
(2014) 03 P&H CK 0084
In the Punjab And Haryana At Chandigarh
Case No : RSA No. 3979 of 2013 (OandM)

Sushila

APPELLANT

Vs

Luxmi Narain

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 12, 12(1)(b)
Hindu Succession Act, 1956 — Section 8

Citation : (2014) 176 PLR 654

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Arun Yadav, Advocate for the Appellant

Judgement

Rakesh Kumar Jain, J.—This appeal is filed by the plaintiff against the judgment and decree of both the Courts below by which their suit for declaration and permanent injunction has been dismissed. The dispute is in regard to estate of deceased Ram Pat.

2. Plaintiff No. 1 is the widow of Prem Chand son of deceased Ram Pat and plaintiff Nos. 2 and 3 are son and daughter of Ram Pat. They have filed a suit for declaration that they are owners of the property left behind by Ram Pat and defendant No. 1, though adopted son of Prabhu Dayal Sharma, had no right, title or interest in the property of Ram Pat.

3. It is not disputed that Ram Pat died in the year 1971 and mutation of inheritance was sanctioned in favour of his son and daughter including defendant No. 1. Thereafter, he was given in adoption by his mother by Prabhu Dayal Sharma on 06.7.1981 and since then his relation with the family has been severed.

4. On the other hand, stand of the defendant No. 1 is that he had already inherited the property of his father as per his adoption, therefore, his rights in the property have been saved in view of Section 12(1)(b) of the Hindu Adoption

and Maintenance, Act, 1956.

5. Counsel for the appellant has argued that once defendant No. 1 was given in adoption, he became child of the adoptive family for all intents and purposes and his ties with that family were severed and replaced by those created by adoption in the adoptive family.

6. I have heard counsel for the appellant and after perusal of record, am of the considered opinion that there is no error in the judgment and decree of the Courts below in dismissing the suit.

7. In order to prove the controversy, it would be relevant to refer to Section 12 of the Hindu Maintenance and Adoption Act, 1956, which is reproduced below:--

"Effect of adoption.- An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family; Provided that-

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption."

8. It is not in dispute that Ram Pat died intestate in the year 1971 and succeeded by his heirs in terms of Section 8 of the Hindu Succession Act, 1956 in which defendant No. 1 got his share. Mutation of inheritance was duly sanctioned on 02.8.1971. Thereafter, in the year 1981, defendant No. 1 was given in adoption by his mother to the adoptive family and from thereon, his relations with the family of his birth were severed and new relations were created in the adoptive family. However, the estate of Ram Pat already inherited by defendant No. 1 would not be affected in view of Section 12 proviso (b) of the Act which says that any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth.

9. In view of the aforesaid, vested rights cannot be divested and the only obligation on defendant No. 1 to maintain the family of his birth and for that relatives had to come forward to seek maintenance if they were in need thereof. The plaintiffs have not set up any case for maintenance, therefore, defendant No. 1 is not obliged to maintain as well. In view of the aforesaid discussion, I do not

find any question of law much-less substantial involved in this appeal to take a different view from the view already taken by the Courts below.

Dismissed.