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**(1995) 01 P&H CK 0001**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Regular Second Appeal No. 1566 of 1979

Nand Kaur (deceased) Now Rep. by Legal Heirs

APPELLANT

Vs

Dharam Singh

RESPONDENT

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**Date of Decision :** 25-01-1995

**Acts Referred:**

**Citation :** (1996) 1 CurLJ 304 : (1996) 3 LJR 325 : (1995) PLJ 537 : (1996) 1 RRR 244

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

**Advocate :** Mr. S.K. Sharma, Advocates., Mr. R.A. Sheoran, Mr. Naveen Mahajan, Advocate, Mr. S.C. Mohunta, Sr. Advocate, Advocates for appearing Parties

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## **Judgement**

N.K. Kapoor, J.—This judgment shall dispose of Regular Second Appeal Nos. 1566, 1819 and 1912 of 1979 as these appeals arise out

of the same judgment and decree of the Additional District Judge dated 22.2.1979.

2. This is plaintiff's regular second appeal against the judgment and decree dated 22.2.1979 of Additional District Judge, Rohtak, whereby the

judgment and decree of the trial Court was modified holding the gift deed in favour of the defendant to be a valid document thereby restricting the

right of the plaintiff to share equally with the defendant in respect of the remaining property left by Sis Ram her father.

3. Smt. Nand Kaur filed a suit for declaration and possession in respect of the land left by father Sis Ram. According to the plaintiff, she is the only

heir to succeed Sis Ram as Sis Ram had no son or other relation to succeed him. Since the defendant took possession of the suit land in the

absence of the plaintiff though he had no right or title in the suit property, hence the present suit.

4. Defendant put in appearance, filed written statement controverting the various material averments made in the petition. The defendant stated that

he was adopted by Sis Ram as his son who also made gift of whole of his land in his favour. Thus, at the time of death of Sis Ram, he was not

possessed of any land. The adoption and the gift deed executed by Sis Ram were challenged during his life time but both these documents were

upheld by the civil Court. According to the defendant, since the time of execution of gift deed and the adoption deed, he is owner in possession of

the suit land. The defendant denied the relationship of the plaintiff with Sis Ram.

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

(1) Whether the plaintiff is the daughter of deceased Sis Ram and is the only legal heir to succeed to his estate ? OPP.

(2) Whether the deceased Sis Ram was the owner and in possession of the land in dispute at the time of his death ? OPP.

(3) Whether the defendant Dharam Singh was validly adopted by the deceased Sis Ram and if so to what effect ? OPD.

(4) Whether the suit is barred by time ? OPD.

(5) Whether the plaintiff has no locus standi to file the present suit ? OPD.

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

(7) Whether the plaintiff is estopped by her act and conduct to file the present suit ? OPD.

(8) Whether the defendant is entitled to special costs under Section 35A C.P.C. ? OPD.

(9) What is the effect of the decree dated 18.2.1957 passed by the Civil Court ? OPD.

(10) Whether the deceased Sis Ram had executed a valid gift deed on 6.6.1956 in favour of defendant. If so to what effect ? OPD.

(11) Relief.

The following additional issue was also framed :

(10A) Whether deceased Sis Ram was governed by agricultural custom in the matter of gift and testamentary disposition, and if so, what that

custom is ? OPD.

6. This case, in fact, has a chequered history. In the first instance, the suit was dismissed by the Sub Judge on 16.2.1974. On appeal, the case was

remanded by the Additional District Judge vide order dated 18.12.1974. Once again, the suit was dismissed on 27.7.1976 but was remanded by the Additional District Judge on 8.9.1978 and thereafter again decided by Sub Judge on 13.11.1978. The trial Court on the basis of evidence decided issue No. 1 in favour of the plaintiff holding that she is daughter of Sis Ram. Under issue No. 2, it was held that Sis Ram continued to be the owner of the whole of the property movable as well as immovable till the time of his death. Under issue No. 3, it has been held that Dharam Singh was validly adopted by Sis Ram. Issue No. 4 was not pressed by the defendant and so was decided against the defendant. Issue Nos. 5 and 6 were decided against the defendant. Issue No. 7 was not pressed by the defendant and so was decided against the defendant. Issue No. 8 was again decided against the defendant since the suit was partly decreed in favour of the plaintiff. Under issue No. 9, it was held that the decree dated 18.2.1957 has no effect so far the rights of the plaintiff are concerned. Under issue No. 10, it was held that there was no valid acceptance of the gift and so the same was held to be a void document. Accordingly this issue was decided in favour of the plaintiff and against the defendant. Under issue No. 10A, it was held that the parties are governed by custom in the matter of adoption and alienation etc. Resultantly, the trial Court held that the plaintiff is daughter of Sis Ram and defendant having been adopted succeed along with her. Thus, it was held that the plaintiff as well as defendant would share equally whole of the property of Sis Ram including the land subject matter of gift deed.

7. Feeling dissatisfied with the judgment and decree of the trial Court, plaintiff as well as defendant filed appeals before the Additional District Judge which have been decided by a common judgment dated 22.2.1979. The Additional District Judge examined the matter on facts as well as on law. The parties primarily contesting the findings of the trial Court in respect of issues No. 3, 10 and 10A. The lower appellate Court on carefully examining the oral as well as documentary evidence in the light of the judicial pronouncements found no ground to differ with the conclusion arrived at by the trial Court in respect of issue No. 3 thus holding that Dharam Singh was validly adopted by Sis Ram. The objection raised by Smt. Nand Kaur that Dharam Singh was not validly adopted as the document Exhibit D5 does not record the consent of mother of

Dharam Singh was brushed aside on the ground that whereas Hindu Adoption and Maintenance Act came into force in December, 1956, the

adoption deed was recorded and registered on 6.6.1956. Not only this, even Sis Ram in his statement Exhibit RD3 accepted the factum of

adoption. Otherwise too, it was held that under custom the essential ceremonies with regard to adoption under Hindu Law were not necessary to

be performed. It was thus held that all that is necessary for establishing a valid adoption is to prove unequivocal adoption of the adopter to adopt

the child which fact is not in dispute in the present case. Under issue No. 10, Additional District Judge differed with the reasoning advanced by the

trial Court wherein it was held that the gift deed is not a valid document on the ground that acceptance of gift by minor donee is also not violative of

any statutory provision. For this, support was sought from the observations of the Court in case reported as Firm of Ganeshdas Bhiwaraj v.

Suryabhan, 39 Indian Cases (1917) page 46, ""an acceptance of a gift may be made personally by a minor donee under Section 122, Transfer of

Property Act, 1882 without the intervention of a guardian"". Since in the present case the gift deed bears the thumbimpression of the donee

(though minor) and his possession is reflected in copies of the khasra girdawaris Exhibits D7, D8 and D9, such a gift is a valid one and this way

reversed the finding of the trial Court under issue No. 10. The Additional District Judge, however, found no merit in the submission of the learned

counsel for the defendant that document Exhibit D5 was indeed a Will in favour of Dharam Singh defendant. On the other hand, it was held that the

document in question is an adoption deed pure and simple. Resultantly, the lower appellate Court modified the judgment and decree of the trial

Court holding that the plaintiff will inherit the property left by Sis Ram equally along with defendant i.e. the property of Sis Ram deceased left after

the execution of the gift deed.

8. The crux of the matter revolves round determination of gift deed dated 6.6.1956 executed in favour of Dharam Singh by Sis Ram. Whether

acceptance of gift by a minor is valid acceptance under law ? To prove the gift deed Exhibit RW1/1, the defendant has examined Chattar Singh

and Kanwal, the two attesting witnesses of the gift deed. Both these witnesses have deposed that the gift deed was executed by Sis Ram in their

presence. Thus, execution of the gift deed stand proved. All the same, it is to be examined whether the same is in conformity with the provisions of

Section 122 of the Transfer of Property Act and both the counsel have advanced arguments in their respective submissions.

9. According to the learned counsel for the appellants, as per Section 122 of the Transfer of Property Act, gift is transfer of certain existing

movable or immovable property made voluntarily and without consideration by one person called donor to another called donee and accepted by

or on behalf of the donee. According to the counsel, the words `accepted by or on behalf of the donee" clearly envisage that acceptance has to be

by a person who is capable of accepting it and in case such a person is infirm on account of his age, such a gift can be accepted by and on his

behalf by a person who is capable of accepting the same. Admittedly, Dharam Singh was minor at the time of registration of gift deed and so such

a person could not validly accept the gift. Thus, the lower appellate Court has clearly erred in law in holding the gift deed to be a valid document.

In addition thereto, it needs to be highlighted that subsequently also at no time the donee has come forward to accept the gift deed i.e. after his

attaining the majority. The gift had not been accepted during the life time of Sis Ram by Dharam Singh, the property of Sis Ram would continue to

be owned and possessed by Sis Ram and so would be inherited by the legal heirs as per Hindu Succession Act. Thus, even if it is held by the

Court that Dharam Singh was validly adopted and at best, such a person would succeed equally with real daughterplaintiff. The findings of the

Additional District Judge are thus unsustainable in law and liable to be reversed.

10. Learned counsel for the respondent in support of the conclusion arrived at by the Additional District Judge urged that the gift was accepted by

Dharam Singh way back in the year 1956. Pursuance to this gift deed, mutation was sanctioned in respect of the property subject matter of gift

deed in his favour and subsequent revenue entries continue to record the defendant to be owner in possession and so the Courts rightly inferred

that even Sis Ram accepted this transfer of ownership. Relying upon the decision in Firm of Ganeshdas Bhiwaraj's case (supra), the counsel urged

that a minor donee can accept a gift even without the intervention of a guardian. Subsequent conduct of the defendant as reflected in the revenue

entries clearly belies the assertion made by the appellant in this regard.

11. I have heard learned counsel for the parties. Vide gift deed, Exhibit D1, dated 6.5.1956 transferred land measuring 10 Bighas 17 Biswas out

of his landholding to Dharam Singh who had been adopted by him the same day. This document bears the thumbimpressions of the attesting

witnesses as well as thumbimpressions of the donor and the donee. Thus, the acceptance of this gift is by Dharam Singh, the donee. The gift as

defined in section 122 of the Transfer of Property Act is transfer of certain existing movable or immovable property made voluntarily and without

consideration by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. This acceptance can be

made during the life time of the donor and while he is capable of giving. In case, the donee dies before acceptance, the gift is void. Thus,

acceptance of gift by the donee is essential before it can be held the same to be a valid document.

12. The word `acceptance" has not been defined. As per Chambers 20th Century Dictionary, Edition 1985, acceptance means, ``accepting;

favourable reception; favour; acceptableness; an agreeing to terms; acceptation""'. Under the Indian Contract Act, when a person signifies to

another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said

to make a proposal; and when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. Thus a

proposal when accepted becomes a promise. The acceptance presupposes that a person accepting is capable of accepting the same i.e. he is

capable of understanding the proposal which would imply that the person is possessed of sound mind and is capable of giving his consent or to

offer a proposal. Section 11 of the Contract Act deals with the subject as to the persons who are competent to contract. According to Section

112 of the Act, every person is competent to contract who is of the age of majority according to law to which he is subject and who is of sound

mind, and is not disqualified from contracting by any law to which he is subject. Thus, a person who had not attained the age of majority or is

otherwise of unsound mind is not competent to contract. Whether such a person can be said to be capable of accepting a gift is the moot point for

consideration in this case.

13. Additional District Judge relying upon the decision in Firm of Ganeshdas Bhiwaraj's case (supra) wherein, it has been held that acceptance of

gift may be made personally by a minor donee under section 122 of the Transfer of Property Act without the intervention of the guardian, held that

the donee appended his thumbimpression to the document of gift is a clear indication of acceptance of gift by the donee. The other evidence

relating to entries in khasra girdawari showing the donee to be in possession of the suit property was relied upon in support of the above

conclusion. The precise objection that since the defendant was a minor when the registered gift deed was executed in his favour was void for want

of acceptance, was not examined by the Court on the ground that this plea of acceptance was raised for the first time in that Court. As it is

question of fact, the plea cannot be allowed. The Court accepted the plea of the plaintiff that had this objection been raised at the proper time and

place the defendant would have proved the acceptance on his behalf by his mother and guardian. Thus, what appears to have weighed with the

Court is that objection with regard to incompetency of the defendant to accept the gift on account of his minority was raised for the first time

before the appellate Court. In addition thereto, the lower appellate Court found the donee to be in possession of the property gifted and so it was

held that the same sufficiently proves acceptance by the defendant himself. Except for making reference to Section 122 of the Transfer of Property

Act, no mention has been made to any other specific provision in support of the above conclusion.

14. A bare perusal of Section 122 of the Transfer of Property Act makes it abundantly clear that the gift has to be accepted by the donee or on his

behalf i.e. either he himself can accept the gift or authorise any person to accept on his behalf and in case of minor an acceptance can be by a

guardian of a minor. Some support can be taken from the language of Section 127 of the Transfer of Property Act as well. According to Section

127 of the Transfer of Property Act, a donee not competent to contract and accepting property burdened by any obligation is not bound by his

acceptance. But if, after becoming competent to contract and being aware of the obligation he retains the property given, he becomes so bound.

Thus, under these two provisions acceptance has to be by a person competent to contract and in case he is not competent at the time when gift

deed was executed he is to convey his acceptance on attaining majority.

15. The judgment in case reported as Lashkar Singh and another v. Rawal Singh and another, 1992(2) RCR(Rent) 333 (P&H) : 1991 PLJ 530

cited by the counsel for the respondent hardly advances the case of the respondent. In fact, in the instant case, gifts were accepted by Sohan Singh

on behalf of the minors. This fact has been noticed by the Court in para No. 7 of the judgment. Similarly, in case reported as Smt. Gurdev Kaur

and others v. Ralla Singh (deceased) now represented by his L. Rs., 1987 PLJ 232, the Court was examining the effect of delivery of possession

in respect of oral gift. In these circumstances, it was held that the gift will be ineffective till transferred to the donee.

16. In the instant case, there is no material on record on the basis of which it could be inferred that at any subsequent time i.e. after attaining the

age of majority the respondentdonee accepted the gift. Reliance is being primarily placed on the revenue entry with regard to sanctioning of

mutation in his favour on the basis of registered gift deed and entries in this regard in copies of the jamabandi. This aspect needs to be examined in

the light of the fact that respondent had been adopted by Sis Ram on the day when the deed was executed. As per law, on his adoption, the

adopted son stands transplanted in the adopted family and since registered gift was in his favour, mutation was sanctioned and entered and so his

name finds recorded in the revenue record. Except for this, there is no proof on record that at any given time the respondent on his attaining

majority has expressed his acceptance of the gift during the life time of the donor. Thus, I am of the view that the lower appellate Court erred in

law in holding that a gift could be validly accepted by a minor in terms of Section 122 of the Transfer of Property Act. Acceptance of gift by a

minor is void. Accordingly, I reverse the finding of the Additional District Judge, in this regard.

17. Resultantly, I accept the appeal, set aside the judgment and decree of the Additional District Judge and uphold the judgment and decree of the

trial Court holding that the plaintiff and defendant are entitled to inherit equally the estate of Sis Ram deceased including the land which was the

subject matter of gift deed.