

Surinder Kaur Vs. Satya Devi and ors.

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Court : Punjab and Haryana

Decided On : May-23-2003

Reported in : (2003)135PLR628

Judge : M.M. Kumar, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 6, 7, 8, 9, 10 and 11

Appeal No. : Regular Second Appeal No. 4586 of 2001

Appellant : Surinder Kaur

Respondent : Satya Devi and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Surinder Mohan Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

M.M. Kumar, J.

1. This is plaintiffs appeal filed under Section 100 of the Code of Civil Procedure (for brevity 'the Code') challenging concurrent findings of facts recorded by both the Courts below. It has been concurrently found that the plaintiff-appellant was

never adopted by Atma Ram deceased and therefore, he is not entitled to inherit the house left by Atma Ram deceased. The findings of the Civil Judge on issue No. 1 as to whether the plaintiff- appellant was entitled to the possession of the house and as to whether he was the owner of the house were not even challenged before the lower Appellate Court. In other words, the plaintiff-appellant accepted the findings of the Civil Judge as prayed on issues No. 1 & 2. In para 11 of the judgment the Civil Judge has concluded that the plaintiff-appellant is not the owner of the suit property nor he is entitled to be granted the relief of possession.

2. The challenge before the learned District Judge, Ambala was regarding issue No. 6 alone which was to the effect as to whether Mohinder Singh was entitled to retain the possession of the house of Atma Ram deceased. The learned District Judge referred to the pleadings and evidence of the parties and then affirmed the findings on issue No. 6. The views of the learned District Judge read as under:

'It is the correctness of finding of issue No. 6 only, which was assailed before this Court by the appellant's counsel. According to him, learned trial Court went wrong in holding that defendant No. 2 (Mohinder Singh) is the adopted son of Atma Ram and had inherited the house is question from him, after his demise.

To start with, I would like to mention that in the plaint of the suit, the plaintiff had not referred to the validity or otherwise of the adoption of defendant No. 2. The latter mentioned about the factum of his adoption in the written statement. And, as the facts are, the plaintiff did not controvert this plea by filing a replication in reply to the written statement. That being so, the plaintiff will be deemed to have admitted the plea of adoption of defendant No. 2 by Atma Ram.

Even otherwise, defendant No. 2 while appearing as DW2, testified on oath that he is the adopted son of Atma Ram and in that capacity, he had inherited the house in dispute after the death of Atma Ram. His testimony was duly corroborated by DW3 Baldev Singh and DW4 Harbail Singh who are the Sarpanch and Lambardar respectively of the village to which Atma Ram belonged. Both these witnesses made consistent statements to the effect that Atma Ram had adopted defendant No. 2 and further that they had also been treating Atma Ram and defendant No. 2 as father and son inter se. There is documentary evidence also regarding

defendant No. 2 being the adopted son of Atma Ram and the same is available on the record of the trial court in the form of Ex.DI, which is copy of a Surety bond. This surety bond was produced by DW1 Satpal, who is an official of Super Bazar, Ambala Cantt. A combined reading of the surety bond (copy Ex.DI) and the testimony of DW1 shows that the surety bond was furnished by defendant No. 2 at the time when one Phool Singh was taken in service in Ambala Central Cooperative Consumer Store, Ambala Cantt. in the year 1986, and in it, defendant No. 2 had described himself as son of Atma Ram. The present suit was filed in the year 1991 i.e. five years after the furnishing of surety bond. At the time the surety bond was furnished, absolutely no dispute about the adoption of defendant No. 2 by Atma Ram had arisen. Therefore, the correctness of the contents of this document in which defendant No. 2 was described as the son of Atma Ram, cannot be doubted. We may also not lose sight of the fact that even the plaintiff himself could not dare to describe this defendant, in the heading of the plaint, as being son of some persons other than Atma Ram, and he described him there as 'son of not known'. Thus, the finding of the learned trial court, holding defendant No. 2 to be the adopted son of Atma Ram is based not only on the oral testimony of the Sarpanch (DW3) and Lambardar (DW4) of the village, but also on the documentary evidence in the shape of Ex.DI. And, the fact that the plaintiff himself also could not dare to describe him, in the heading of the plaint, as the son of some body other than Atma Ram, also lends corroboration to the evidence led by the defendants on the point.'

3. Mr. Surinder Mohan Sharma, learned counsel for the plaintiff-appellant has argued that it is strange to find that in the suit filed by the plaintiff- appellant findings have been recorded in favour of defendant. Learned counsel has further pointed out that contradictory yardsticks have been adopted to recognize the adoption of the defendants-respondents and reject the adoption of the plaintiff-appellant.

4. After hearing the learned counsel for the appellant, I am of the considered view that this appeal is bereft of any merit and is thus liable to be dismissed because the suit of the plaintiff could succeed only if there was sufficient evidence fulfilling the legal requirements of a valid adoption. Under Sections 6 & 11 of the [Hindu](#)

[Adoptions and Maintenance Act, 1956](#) various requirements have been laid down for a valid adoption of a child. The aforementioned provisions are reproduced below for facility of reference:

'6. Requisites of a valid adoption.- No adoption shall be valid unless -(i) the person adopting has the capacity, and also the right, to take in adoption; (ii) the person giving in adoption has the capacity to do so; (iii) the person adopted is capable to being taken in adoption; and (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter,

11. Other conditions for a valid adoption.- In every adoption, the following conditions must be complied with :-

(i) If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, sons's son or son's sons's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) If the adoption is by a male and the person to be adopted is a female the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) 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 for [or in the case of an abandoned child or child whose percentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of atta homam shall not be essential to the validity of adoption.'

5. A perusal of Section 6 contemplates basic requisites of a valid adoption and provides that no adoption would be valid unless the person adopting has the capacity and also the right to take a child in adoption. Similarly, the person giving in adoption should have capacity to do so and the child also should be capable of being taken in adoption apart from other condition as laid down in Sections 7, 8, 9 and 10. Section 11 provides that in case of adoption of a son, the adoptive father or mother must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption. Clause (vi) of Section 11 further requires that the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with an intention of transfer the child from the family of its birth to the family of its adoption. None of these conditions have been proved to be fulfilled by the plaintiff-appellant. In fact, before the learned District Judge, the plaintiff-appellant had given up the claim with respect to ownership and possession of the house which was based on a valid adoption. Therefore, no interference is called for in the findings of facts recorded by the learned Civil Judge which have attained finality.

6. The argument of Sh. Surinder Mohan Sharma, learned counsel for the plaintiff-appellant, that no finding in favour of defendant-respondent can be given in the suit filed by him, has failed to impress me because the counter-claim was made by the defendant-respondent claiming to be a validly adopted child of Atma Ram deceased. It is true that both the Courts below have been swayed by circumstantial evidence where the defendant-respondent had held himself out to be adopted child of Atma Ram deceased but it cannot be concluded that the findings are perverse and are liable to be set aside. The document Ex.D1, which is a copy of a surety bond, was produced by DW1, Satpal, an official of Super Bazar, Ambala Cantt. In this document, executed in the year 1986, defendant-respondent No. 2 is shown himself to be son of Atma Ram. Such an entry was made before there was any controversy would inspire confidence and give rise to a presumption of truth. The aforementioned entry has also been produced by the defendant-respondent. It is well-settled that the findings of facts recorded by the Courts below are not to be interfered with unless it is found that the findings are without any evidence or on the available evidence, no reasonable man would record those

findings. Therefore, this appeal is liable to be dismissed.

For the reasons recorded above, this appeal fails and the same is dismissed.

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