

(2010) 08 P&H CK 0337
In the Punjab And Haryana At Chandigarh

Nirmal Singh and Others	Vs	APPELLANT
Kirpal Singh alias Kaka Singh and Others		RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2010) 08 P&H CK 0337

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Plaintiffs are in second appeal having remained unsuccessful in both the courts below.

2. The dispute is regarding the land of Hamir Singh since deceased. Defendants No. 3 to 9 are sons and daughters of Santo, a sister of Hamir Singh whereas plaintiffs and defendants No. 1 and 2 are sons and daughters of Punno another sister of Hamir Singh. In view of said relationship, the plaintiffs along with defendants No. 1 and 2 inherited half share in the suit land whereas defendants No. 3 to 9 inherited the other half share. The plaintiffs also challenged judgment and decree dated 29.2.1992 suffered by Hamir Singh in favour of defendant No. 1 Kirpal Singh alias Kaka Singh alone declaring him to be owner in possession of the entire suit land.

3. Defendant Nos. 2 to 9 were proceeded ex parte in the trial court. Defendant No. 1 contested the suit and inter alia, pleaded that he had been adopted by Hamir Singh and therefore, only he i.e. defendant No. 1 inherited the entire suit land. Defendant No. 1 also pleaded that in a family settlement, Hamir Singh during his life time had given the suit land to defendant No. 1 regarding which judgment and decree dated 29.2.1992 were passed.

4. Learned Civil Judge (Senior Division), Fatehgarh Sahib vide judgment and decree dated 18.10.2006 dismissed the plaintiffs' suit. First appeal preferred by the plaintiffs has been dismissed by learned Additional District Judge, Fatehgarh

Sahib vide judgment and decree dated 6.12.2007. Feeling aggrieved, the plaintiffs have preferred the instant second appeal.

5. I have heard learned Counsel for the parties and perused the case file.

6. Both the courts below have recorded concurrent finding of fact regarding adoption of defendant No. 1 by Hamir Singh. The said finding being based on proper appreciation of evidence cannot be said to be perverse or illegal and therefore, does not warrant interference in second appeal. No question of law much less substantial question of law arises for determination on this aspect. On the other hand, lower appellate court is the final court of fact. It is not a case where it may be said that the finding is based on no evidence or on misreading of evidence or by ignoring some relevant evidence or by considering some irrelevant evidence.

7. Learned Counsel for the appellant emphatically contended that in the suit filed by defendant No. 1 against Hamir Singh in which judgment and decree dated 29.2.1992 were passed, defendant No. 1 claimed himself to be son of Hamir Singh and not adopted son of Hamir Singh. However, on this basis, it cannot be said that defendant No. 1 did not claim himself to be adopted son of Hamir Singh because defendant No. 1 is admittedly natural son of Kartar Singh. Defendant No. 1 by depicting himself to be son of Hamir Singh rather reinforced his assertion that he was adopted son of Hamir Singh and treated himself to be son of Hamir Singh.

8. Learned Counsel for the appellants also contended that in sale deed Ex. P1 dated 24.10.2000 defendant No. 1 depicted himself to be son of Kartar Singh. However, this contention although apparently attractive also does not help the appellants because land which was sold through this sale deed came to defendant No. 1 from his natural father and in the revenue record name of father of defendant No. 1 was recorded as Kartar Singh being his natural father and therefore, the sale deed was executed as such. On the other hand, much before the execution of this sale deed, defendant No. 1 had been depicting himself to be adopted son of Hamir Singh as made out from different documents placed on record. Learned Counsel for the appellants contended that no document depicting defendant No. 1 to be adopted son of Hamir Singh prior to death of Hamir Singh has been produced in evidence. However, the same argument also applies to the appellants who have also not produced any document to show that defendant No. 1 depicted himself as son of Kartar Singh since after his alleged adoption in the year 1965 till the death of Hamir Singh in the year 1994.

9. In addition to the aforesaid, plaintiff No. 1 while appearing in witness box admitted that defendant No. 1 had been residing with Hamir Singh in his village for 30-35 years. It was also admitted that defendant No. 1 had been residing with his family with Hamir Singh and was also cultivating the suit land. It was also admitted that defendant No. 1 is cultivating suit land as sole owner. It was also admitted that Hamir Singh treated defendant No. 1 to be his son. An effort

was made to explain in subsequent cross-examination that being maternal uncle, Hamir Singh treated defendant No. 1 as his son. However, the fact remains that defendant No. 1 had been residing with Hamir Singh since after his adoption and Hamir Singh also treated him as his son. Consequently, the finding of adoption of defendant No. 1 by Hamir Singh recorded by the courts below does not suffer from any infirmity.

10. In addition to the aforesaid, there is also no sufficient ground to set aside decree dated 29.2.1992 suffered by Hamir Singh in favour of defendant No. 1. Suffering of the said decree by Hamir Singh in favour of defendant No. 1 would also depict that defendant No. 1 was adopted son of Hamir Singh. The suit to challenge the said decree filed after nine years is also barred by limitation.

11. For the reasons recorded hereinabove, I find no merit in the instant second appeal. No question of law much less substantial question of law arises for determination in the instant second appeal. The appeal is accordingly dismissed.