
(1990) 11 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 10817 of 1989 & Civil Writ Petition No. 10817 of 1989

Harjit Singh and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 06-11-1990

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 10, 11, 4

Citation : (1991) 1 DMC 441 : (1991) 99 PLR 403

Hon'ble Judges : G.C. Mital, J; G S. Chahal, J

Bench : Division Bench

Advocate : H.S. Sanjha, for the Appellant; H.S. Brar, Sr. Standing Council, for the Respondent

Judgement

G.S. Chahal, J.—This judgment will dispose of two writ petitions (No. 10817 of 1989 and 8896 of 1989). These have been laid before us on a reference by M.R. Agnihotri, J.

2. Harjit Singh, minor, and his adoptive father Gurcharan Singh and mother Smt. Sarbjit Kaur are petitioners in the former writ petition while Parminder Singh, his adoptive father Nirmal Singh Sangha and mother Smt. Parkash Kaur Sangha are the petitioner in the latter petition.

3. The petitioners had moved applications to the Passport Immigration Officer, Jalandhar for the issuance of passports in favour of the minors. The said officer has held the adoptions to be invalid. On that basis, he refused to issue the passports. With respect to Parminder Singh petitioner, the adoption was held to be invalid on the basis that his adoptive father, Nirmal Singh Sangha had a natural son living at the time of adoption. With regard to Harjit Singh petitioner, the adoption was held to be invalid, as he was above 15 years of age at the time of adoption.

4. These two petitions raise two legal propositions of law : (1) that the Passport authority had no jurisdiction to question the legality and validity of the registered

adoption deeds and (2) the adoptive fathers being Jats of Punjab were not governed by the Hindu Law and as such, the adoptions were valid.

5. On facts, it is not disputed that Nirmal Singh Sangha had a son living at the time of adopting Parminder Singh and also the fact that Harjit Singh was above 15 years of age at the time of adoption.

6. Section 4 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as the Act) provides as follows :

"4. Overriding effect of Act--Save as otherwise expressly provided in this Act,--

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindu insofar as it is inconsistent with any of the provisions contained in this Act."

This section clearly gives an overriding effect to the provisions of the Act and any custom or usage as a part of the Hindu law which was in force immediately before the commencement of this Act had ceased to be effective. The Hindu Jats of Punjab are governed by the provisions of the Act and any custom or usage contrary to the provisions of the Act cannot be held to be valid. Any custom contrary to the provisions of the Act ceased to have effect as soon as the Act came into force. The learned counsel for the petitioners has not been able to show, how the custom or usage with respect to adoption and maintenance is still applicable to the case of the petitioners. We, thus, hold that the provisions of the Act are applicable to the petitioners. If the adoption was in contravention of any of the provisions of the Act, the same will be invalid.

7. The following provisions of the Act provide for the persons competent to be adopted and the conditions for a valid adoption :

"Section 10. Persons who may be adopted--No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely--

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

Section 11. Other conditions for a valid adoption -- In every adoption, the following conditions must be complied with :

(i) if any adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up to the family of its adoption;

Provided that the performance of datta homan, shall not be essential to the Validity of an adoption."

8. Admittedly, Harjit Singh was more than 15 years of age at the time of adoption and as such, he was not a person capable of being taken in adoption.

9. It is undisputed that Nirmal Singh Sangha had a natural son living at the time of adoption of Parminder Singh and as such u/s 11 of the Act, Nirmal Singh Sangha was not competent to adopt Parminder Singh as a son. The adoptions of both the minor-petitioners were invalid as these were contrary to the provisions of the Act.

10. Faced with the above situation, the learned counsel for the petitioners raised two points : (1) that the adoptions being under registered documents, a presumption u/s 16 of the Act is to be raised and (2) the Passport authority had no jurisdiction to determine the validity of the adoptions. We are unable to accept any of these arguments. Section 16 provides as under :

"Section 16. Presumption as to registered documents relating to adoption. Whenever any "document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

Section 16 provides for a presumption with respect to registered document

relating to adoption. The presumption is only to the effect that adoption has been made in compliance with the provisions of the Act. It is not a conclusive presumption, but a rebuttable one. The presumption has been rebutted by the admitted case with respect to Nirmal Singh Sangha petitioner, having a son living at the time of adopting Parminder Singh and with respect to Harjit Singh, being 15 years old at the time of adoption.

11. The Passport authority was within its right to examine the applications of the minor-petitioners to reach at a conclusion, whether they had given correct particulars. For, that purpose, it could examine if the minor-petitioners were validly adopted sons of the persons who claimed to have adopted them. Since the facts, which were considered by the Passport authority in coming to the conclusion, were not disputed and the provisions making the adoption to be invalid were apparent on record, the action of the Passport authority cannot be challenged. We, thus, hold that no case is made out for issuance of a writ of mandamus in the writ jurisdiction.

12. Learned counsel for the petitioners has shown his apprehension that these orders of the Passport authority may not stand in the way of the petitioners in applying again for the issuance of passports by giving their natural parentages, he, thus, prays for a clarification. To avoid all doubts, we hereby issue a direction to the Passport authorities that if fresh applications are made by the petitioners, showing themselves to be the sons of their natural fathers and mothers, the orders of the Passport authority dated 21-6-1989 Annexure P2 relating to Harjit Singh petitioner and order dated 23-6-1989 Annexure P6 concerning Parminder Singh petitioner will not stand in their way.

13. With these orders and directions, both the writ petitions stand disposed of.