

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**RSA-2623-1988**

**Decided on 11.08.2014**

**Karam Singh and others**

**..... Appellants**

**VERSUS**

**Jagsir Singh and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA**

**Present: Mr.Nitin Sarin, Advocate, for the appellants.**

**None for the respondents.**

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**RAJIVE BHALLA, J. (ORAL)**

The appellants challenge judgment and decree dated 01.09.1988, passed by the Additional District Judge, Bathinda, reversing the judgment and decree dated 01.08.1987, passed by the Sub Judge, Ist Class, Bathinda.

Counsel for the appellants submits that the only dispute in this case is whether Jagsir Singh is the validly adopted son of Dharam Singh (deceased). The onus to prove the adoption by clear, cogent and reliable evidence lay upon the respondents. After enactment of the Hindu Adoption & Maintenance Act, 1956 (hereinafter referred to as the 'Act') an adoption has to be made by a registered written instrument. The failure of the natural father to appear before the Registrar and endorse the adoption deed, negates the adoption deed and, therefore, does not raise a presumption as to

execution of a valid adoption deed as envisaged by Section 16 of the Act. The endorsement before the Sub Registrar by the natural mother of the child alone leaves no ambiguity that the adoption made, without endorsement by the natural father, is illegal and, therefore, does not confer the status of an adopted child upon Jagsir Singh (defendant/respondent No.1). It is argued that evidence of so called ceremonies of adoption produced by the respondents was rightly rejected by the trial Court by holding that it is beyond pleadings. The first appellate Court has, however, reversed these findings without assigning any clear and cogent reasons. The adoption deed is even otherwise surrounded by suspicious circumstances and when read alongwith the fact that the father did not make an endorsement, before the Sub Registrar, raises a credible inference that the adoption deed is a fabricated document, prepared with the sole object of depriving the appellants of their inheritance to the estate of Dharam Singh. In support of his arguments, counsel for the appellants relies upon the judgment of this Court in “**Smt.Sukho Alias Phool Wati (died) through LRs Vs. Bijendeer and another**”, PLR Vol.CLIX (2010-3).

Counsel for the appellant has framed the following substantial questions of law: -

- “1. Whether to raise a presumption of validity of an adoption under Section 16 of the Hindu Adoption and Maintenance Act, is it necessary that the natural father

should also sign the document before the Registrar?

2. Whether the learned Lower Appellate Court has misread oral and documentary evidence on the record?

3. Whether the judgment and decree of the learned Lower Appellate Court is perverse and liable to be reversed?"

No-one is present on behalf of the respondents.

I have heard counsel for the appellants, perused the impugned judgment as well as judgment recorded by the trial Court and appraised the record.

Karam Singh etc. the appellants filed a suit for declaration and permanent injunction, claiming ownership to the estate of Dharam Singh who had passed away issueless and widow-less. The appellants pleaded that they are natural heirs of Darshan Singh but Jagsir Singh's guardian has produced an adoption deed, dated 21.06.1983 and got a mutation registered in the name of Jagsir Singh. The adoption deed is a fabricated document. The appellants being natural heirs are owners in possession of the disputed property.

In response, the defendants/respondents filed a written statement, controverting averments in the plaint, asserting Jagsir Singh's rights as the adopted son of Dharam Singh pursuant to a registered adoption deed dated 21.06.1983 registered before the Sub Registrar, Bathinda and duly signed by the natural father and mother as well as by Dharam Singh and prayed for dismissal of the suit. The

trial Court framed the following issues: -

- “1. Whether Jagsir Singh was adopted by Dharam Singh as alleged? OPD
2. Whether the plaintiffs are entitled to the declaration prayed for? OPP
3. Whether the plaintiffs are entitled to the permanent injunction as prayed for? OPP
4. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
5. Whether the defendants are entitled to special costs? OPD
6. Whether the plaintiffs are in possession of the suit property as cosharers, if so, to what effect? OPP
7. Relief.”

After parties led evidence, the trial Court decreed the suit by holding that the adoption deed does not confer the status of an adopted son upon Jagsir Singh. The trial Court held that ceremonies of adoption proved by the respondents are beyond pleadings and as Mann Singh natural father of the adopted child, did not endorse the adoption deed, before the Sub Registrar, the presumption of truth attached to a registered adoption deed, by Section 16 of the Act, does not arise. The trial Court thereafter proceeded to hold that the appellants are owners to the extent of 1/6<sup>th</sup> share, each, in the estate of Dharam Singh.

Aggrieved by the aforesaid judgment, defendant/respondent No.1-Jagsir Singh filed an appeal which was

allowed by the Additional District Judge, Bathinda, on 01.09.1988, by setting aside the trial Court judgment, dismissing the suit and affirming the registered adoption deed dated 21.06.1983.

The first appellate Court held that the adoption deed was scribed by DW-1 Kulwant Singh Brar, Advocate, attested by witnesses, thumb marked by Dharam Singh, the adopting father, Mann Singh the natural father and Gurnam Kaur the natural mother and was completed as soon as it was scribed. The mere fact that Mann Singh may not have endorsed the adoption deed before the Sub Registrar, is irrelevant as the adoption deed was executed and registered on the same day and, therefore, it may be presumed that Mann Singh was present at the time of registration of the adoption deed. As regards ceremonies of adoption, it was held that it was not necessary for the appellants to plead ceremonies, in the written statement, as evidence has been adduced with respect to ceremonies of adoption.

I have heard counsel for the parties, perused the record and the impugned judgment.

The adoption deed admittedly bears the thumb impressions of Mann Singh and Gurnam Kaur the natural father and mother and Dharam Singh, the adopting father. The adoption deed Ex.D1 was scribed by DW-1 Kulwant Singh Brar, Advocate, witnessed by DW-3 Kirpal Singh and as referred to above, thumb marked by DW-4 Mann Singh, the natural father, Gurnam Kaur the

natural mother and Dharam Singh, the adopting father. However, at the time of registration, the thumb impression of the natural father was not obtained.

The question that has been framed as a substantial question of law is whether failure by the natural father to append his endorsement, on the adoption deed, at the time of registration, does not raise inference of validity, under Section 16 of the Act.

After enactment of the Hindu Adoptions & Maintenance Act, 1956, a Hindu may give or take a child in adoption only in accordance with provisions of the aforesaid enactment. The Act is a complete Code, setting out requisites for a valid Hindu adoption namely: - the capacity of a male/female Hindu to take in adoption, persons capable of giving in adoption and the persons who may be adopted etc. Section 16 of the Act raises a presumption as to validity of an adoption, if the adoption deed signed by the person giving and the person taking in adoption, is registered. The Act, however, does not require an adoption deed to be compulsorily registered or postulates that if an adoption deed is not registered the adoption is invalid. Thus, if an adoption deed is reduced into writing and is signed by both sets of parents i.e. parents giving in adoption and parents taking in adoption and the adoption satisfies all statutory requirements set out under the Act, the mere fact that it is not registered or there is a defect in its registration, would not render the adoption deed or the adoption invalid. An adoption deed comes into

effect the moment it is signed or thumb marked by the natural parents and the adopting parents. The only consequence on non-registration or a defective registration is that the presumption of truth, raised under Section 16 of the Act shall not arise and, therefore, the adoption and the adoption deed shall have to be proved like an other ordinary fact or document. The fact that an adoption, valid in all other aspects, signed/thumb marked by both sets of parents but is not attested by natural father at the time of registration, may if at all, raise a presumption that the registration is defective but cannot by reference to any provision of the Act, raise an inference that the adoption is invalid. The first question of law is, therefore, answered against the appellants in the above terms.

A perusal of the adoption deed reveals that it is signed by the natural father and mother of the child and by the adopting father, Dharam Singh. The adoption does not suffer from any legal defect as to competence of the natural parents to give in adoption or the adopting father to take in adoption. The adoption was proved by examining the scribe, the witnesses and the parents giving in adoption and was duly registered. The natural father-Mann Singh stepped into witness box as DW-4, acknowledged his thumb impressions on the adoption deed and deposed as to all other relevant facts relating to the adoption. The mere fact that the adoption deed does not bear the endorsement of the natural father, at the time of registration, in my considered opinion, does not raise any suspicion

as to its execution or as to its legality.

The second and third substantial questions of law are general in nature and as it is not pointed out as to which oral and documentary evidence has been misread or as to which finding is perverse, and are, therefore, answered against the appellants.

However, it would be appropriate to deal with a contention raised by counsel for the appellants that as the trial Court had discarded evidence regarding ceremonies of adoption for failure to plead such a fact, the first appellate Court could not have reversed this part of the judgment. Even if the respondents had not proved ceremonies of adoption the fact that a written document of adoption was executed and proved, rendered pleadings and proof of ceremonies of adoption, irrelevant, particularly as adoption took place after enactment of the Act.

In view of what has been recorded hereinabove in the absence of any error of jurisdiction or of law, discernible in the impugned judgment, the appeal is dismissed but with no order as to costs.

11.08.2014  
Shamsher S.Sabharwal

**[ RAJIVE BHALLA ]**  
**JUDGE**