
(1999) 10 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 570 of 1980

Om Parkash adopted Son of Garib Ram

APPELLANT

Vs

Des Ram and Others

RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 10, 16, 9(2)

Citation : (2000) 124 PLR 232

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Chandra Singh, for the Appellant; Ashish Kapor, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—This is a defendant's appeal and has been directed against the judgment and decree dated 8.1.1980 passed by the additional District Judge, Rohtak who affirmed the judgment and decree dated 18.4.1979, passed by the Court of Sub Judge 1st Class, Jhajjar, who decreed the suit of the plaintiff-respondents for permanent injunction restraining the defendant No. 1 Shri Om Parkash, now appellant, from interfering in their possession over the suit land.

2. The case set up by the plaintiffs before the trial Court was that the property fully described in para No. 1 of the plaint was jointly owned by the plaintiffs and defendants No. 2 to 5. This property was under the tenancy of Shri Garib Ram son of Har Lal, who according to the plaintiffs, died issueless about four years ago prior to the date of the institution of the suit which instituted somewhere in August, 1974. In this manner, the tenancy of Shri Garib Ram came to an end and the land reverted back in the hands of the joint owners. The plaintiffs alleged that defendant No. 1 Shri Om Parkash, now appellant, had nothing to do with the land and he wants to dispossess the plaintiffs from the suit property by force on the pretext that he is the adopted son of Shri Garib Ram. According to the plaintiffs, Shri Garib Ram never adopted Shri Om Parkash as his son and even if there was any such adoption it was void and illegal and defendant No. 1 could

not interfere in possession of the plaintiffs. The plaintiffs further alleged that defendant No. 1 in collusion with the village Patwari, had got Girdawari of the land for Kharif 1973 to Rabi 1974 recorded in his name against the law and facts and in the garb of that Shri Om Parkash had been threatening the plaintiffs to oust them. Even if, it is held that Shri Om Parkash is adopted son of Shri Garib Ram still the tenancy of Garib Ram stood determined by his denial of the title of the plaintiffs. Defendant No. 1 was persuaded to see this reason and not to interfere into their possession but he is adamant. With the above allegations the plaintiffs prayed for permanent injunction restraining the defendant No. 1 from interfering in their possession over the suit land.

3. In the alternative, it was pleaded by the plaintiffs that if defendant No. 1 was found in possession of the suit property, a decree for possession may be passed in their favour.

4. Notice of the suit was given to the defendants. Defendant No. 1 denied the ownership of the property by the plaintiffs and defendants No. 2 to 5 and contended that it was owned by Har Lal and on his death, it has been inherited by his only son Garib Ram and when the latter died it had developed on him and since then it has been in his possession as owner. He pleaded that there was no question of termination of his tenancy when there was no relationship of landlord and tenant between the parties and their ancestors. He also took the position that he had become the owner of the property by way of adverse possession; that the suit is barred by time; that it has not been properly valued for the purpose of court fee and jurisdiction and that the plaintiffs are estopped by their own act and conduct in filing the suit.

5. The defendants No. 2 to 5 did not give any contest in the trial Court.

6. From the above pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiffs and defendants No. 2 to 5 are owners in possession of suit land as alleged? OPP

2. Whether deceased Garib Ram died issueless and his tenancy stood terminated on his death as alleged? OPP

3. Whether Om Parkash is the adopted son of said Garib Ram and is in possession of the suit land as son of Garib Ram after his death? OPD

4. Whether defendant No. 1 has become owner by adverse possession? OPD

5. Whether the suit of the plaintiff is barred by limitation so far as the alternative relief of possession is concerned? OPD

6. Whether the suit is not properly valued for Court fee and jurisdiction? OPD

7. Whether the suit is false and vexatious and the defendant is entitled to special costs on that account u/s 35-A C.P.C.

8. Relief.

7. The parties led oral and documentary evidence in support of their case and it was decided by the trial Court that plaintiffs and defendants No. 2 to 5 are the joint owners and in possession of the suit property. Further it was held by the trial Court that Garib Ram died issueless and his tenancy stood terminated and that Om Parkash is not the adopted son of Shri Garib Ram. Also it was held that defendant No. 1 has not become the owner of the property by way of adverse possession and the suit is not barred by limitation. Also it was observed that the plaintiffs are not estopped by their own act and conduct from filing the suit. Further the finding was given that the tenancy stood terminated. Resultantly, the suit of the plaintiffs was decreed as stated above.

8. Aggrieved by the judgment and decree of the trial Court, defendant Om Parkash filed the appeal before the Additional District Judge, Rohtak, who, dismissed the appeal considering it without force. However, the second observation made by the additional District Judge, is as follows:-

"But I feel in view of the entry in the khasra girdawari Ex.P.2 in regard to Kharif 1973 and Rabi 1974 showing the possession of defendant in the suit land the trial Court should have decreed the suit for possession of the suit land which relief in the alternative had been sought by them in the plaint."

9. However, at any rate, the judgment and decree of the trial Court was affirmed and the appeal was dismissed.

10. Before the first appellate Court, the parties argued about the findings of the trial Court with regard to the adoption of defendant No. 1 Shri Om Parkash, now appellant, by Shri Garib Ram deceased and his acquisition of ownership of the suit land by adverse possession. For the reasons given by the first appellate Court, in the impugned judgment, this Court is also of the considered opinion that the appellant has not been able to prove that he or his predecessor Shri Garib Ram or his father Shri Har Lal were occupying the property by way of adverse possession. However, a tenant can claim adverse possession. The case set up by the defendant in the trial Court was that he is adopted son of Shri Garib Ram who was their tenant in respect of the property. Meaning thereby Garib Ram would achieve a status of a tenant till his death and after his death only Shri Om Parkash will achieve the status, of a tenant or in the alternative he can say that he is the owner of the property by way of adverse possession. The case of Shri Om Parkash was very simple in the trial Court that his father Shri Garib Ram was the tenant of the property and that tenancy is heritable and by virtue of his being adopted son, he has inherited the tenancy rights. To this extent, the learned counsel appearing on behalf of the appellant has not challenged the finding of the first appellate Court but definitely he was not concurring with the views of the first appellate Court and the trial Court, when, both the Courts below have held that it is not proved on the record that Shri Om Parkash was validly adopted by Shri Garib Ram. The counsel submitted that it is

proved on the record that Shri Garib Ram was issueless and he adopted Shri Om Parkash through a registered document and by virtue of the provision of Section 16 of the Hindu Adoptions and Maintenance Act, 1956, there is a presumption to the registered document with regard to a valid adoption.

11. On the contrary, the contention of the learned counsel for the respondents was that the presumption u/s 16 of the Hindu Adoptions and Maintenance, Act, is rebuttable. It is not proved on the record that essential ceremonies of the adoption were complied with. The attesting witness of the so called adoption deed has not been examined and, therefore, it cannot be held that Shri Om Parkash appellant was the adopted son of Shri Garib Ram.

12. Before, I give my findings on these pleas raised by the counsel for the parties, it may be proper for me to quote in verbatim the reasons given by the first appellate Court when it had held that adoption of Shri Om Parkash is not proved, which are as under:-

"As regards the second question it seems equally clear to me that the finding of the learned trial Court that the adoption of defendant No. 1 by Garib Ram was invalid was right. This aspect of the matter entirely rests on the interpretation and applicability of Section 16 of the Hindu Adoption and Maintenance Act, 1956 which runs as follows:

"16. The presumption as to registered documents relating to adoptions whenever any document regd. under any law for the time being enforced 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."

The presumption raised by the section would arise only if the adoption deed is executed and registered in the manner specified. The section requires as was held in *Gajjan Singh and Ors. v. Bachan Singh and Ors.* 1972 P.L.J. 50 that the adoption deed should be signed not only by the person taking the child in adoption but also by the person giving away that child. In the reported case there was no evidence as to the person who had giving the child in adoption. In our case there is the evidence of the natural father of defendant No. 1, Siri Ram DW4 that defendant No. 1 was given in adoption by his parent. Kamla Devi the natural mother of defendant examined as DW 6 has stated it likewise. She stated that she was present at the time the ceremony of the adoption of defendant No. 1 was held by Garib Ram. The adoption deed Ex.D-3 does not bear the attestation of Kamla Devi DW6 the natural mother of defendant in the absence of which it cannot be said that she had consented to the adoption of defendant No. 1 by Garib Ram deceased at the time it was made. In *Gajjan Singh's* case (*supra*), it was held that the consent of the mother was also to be taken and she should have also signed the adoption deed. The ruling *Bas Dev Bhardwaj v. Ram Sarup and Ors.* ILR (1968) 2 P &H 231 can only be of avail to the appellant if

section 16 is shown to have been strictly complied with. The presumption as regards to the validity of the adoption was not held to apply in Gajjan Singh's case (supra) as it was found by the court that the registered deed in that case did not have the signatures of the persons giving away the child in adoption. In all fairness it may, however, be mentioned that in Gajjan Singh's case, there was no evidence independently of the registered deed that the part of the ceremony which requires the formal handing over of the child, by his natural or defect guardian had been gone into. However, there are some circumstances in this case which deserve to be noticed. Defendant No. 1 admitted that the name of his natural father was recorded in the school register. The ration card of Garib Ram deceased showing defendant No. 1 as his adopted son has not been produced. The voters list has also been withheld. Admittedly, there was a Pandit who presided over the ceremonies connected with the adoption of defendant No. 1 by Garib Ram. He too has been withheld. There was a Dholakwala (drum beater) and a photographer. They have also not come forward to support the case set up by defendant No. 1. It is in evidence that the photographs were taken at the time of adoption, which have also been pushed under the carpet. It is in the statements of the natural mother and father of defendant No. 1 that after adoption defendant No. 1 calls him as his nephew and her as his daughter-in-law which sounds improbable and illogical. It is also in evidence that about 150-200 person were present at the time defendant I was taken in adoption by Garib Ram. None of the persons who attended the adoption ceremonies of defendant No. 1 belonging to V. Khera Thru has come forward. None of the relations of Garib Ram has been produced to support the alleged relationship of defendant No. 1 with Garib Ram. In the state of the above evidence, I hold that there was no acceptable evidence to hold that defendant No. 1 had been taken in adoption by Garib Ram and the ceremony of giving and taking was performed as enjoined by Section 11(vi) of the Act."

13. According to Section 6, "no adoption shall be valid unless the person adopting has the capacity, and also the right to take in adoption; the person giving in adoption has the capacity to do so; the person adopted is capable of being taken in adoption; and the adoption is made in compliance with the other conditions mentioned in this chapter".

14. Section 11 sub-section (6) lays down that in every adoption 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 to the family of its adoption.

15. Section 16 of the Act, further lays down that "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."

16. In the present case, it is established on the record that through a registered document Ex.D.3 Shri Om Parkash appellant was adopted by Shri Garib Ram. Shri Ramjas was the natural father and Smt. Kamla Devi was the natural mother. Both these witnesses appeared as DW7 and DW-6 respectively. Apart from this, there is a statement of DW-4, Siri Ram, who deposed that defendant No. 1 was given in adoption by his parents. Of course, Smt. Kamla Devi has not signed the deed of adoption but it cannot be lost sight of the fact that Smt. Kamla Devi appeared as DW-6 and she had stated that she was present at the time of the ceremony of the adoption. It has further come in her statement that she had consented to the adoption. If the adoption deed Ex.D.3 is not signed by Kamla Devi, inference cannot be drawn per se that she never consented to the adoption. The requirement of the law as per Section 9 Sub-clause(2) is that father is alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a Court of competent jurisdiction to be of unsound mind.

17. The learned counsel for the respondents placed reliance on the two citations; Gajjan Singh and Ors. v. Bachan Singh 1972 P.L.J. 50 and 1996(2) P.L.R. 276 Smt. Dhano v. Tuhi Ram. Incidentally, I was the author of the second authority. While distinguishing the first judgment, the learned first appellate Court has itself distinguished that in the said case there was no evidence as to the person who had given the child in adoption. Whereas in the present case, there is the evidence of natural father of defendant No. 1, Shri Ramjas DW-7 and of Smt. Kamla Devi, who appeared as DW-6. Also there is statement of Smt. Kamla Devi that she was present at the time of the ceremony of the adoption of defendant No. 1 and this ceremony was held by Shri Garib Ram. In the second citation, this Court was of the view that by mere placing of the documents on the record without proving the ceremonies of due adoption, it cannot be said that there was a valid adoption. This Court further was of the view that the factum of adoption must be proved in the same way as any other fact and evidence in support of the adoption must be sufficient to satisfy the heaving that rests upon any person who seeks to displace the natural succession by alleging the adoption. Further it was observed by this Court that the presumption u/s 16 of the Hindu Adoptions and Maintenance Act, 1956, is a rebuttable one. The learned trial Court, of course, in the quoted paras above, also held that defendant No. 1 admitted that name of his natural father was recorded in the school register; that the ration card of Garib Ram, showing defendant No. 1, as his adopted son, has not been produced in Court; that voter list has also been withheld and that the panchayat should preside over the ceremony in connection with the adoption too, has been withheld by the defendant. ScNnuch so, the Dhaulwala (drum heater) and the Photographer have also not come in the witness box to support the adoption of defendant No. 1, Om Parkash. In the opinion of this Court,-the learned first appellate had stretched too much to draw an inference against defendant No. 1. To cover all these possible lapses on the part of an adopted son or adoptee, the

Legislature has incorporated the provisions of Section 16. If a registered adoption has been produced and proved, the Court is bound to raise the presumption that adoption has been made in compliance with the provisions of the Act.

18. The learned counsel for the respondents relies upon 1992(2) C LJ 80, Hari Ram v. Surja and Ors., and submitted that the formalities for a valid adoption as required u/s 9(2) of the Hindu Adoption and Maintenance Act, 1956, in this case have not been completed, therefore, there is no valid adoption and in these circumstances, the presumption u/s 16 of the Hindu Adoption and Maintenance Act, cannot be drawn. He submitted that in the adoption deed Ex.D.3, there is no covenant that mother had given the son in adoption. Moreover, it is not attested by the natural mother and the statement of the father is also silent as to whether the consent of the mother was obtained by him or not at the time of the giving of the son in adoption. In these circumstances, it should be inferred that consent of natural mother was never obtained. The judgment is distinguishable on fact. In the case in hand, both, the natural father and mother have appeared. They had stated that consent was given. Mother has also stated that she was present at the time of the ceremony. It is true that the mother of Shri Om Parkash is not attesting witness of the adoption deed but if she is the consenting party to the adoption and father has also supported the adoption, the ingredients of valid adoption as required u/s 9(2) and Section 10 of the Act, are held to be complied with.

19. The dying man catches at a straw. Faced with the difficulties that a valid adoption has taken place in the present case, the learned counsel for the respondent then relied upon three judgments of the Hon'ble Supreme Court reported as Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others, and Ors. 1997(2) SC C 471, Dnyaabiba Bhaurao Shemade v. Maroti Bharurao Marnor and Navaneethammal Vs. Arjuna Chetty, and submitted that High Court should not interfere with the decision of the trial Court and appellate Courts on the question of fact. He submitted that both the Courts have held that adoption is not valid and, therefore, this Court should not take a different view. I do not dispute with the" preposition of law propounded by the Supreme Court. In fact, it is a reiteration of the settled principle of law that concurrent finding of fact, howsoever, erroneous may be, should not be disturbed by the second appellate Court but there is one exception to the general rule if there is a mis-reading of evidence and wrong appreciation of evidence, the second appellate Court can examine such evidence. Moreover, valid adoption is a mixed question of law and fact. In the present case, it is proved on the record that necessary ceremony giving and taking of child had taken place. There are statement of three witnesses and a reading of the same has clearly given the impression that all the necessary ceremonies for 136uting a valid adoption had been performed. Of course, there was one snag that the natural mother of the child had not attested the adoption deed. That snag is covered by the oral evidence when she appeared in the witness box and deposed about the valid adoption. In these circumstances,

Section 16 will come into play. The presumption of valid adoption has not been successfully rebutted by the plaintiffs-respondents. The counsel also relied upon *Lal Man Vs. Dy. Director of Consolidation and Others*, and submitted that when two Courts examined the validity of a deed of adoption in the light of evidence adduced by both the parties and reached a particular conclusion that there was a valid adoption, in such a situation the third Court should be reluctant in interfering in its jurisdiction. The judgment is distinguishable on facts again. The Hon"ble Supreme Court was laying down that when a matter has been appreciated by Deputy Director of Consolidation and by the High Court with regard to the validity of the deed of adoption, then in such circumstances, the Supreme Court should be reluctant to interfere in its jurisdiction under Article 136 with such findings. In that background, the Hon"ble Supreme Court, held that general rule is that the Hon"ble Supreme Court does not interfere.

20. This case can be viewed from another aspect also. Assuming for the sake of arguments, it may be taken as granted for the benefit of the plaintiffs that adoption deed Ex.D.3 has not been proved as propounded by defendant No. 1 because the said document is not signed by his natural mother Smt. Kamla Devi, both the Court have forgotten this fact that plaintiffs have approached to the Court and they have sought a permanent injunction which could only be granted to them if they proved to be in established possession on the date of the institution of the suit which was 14.8.1974. The Courts below went astray in appreciating the documentary evidence produced by the defendant. In the Jamabandi of 1955-56 Ex.D.1, Garib Ram has been recorded as non-occupancy tenant under Des Ram and others. This entry is repeated in the subsequent Jamabandis of the year 1961-62 D.6, 1963-64 D.2, D.5, D.9, 1968-69 D.4, 1973-74 D.7. Even in the khasra girdawaris from Kharif 1970 to Rabi 1974, possession of Garib Ram has been recorded till Rabi 1973. So far as the last two crops are concerned, the possession of Shri Om Parkash, defendant No. 1 has been recorded and there is a mention that he is the adopted son of Shri Garib Ram on the basis of registered adoption deed dated 2.7.1962.

21. In these circumstances, both the Courts ought to have drawn an inference regarding the continuity of possession and it was not a stray entry in favour of Shri Garib Ram or in favour of Shri Om Parkash. If that was so, the suit of the plaintiffs for permanent injunction cannot be decreed. In that eventuality the plaintiffs could only file a suit for, possession on the basis of title or they could seek the ejectment under the revenue laws. As it is the case of the plaintiffs that defendant No. 1 had denied the relationship of landlord and tenant and had tried to put up the title in his own style, meaning thereby that according to the plaintiffs the possession of defendant No. 1 was wrongful. The first appellate Court itself admits that in the khasra girdawari P-2, the possession of defendant No. 1 has been shown against the crops of Kharif 1973 and Rabi 1974. It is not established by the plaintiffs at what point of time Shri Om Parkash had delivered the possession to them after Rabi 1974. Thus, it is concluded that it is not proved on the record that defendant Shri Om Parkash was in adverse possession of the

property. His possession was permissive either in the status of a tenant or in the status of the heir of a tenant. It is not established on the record that the plaintiffs were in possession of the property on the date of the institution of the suit and, therefore, their suit for injunction, in fact, was not legally maintainable. I also further declare that Shri Om Parkash was the adopted son of Shri Garib Ram on the basis of the document Ex.D.3 and even if it is assumed by giving entire concession to the plaintiffs that the adoption deed is not established, still the plaintiffs could not claim the relief of injunction.

22. From all these angles, I am constrained to allow this appeal. Resultantly, the appeal is allowed, the judgments and decrees of the Courts below are hereby set aside and the suit of the plaintiffs-respondents is hereby dismissed with no order as to costs.