited in the texts. I need hardly observe that this case deals with the Bengal School of Hindu Law and is, therefore, hardly of much assistance to us.

(13) Reference is then made to *Ado Rai Vs. Huro Rai and Others*, where the same rule is recognised, reliance having been placed on *Dattaka Chandrika* and *Dattaka Mimansa*.

(14) Assistance is then sought from *Chand v. Mst. Malan* 106 Pun Re 1918: (AIR 1918 Lah 344 (2)), where the adoption of a daughter's son by a Hindu was held to be opposed both to Hindu Law and the general agricultural custom of the

province and a person setting up such an adoption was required to prove a special custom in favour of its validity. This was a case of Aroras from Lahore and the factum of adoption was also held not established on the evidence. The discussion on the question of the validity of the adoption under Hindu Law is far from illuminating or instructive.

(15) *Surain Singh v. Jawahir Singh* 281 Pun LR 1913 is the next authority for the proposition that among Randhawa Jats of Jullundur District son of daughter or niece cannot be validly adopted unless a special custom is established. This is not a case of Hindu Law and is thus hardly relevant. Whether it lays down a correct rule of custom or not does not call for determination by us in the present case.

(16) The last decision on which the appellants have relied is *Moti v. Bagrawat* 64 Ind Cas 189 in which it is laid down that inasmuch as the right to adopt a daughter's son is equally opposed to Hindu Law and is general Customary Law of the Punjab, the burden of proving that such a custom exists among a particular tribe is on the party alleging it. This was a case of Bisshonis of Hissar and the relevant *Riwaj-i-am* was against the custom. A general broad-based observation in the course of discussion is of no real assistance to us.

(17) *Madan Gopal Vs. B. Mukand Lal and Another*, is a recent Bench decision of this court in which adoption of a sister's son amongst the Aggarwals and also amongst the inhabitants of the area round about Delhi was upheld on a consideration of the case-law on the subject. Referring to this case, Mr. Kaushal submitted that there a plea was expressly taken that according to custom prevailing in Punjab amongst Mahajans generally, and in the districts of Sirsa and Hissar particularly, a sister's son could be validly adopted with incidents analogous to those of a Dattaka son under the Hindu Law. The counsel has thus sought to distinguish *Madan Gopal Vs. B. Mukand Lal and Another*, on this ground. He has also in this connection, referred to *Gokal Chand v. Parvin Kumari* AIR 1952 S. C. 231 and *Saraswathi Ammal Vs. Jagadambal and Another*, in which the Supreme Court repeated that it is incumbent on a party setting up a custom to allege and prove the custom on which it relies and that a party which is alleged to be governed by custom must prove that it is so governed and what the custom is.

(18) As against this, reliance has been placed on behalf of the respondent on the following decided cases, with special emphasis laid on *Madan Gopal Vs. B. Mukand Lal and Another*, The observations contained in para 12 of the last mentioned judgment, at pages 437 and 438 (AIR 1959 Punj) have been specially relied upon and it has been submitted that the adoption of a sister's son amongst Aggarwals and also in the area round about Delhi, is by an large, considered to be valid, the strict tenets of the Hindu Law as contained in the Dharam Shastras notwithstanding, and such a person is generally recognised as worthy of adoption, and to this extent Hindu Law stands modified. The respondent also referred us to the above judgment in order to show that it was not decided on the evidence led in that particular case, and that therefore it

constitutes a very valuable precedent.

(19) AIR 1948 60 (Privy Council) is a judgment in a case from Ajmer Merwara. In this case Lord Normand while delivering the judgment on behalf of the judicial Committee observed as follows :--

"It is not doubtful that the ordinary rule is that a party relying on a custom affecting the Jains which at variance with the ordinary Hindu Law must allege and prove it. But it is equally beyond doubt that a custom which has been recognised and affirmed in a series of decisions, each of them based on evidence adduced in the particular case, may become incorporated in the general law, with the result that the onus of proof of longer lies on those who assert it but upon those who assert an exception to it. These are familiar general principles which are acknowledged by both the parties to this appeal"

It is in this judgment that it was observed that in the Punjab, adoption, whether by Jains or by people of other beliefs, is subject to local customs which may and do vary from the law and custom observed by the same peoples and sects in other parts of India.

(20) I need hardly refer to Bawa Singh v. Mst. Taro 1950 52 Pun LR 369: (AIR AIR951 Simla 239), and Sukan Chand Bhikamchand v. Mangibai Gulabchand AIR 1942 Bom 185 which also lay down that a custom repeatedly recognised by courts need not be proved in each case.

(21) In the light of these authorities it is urged on behalf of the respondent that it was for the defendants to allege and prove applicability of strict text of Hindu Law and that in the absence of such a plea the rule of adoption as recognised in Madan Gopal Vs. B. Mukand Lal and Another, must be applied. Reference in this connection has also been made to para 37(a) of Rattigan's Digest which lays down that a daughter's or a sister's son amongst Hindu non-agriculturists is generally recognised as a proper person to be appointed.

The counsel has in this context emphasised that this Digest has been held even by the Supreme Court to be a book of authority. Ram Sarup v. Mst. Jai Devi AIR 1946 Lah 272 has been relied upon for the proposition that adoption of a daughter's son, though not permissible under strict Hindu Law, is valid under custom in the districts of the old Delhi territory and, if established, has the effect of a valid adoption under the Hindu Law. This was a case from Hissar and in support of this view reliance was placed on Giasu v. Hardial 59 Ind Cas 82: (AIR 1920 Lah 284) and Raghbir Saran v. Ram Chander ILR Lah 126: (AIR 1931 Lah 546), a case of Kaisths from Rohtak. In Roshan Lal v. Samar Nath AIR 1937 Lah 626, a case of Khattris from Amritsar town, Tek Chand J., who delivered the judgment on behalf of the Division Bench made the following important observations :--

"It is no doubt true that under the Hindu Law of the Mitakshara School, as administered in the British Indian courts, a daughter's son cannot be adopted,

but as observed by their Lordships of the Privy Council in *Rup Narain v. Mt. Gopal Devi* 93 Pun Re 1909 at page 67:

This general rule may be varied by custom and often is so varied in the province from which this appeal comes (Punjab).

There are numerous cases in which it has been held that among high caste non-agricultural Hindus, resident in towns, strict Hindu Law has been so varied, and a daughter's son can be validly adopted."

(22) After considering the respective contentions advanced on behalf of the parties, I am inclined to hold that the custom of adoption of a sister's son amongst Aggarwals and generally amongst Hindus in the area round about Delhi, including Thanesar, has been so well established that the Courts can legitimately take notice of its existence as a part of their personal law. A sister's son and a daughter's son are, from this point of view, treated in the same way under the rules of strict Hindu Law and in the Punjab generally both a daughter's son and a sister's son have been considered to be worthy objects of adoption. In the following cases also the Courts seems to have recognised the validity of such adoption :--

Brij Indar Singh v. Bansi Lal 88 Pun Re 1912; *Mst. Nikki v. Gujar Mal* AIR 1916 Lah 347 and *Kirpa v. Rabi Dutt* AIR 1924 Lah 457 . Mayne has also in his *Hindu Law and Usage* at page 233 recognised that in the Punjab adoptions of daughter's and sister's son are common among the Jats, and this laxity has speared even to Brahmans, and to the orthodox Hindu inhabitants of towns, such as Delhi. I may in this connection observe that adoption of a sister's son and a daughter's son is now by and large recognised as valid amongst agriculturist tribes as well (see *Data Ram and Another Vs. Teja Singh and Another*, *Ranjit Singh v. Tola Singh* 1960 62 Pun LR 250; *Ram Narain v. Madan Lal* ILR 1959 P&H 1285; and *Lal Singh v. Ishar Singh*, Second Appeal No. 621 of 1955, decided by *Mehar Singh and Gosain JJ.* on 22nd of December, 1959 and the various decisions cited in these cases).

(23) It is also not without significance that not a single decided case has been brought to our notice on behalf of the appellants in which adoption of a sister's son among Vaish Aggarwals of Thanesar or for that matter among Hindus of the area round about Delhi was declared invalid on the ground of being contrary to the strict tenets of Hindu Dharam Shastras. In the absence of any such decision and in the light of the above discussion, I have not the slightest hesitation in upholding the validity of *Rikhi Ram's* adoption.

(24) The question of limitation, which has also been raised, does not call for any elaborate or serious discussion. The appellants have contended that looking at the substance of the plaint the suit is in the essence one for declaration that the plaintiff is a validly adopted son of *Joti Parshad*, and, therefore, article 119 of the Indian Limitation Act is applicable. *Bharma Shidappa Bhore Vs. Balaram Sakharam Gujar*, has been relied upon in support of this contention. It is no

doubt true that for the purpose of determining the true scope and effect of the plaint the real substance is to be seen and the law of limitation cannot be evaded by couching the relief in a different language.

In the present case, however, it is clear that in substance it is only the gifts which are being sought to be set aside and the validity of adoption has come to be determined on the defendant's plea disputing the factum and validity of the plaintiff's adoption by Joti Parshad. The reasoning and the conclusion of the trial Court on the point of limitation seem to us to be quite correct and nothing convincing having been urged in their criticism the decision on this point must also be affirmed.

(25) No other point was agitated before us with the result that the appeal fails and is hereby dismissed but with no order as to costs.

(26) The cross-objections by Rikhi Ram against the dismissal of his suit for a declaration that he is the owner of the property in question have not been pressed, and in my opinion, rightly, because in view of the terms of the deed of adoption during Smt. Badami's life time he cannot claim such a declaration. The cross-objections thus also fail but without costs.

Bishan Narain, J.

(27) I agree.

(28) Appeal dismissed.