
(1996) 03 P&H CK 0042

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3181 of 1985

Smt. Dhanno and others

APPELLANT

Vs

Tuhi Ram (Died) and others

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 16
Hindu Succession Act, 1956 — Section 9

Citation : AIR 1996 P&H 203 : (1996) 1 CivCC 705 : (1996) 113 PLR 276

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

Bench : Single Bench

Advocate : R.S. Mittal, for the Appellant; S.K. Bansal, for the Respondent

Judgement

1. This is a defendants' appeal and has been directed against the judgment and decree dated 8-10-1985 passed by the Court of Shri A. S. Chalia, Additional District Judge, Sonapat by which He dismissed the appeal of defendant-appellants in a suit for declaration which was filed by the plaintiffs-respondents.

2. The brief facts of the case are that Sarvshri Tuhi Ram, Darma and Parbha sons of Puran filed a suit for possession to the extent of 1/2 share of the agricultural land on 14-10-1980 against the defendants, namely, Smt. Dhanno widow of Balbir Singh, (2) Bhopal, (3) Suraj Kumar and (4) Krishan, sons of said Balbir Singh, Jagmali daughter of Balbir Singh and Chattar Singh father of Balbir Singh deceased and the case set up by the plaintiffs was that Sarvshri Neki, Puran and Bhane are three sons of Raje. Smt. Parbhathi at the first instance married with Bhane aforesaid and out of this wedlock Chattar Singh defendant No. 6 and Khajani were born. Tuhi Ram, Parbha and Dharma are sons of Puran. After the death of Bhane, Smt. Parbhathi performed a "Karewa" with Shri Neki. Balbir Singh deceased was the son of Chattar Singh, defendant No. 6. Defendants Nos. 2, 3, 4 and 5 are the children of Balbir Singh and were born from the womb of Smt. Dhanno defendant No. 1. The plaintiffs alleged that Shri Neki died about 53 years ago, leaving behind Parbhathi as widow who had one-third share in the land of

Neki. Plaintiffs, Parbhati and Chattar Singh defendant No. 6 jointly owned and possessed agricultural land measuring 203 Kanals 19 Marias in equal shares situated in the estate of village Chirasmī, fully described in para No. 3 of the plaint. Smt. Parbhati died in the year 1960 leaving no heir behind her. (This averment of the plaintiffs appears to be wrong because Smt. Channo DW 2 has been proved to be the daughter of Parbhati and Neki). The plaintiffs allege that they and defendant No. 6 became joint owners in possession in equal shares of the land mentioned above. Defendant No. 6 fictitiously showed his son Balbir Singh as adopted son of Smt. Parbhati in order to harm the rights of the plaintiffs. Smt. Parbhati was under the influence of defendant No. 6 Balbir Singh has since died on 16-3-1977 and mutation was illegally got entered of the share of Smt. Parbhati in the name of Balbir Singh. Said Balbir Singh never came into possession of any part of the land mentioned above throughout his life. Balbir Singh treated himself as son of Sh. Chattar Singh and not son of Parbhati. Defendants Nos. 1 to 5 also considered Balbir Singh as son of Chattar Singh defendant No. 6. At the time of alleged adoption, Balbir Singh was more than 15 years of age and as such no valid adoption took place. Smt. Parbhati was a very old lady and for several years, she remained confined to her bed. She had no power of understanding of her own and remained under the undue influence of defendant No. 6. No ceremony of the alleged adoption was ever performed in the village. Defendants Nos. 1 to 5, because of the wrong entry in the revenue record, claimed themselves to be the owners in possession to the extent of one-third share. The plaintiffs many a times asked the defendants to admit them as owners of the land to extent of one-half share of the entire land and hand over the possession of this land left by Smt. Parbhati, but to no effect. Hence this suit for possession.

3. Defendants appeared and filed written statements. It was the stand of the defendants that Smt. Parbhati adopted Balbir Singh on 4-6-1958 and on the same day, a registered will was also made in favour of Balbir Singh by Smt. Parbhati when she was in sound disposing mind and without any undue influence. The defendants admit that after the death of Sh. Bhane, Smt. Parbhati performed "Karewa" with Sh. Neki. The death of Balbir Singh is also not disputed, who died on 16-3-1977. Objection was also raised by the defendants that the suit is not maintainable; that the same is barred by time and that the plaintiffs are estopped by their own act and conduct for filing the present suit.

4. Plaintiffs filed rejoinder to the written statement in which they reiterated their pleas by denying those of the written statement and from the above pleadings of the parties, learned trial Court framed the following issues :--

1. Whether the plaintiffs are entitled to half share of the land left by Smt, Parbhati? OPP.
2. Whether the suit is not maintainable in the present form? OPD.
3. Whether the suit is time-barred? OPD.

4. Whether the plaintiffs are estopped from bringing the present suit by their act and conduct? OPD.

5. Whether the defendant Sh. Balbir Singh was validly adopted by Smt. Parbhati, as alleged, if so to what effect? OPD.

6. Relief.

5. Parties led oral and documentary evidence in support of their case and I shall deal with the relevant pieces of evidence in the subsequent portion of this judgment and on the conclusion of the trial, it was held that plaintiffs are owners to the extent of one-half share of the land in question. Resultantly, issue No. 1 was decided in favour of the plaintiffs and against the defendants. Issues Nos. 2, 3, 4 and 5 were decided against the defendants and finally suit of the plaintiffs was decreed by the trial Court on 14-6-1983. Aggrieved by the said judgment and decree, the defendants came into appeal before the first Appellate Court, who vide impugned judgment and decree dated 8-10-1985 dismissed the appeal. Defendants were still not satisfied and have come in the present Regular Second Appeal.

6. Parties addressed arguments before me on issues Nos. 1, 2 and 5 and I shall confine my discussion on these issues only.

ISSUE NO. 1

7. The onus of this issue was upon the plaintiff to establish that they are also legal heirs of Smt. Parbhati and are entitled to succeed 1/2 share of her land. It is the common case of the parties that at the first instance Smt. Parbhati got herself married with Bhane out of which defendant No. 6 Chatter Singh and Smt. Khajani were born. After the death of Bhane, Smt. Parbhati held a "Karewa" with Sh. Neki; who was the real brother of Bhane. The evidence has also come that Smt. Channo is daughter born from the union of Smt. Parbhati and Sh. Neki. She is the Class-I heir. Smt. Channo appeared as D.W. 2 and even plaintiff Tuhi Ram admitted in his cross-examination that Smt. Channo is the daughter of Smt. Parbhati and Sh. Neki. In the presence of Smt. Channo who was entitled to succeed the estate of her mother Smt. Parbhati, how the plaintiffs Sh. Tuhi Ram, Sh. Dharma and Sh. Parbha filed the suit for possession of the land to the extent of one-half share? In the presence of Smt. Channo, suit was misconceived.

8. Both the plaintiffs as well as the defendants are claiming the share of Smt. Parbhati. Plaintiffs are claiming as if Smt. Parbhati has died intestate without leaving any legal heir. The position is not correct. Smt. Channo is admittedly the daughter of Smt. Parbhati. Learned Counsel for the plaintiff submitted that Smt. Channo has relinquished her right, title or interest in the estate of Smt. Parbhati and that the adoption deed Ex. D.2 has not been proved, therefore, the estate of Smt. Parbhati goes to the line of Puran and Bhane. I am not in a position to subscribe to the argument of the learned Counsel for the plaintiff because there is not an iota of allegation in the plaint nor it is pleaded by the plaintiffs that

Smt. Channo has relinquished her right, title or interest in the estate of her mother Smt. Parbhati. Moreover, by putting signatures on the will Ex. D.1 executed by Smt. Parbhati in favour of Balbir Singh and adoption deed Ex.D.2 by which Balbir Singh was allegedly taken in adoption by Parbhati, it cannot be inferred that Smt. Channo has relinquished her right, title or interest in the estate of her mother Smt. Parbhati. Moreover, the Will Ex.D.1 has not been proved at all according to law and the adoption deed Ex.D.2 has also not been proved because of want of evidence. Ex.D1 and Ex.D2 were not even put to Smt. Channo when she appeared in the witness-box. There was no issue before the trial Court that Smt. Channo has relinquished her right, title or interest in the property. Strange enough that plaintiffs had intentionally concealed that Smt. Channo is daughter of Smt. Parbhati and so are the defendants who have not mentioned in the written statement that Smt. Parbhati left behind Smt. Channo. Under these circumstances, suit of the plaintiffs claiming one-half share in the property of Smt. Parbhati in the presence of her natural heir was not maintainable, and that the plaintiffs had no locus standi to file the suit. The trial Court as well as the first appellate Court have not dealt with the point in a right and correct manner. In para No. 1 of the judgment, the first appellate Court also admitted that Smt. Channo is daughter of Neki and Smt. Parbhati. The Court, however, held that she has relinquished her right or interest in the property of her mother by putting signatures on the Will Ex.D1 and the adoption deed Ex. D2 and for that reason, she does not come into picture. I am not convinced with the reasons advanced by the learned first appellate Court because Smt. Channo is not a party to the suit nor there is any averment in the plaint that Smt. Channo has relinquished her interest in the estate of her mother nor she made any statement before the Court of law disclaiming the estate of her mother Smt. Parbhati. Under these circumstances, I reverse the findings of the trial Court as well as the first appellate Court on issue No. 1 and hold that the plaintiffs are not entitled to one-half share of the land left by Smt. Parbhati as claimed by them.

ISSUE NO. 2

9. In view of the above discussion, I further hold that suit of the plaintiffs was misconceived and was not maintainable at all.

ISSUE NO. 5

10. Onus of this issue was upon the defendants. Learned Counsel appearing on behalf of the appellants submitted that adoption deed Ex.D.2 stands proved from the statement of Smt. Channo D.W.2 who stated that she and her mother Smt. Parbhati came into the Court premises several years back on that day, i.e., on 4-6-1958, executed the Will Ex.D.1 and adoption deed Ex.D2. I had already stated above that both these documents were not put to this witness. In order to prove the adoption, it was incumbent on the part of defendants to prove ceremonies of giving and taking. It has also to be seen after the adoption, whether Balbir was ever treated by Smt. Parbhati as her son. There is no evidence in that regard. Chattar Singh defendant No. 6 when appeared in the

witness box, admitted that Balbir was his son. Balbir Singh was simply brought up and was married by Smt. Parbhati. Beyond that, there is no evidence that after the alleged deed of adoption, Balbir was ever acknowledged by Smt. Parbhati as her son or in the relationship. There is no evidence on the record to show if any ceremony in the village took place regarding adoption of Balbir by Smt. Parbhati.

11. Learned Counsel for the appellants relied upon Section 16 of the Hindu Adoption and Maintenance Act and submitted that adoption deed being a registered document, should be believed. Section 16 of the said Act 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". The above provision will show that the presumption, if any, is re-buttable. By mere placing the document on the record without proving the ceremonies of due adoption, it cannot be held that there was a valid adoption when Balbir Singh was allegedly given in adoption to Smt. Parbhati. Factum of adoption must be proved in the same way as any other fact. Evidence in support of adoption must be sufficient to satisfy the heavy burden that rests upon any person who seeks to displace the natural succession by alleging the adoption. The statement of Chattar Singh defendant No. 6, who was natural father of Balbir, established that even after the deed of alleged adoption, he was treating Balbir Singh as his own son giving rise to an inference that Balbir Singh, in fact, was not given in adoption to Smt. Parbhati. Rather Chattar Singh, who was the son of Parbhati from her first husband, managed two documents Ex.D1 and Ex.D2, from his mother in favour of his son Balbir so as to claim succession after the death of Smt. Parbhati. Smt. Channo has not proved the adoption deed Ex.D.2. Other attesting witnesses of adoption deed have also slated on oath that Balbir was not adopted by Smt. Parbhati. Statement of scribe can only prove that adoption deed was executed, but beyond that it cannot be established that Balbir was actually given in adoption according to law to Smt. Parbhati. The evidence led by the defendants on record, does not prove a valid adoption of Balbir by Smt. Parbhati.

12. Learned Counsel for the respondents has placed reliance on Durgapada Jana Vs. Nemai Charan Jana and Others, , where it was held that the ceremony of actually giving and taking in adoption must be proved. In the absence of ceremony, the adoption is not valid. Also it was held in this authority that once actual giving and taking in adoption is not proved, presumption u/s 16 of the Hindu Adoption and Maintenance Act, 1956, stands successfully rebutted. Similar was the view taken in Krushna Chandra Sahu v. Pradipta Das. Even our own High Court in Ved Pal Singh v. Bhalla Ram has held that for valid adoption it is necessary to prove for the person who relies on the valid adoption, that the ceremonies of giving and taking had taken place. There is no evidence on the file of the present case that any ceremony was performed regarding actual giving

and taking by Smt. Parbhati and Chattar Singh. In this view of the matter, I affirm the findings of the trial Court as well as of the first appellate Court on issue No. 5.

13. As I have held above under issue No. 1, that the plaintiffs are not legal heirs of Smt. Parbhati in the presence of Smt. Channo, therefore, the trial Court as well as the first appellate Court, fell in error when they granted a decree to the extent of one-half share in the property of Smt. Parbhati in favour of the plaintiffs and the remaining one-half share to defendant No. 6.

14. In view of my above discussions, I accept the present appeal, set aside the judgments and decrees of the first appellate Court as well as of the trial Court and dismiss the suit of the plaintiffs-respondents. There shall be no order as to costs.

15. Appeal allowed.