A HARNEK SINGH

v.

PRITAM SINGH & ORS.

(Civil Appeal Nos.3895-3896 of 2013)

APRIL 17, 2013

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[SURINDER SINGH NIJJAR AND M.Y. EQBAL, JJ.]

Family Law – Custom – Adoption – Validity – Plea of plaintiff-appellant that he had been adopted by defendant C *no.1 – Parties belonged to the Jat community in District Ambala, Haryana – At the time of alleged adoption, plaintiff was about 23 years old and a married man having children – For valid adoption, required condition that the person who may be adopted has not completed the age of 15 years unless* D *there is a custom and usage applicable – Concurrent findings of both the first appellate court and the High Court that neither the custom was proved nor the factum of adoption was established by conclusive evidence – On appeal, held: Question with regard to the custom prevalent amongst the Jats* E *to take in adoption a married man having children not required to be gone into – Evidence brought on record goes against the plaintiff and on that basis it cannot be held that there was a valid adoption – Defendant no.1 filed written statement asserting that he never took the plaintif in adoption,* F *and also denied that plaintiff resided with him or helped him in cultivating the land – Further during pendency of the case, when defendant No.1 died, the plaintiff did not even perform the last ritual and other ceremonies of the deceased – Normally, concurrent findings recorded by two courts need not* G *be interfered with, unless they appear to be perverse in law – On facts, evidence goes against the appellant and, therefore, it cannot be held that there was perversity in the judgment passed by the two appellate courts – Hindu Adoption and Maintenance Act, 1956 – ss. 10 & 11.*

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The plaintiff (appellant) filed a suit for declaration that the gift deed alleged to have been executed by defendant No.1 in favour of defendant Nos. 2 and 3, in respect of the suit land was illegal, void, ineffective and liable to be set aside. The plaintiff averred that he was the adopted son of defendant No.1; that the plaintiff along with defendant No.1 constituted a Joint Hindu family and was having title in the ancestral property and that defendant Nos.2 and 3 got the alleged gift deed executed in their favour by giving threat and undue coercion, taking advantage of the unsound and mental weakness of defendant no.1.

The defendant Nos. 2 and 3 filed their joint written statement taking preliminary objection that the plaintiff is not the adopted son of defendant no.1 as he never adopted the plaintiff and, therefore, the plaintiff had no *locus standi* to file the suit. The further case of the said defendants was that that defendant No.1 was the absolute owner of the suit property and was fully competent to alienate the same in favour of defendants; and that he executed the gift deed in their favour out of love and affection.

The trial court held that the plaintiff was the legally adopted son of deceased defendant No.1, however, the suit property was not the ancestral property; hence, defendant no.1 was entitled to alienate the property. Consequently, the suit filed by the plaintiff was dismissed. The first appellate court observed that when the appellant claimed to have been taken in adoption, he was more than fifteen years of age (about 23 years old) and a married man having children, and thus it was incumbent upon him to at least plead that his adoption was in consonance with the custom prevalent amongst his community (Jat community of District Ambala) but he did not so plead in the plaint. Further observing that the

A suit was filed during the life time of defendant no.1, who had filed a written statement wherein he denied the very factum of adoption; the first appellate Court held that once the adoptive father himself alleged that he never took the plaintiff-appellant in adoption, the court cannot B substitute its own decision that he was taken in adoption by defendant no.1. The first appellate court held that *prima facie* the alleged adoption was violative of the provision of Section 10 of the Hindu Adoption and Maintenance Act 1956 and accordingly the same cannot C be held to be a valid adoption. The High Court affirmed the findings recorded by the first appellate court, and therefore the instant appeals.

Dismissing the appeals, the Court

D HELD: 1. Under clause (iv) of Section 10 of the Hindu Adoption and Maintenance Act, 1956, one of the conditions *inter alia* is that the person who may be adopted has not completed the age of 15 years unless there is a custom and usage applicable to the parties E which permit persons who completed the age of 15 years being taken in adoption. The other condition for a valid adoption has been provided in Section 11 of the Act. Clause (vi) of Section 11 specifically provides that the child to be adopted must be actually given and taken in F adoption by the parents or guardian concerned or under their authority with the intent to transfer the child from the family of its birth. A child who is abandoned or whose parentage is not known may also be taken in adoption provided the given and taken ceremony is done from the G place of family where it has been brought up to the family of its adoption. [Paras 12, 13 & 14] [195-G; 196-H; 197-A]

2.1. Both the first appellate court and the High Court finally came to the conclusion that neither the custom has been proved nor the factum of adoption has been H established by conclusive evidence. Normally, the

concurrent findings recorded by the two courts need not be interfered with, unless the findings appear to be perverse in law. Without going into the question with regard to the custom prevalent amongst the Jats to take in adoption a married man having children, the evidence which has been brought on record goes against the plaintiff-appellant on the basis of which it cannot be held that there was a valid adoption. [Paras 15, 16] [197-B-D]

2.2. The plaintiff-appellant impleaded his adoptive father as defendant No.1 and alleged that he was adopted by defendant No.1. Curiously enough, defendant No.1, the so called adoptive father, contested the suit by filing written statement making an averment that he never adopted him as his son. If the adoptive father himself asserted that he never took the appellant in adoption, the court cannot come to the conclusion that appellant was taken in adoption by defendant No.1. It is strange enough that when during the pendency of the case defendant No.1 adoptive father died the plaintiff-appellant who claims himself to be the adopted son has not even performed the last ritual and other ceremonies of the deceased. It has also come in evidence that during the period when the alleged adoption took place, the appellant's natural father was *Sarpanch* of the village and the register which was produced in court to show that there was some entry with regard to adoption remained with the said *Sarpanch*. Apart from that, defendant No.1 adoptive father in his detailed written statement has denied each and every allegation and claimed to be in cultivating possession of the land and further denied that the appellant ever resided with him in his house or helped him in cultivating the land. The evidence goes against the appellant and, therefore, it cannot be held that there is perversity in the judgment passed by the two appellate courts. [Para 17] [197-E-H; 198-A]

A *Kishan Singh and Others vs. Shanti and Others* **AIR 1938 Lahore 299 – referred to.**

Case Law Reference:

AIR 1938 Lahore 299 referred to Para 9

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3895-3896 of 2013.

From the Judgment & Order dated 11.05.2009 of the High Court of Punjab & Haryana at Chandigarh in RFA Nos. 122 & C 123 of 2008.

Jyoti Mendiratta for the Appellant.

Geeta Luthra, Aman Pal, Rupinder Sheoren, Ajay Pal for D the Respondents.

The Judgment of the Court was delivered by

M.Y. EQBAL, J. 1. Leave granted.

E 2. The plaintiff-appellant assailed the common judgment and order dated 11.05.2009 passed in RSA Nos.122/2008 and 123/2008 whereby the learned Single Judge dismissed both the appeals and affirmed the order passed by the lower appellate court.

F 3. The facts leading to these appeals may be summarized thus:-

4. The plaintiff (appellant herein) filed a suit being Title Suit No. 80/1985 on 23.04.1985 for declaration that the gift deed G dated 28.02.1985 registered on 22.03.1985 alleged to have been executed by defendant No.1 Sarup Singh (since deceased) in favour of defendant Nos. 2 and 3, Pritam Singh and Surjan Singh, in respect of the suit land is illegal, void, ineffective and is to be set aside. A decree for permanent H injunction was also sought for restraining defendant No.1 Sarup

Singh (now deceased) from alienating the land fully described in the schedule of the plaint. The plaintiff filed the said suit with the averments that he is the adopted son of Sarup Singh *alias* Sarupa (now deceased) (defendant No.1 in the original suit). The plaintiff's case is that Sarup Singh and his wife Prem Kaur (now both deceased) had no child and were issueless. They approached the natural father of the plaintiff Kesar Singh and expressed their desire to adopt the plaintiff as their son to which Kesar Singh agreed. Consequently, the plaintiff was adopted as their own son by Sarup Singh and his wife on 16.12.1982 at Village Khatoli, District Ambala. There was actual giving and taking i.e. the plaintiff was allegedly put in the lap of Sarup Singh and Prem Kaur by the natural father Kesar Singh and declared that from 16.12.1982 the plaintiff became their son. It was alleged that all necessary ceremonies including religious and customary formalities were observed and sweets were distributed and since then the plaintiff became the son of deceased defendant No.1 Sarup Singh and his wife. Plaintiff's further case is that since the adoptive father and mother had become old, the plaintiff started managing the entire property of the family including the land, houses etc., and has been cultivating the suit land. The plaintiff's further case is that for a few days when he went out of the village, defendant Nos.2 and 3 who are very strong headed and clever fellows removed the deceased Sarup Singh from his house and by misrepresentation and putting pressure to him and by giving threat and undue coercion got the alleged gift deed executed in their favour taking advantage of the unsound and mental weakness of the deceased Sarup Singh. The plaintiff, therefore, filed the suit being No. 80/1985 against Sarup Singh (defendant No. 1) and defendant Nos. 2 and 3 challenging the said alleged gift deed. The plaintiff also alleged that defendant Nos. 2 and 3 have obtained a decree against defendant No.1 regarding the suit property. Plaintiff's further case is that the plaintiff along with defendant No.1 constituted a Joint Hindu family and was having title in the ancestral property.

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A 5. On being summoned, defendant Nos. 2 and 3 filed their joint written statement taking preliminary objection that the plaintiff is not the adopted son of Sarup Singh as Sarup Singh never adopted the plaintiff and, therefore, the plaintiff has no *locus standi* to file the suit. Defendants also denied that the B plaintiff is in possession of the disputed land. The entire story of giving and taking and celebration was denied. It was also denied that any religious and customary formalities were ever observed in respect of the alleged adoption. Defendants' further case is that defendant No.1 Sarup Singh executed a gift deed C in their favour out of love and affection and in view of the services rendered by them. It was stated that defendant No.1 was the absolute owner of the suit property and was fully competent to alienate the same in favour of defendants.

6. It is pertinent to mention here that earlier defendant Nos. D 2 and 3 had also filed a suit being Suit No. 784 of 1984 titled as Hari Singh vs. Sarupa (defendant No. 1) for declaration that they are the owners in possession of the suit land on the basis of Gift Deed dated 22.03.1985 which was decreed by the Civil Judge vide his judgment and decree dated 15.04.1985. The E plaintiff who was having no knowledge of the decree dated 15.04.1985 could not challenge the same in his aforementioned Suit No. 80 of 1985 filed on 23.04.1985 and had to file a second suit being Suit No. 46 of 1987 challenging the decree dated 15.04.1985 alleging therein that the decree is a collusive F one and has been obtained by committing fraud upon the Court and thus the same is invalid and ineffective. The pleadings of the parties in Suit No. 46 of 1987 are alleged to be similar to the pleadings in Suit No. 80 of 1985.

G 7. Both the suits were taken up together by the trial court and the following consolidated issues were framed:-

1. Whether the plaintiff is adopted son of Sarup Singh as alleged? OPP

H 2. Whether the judgment and decree dated 15.4.85 is

liable to be set aside as alleged? OPP

3. If issue No.1 is proved, whether the land was ancestral in the hand of Sarupa Singh, if so to what effect? OPP

4. Whether the plaintiff was in possession of the suit land as alleged? OPP

5. Whether the plaintiff is entitled for possession of suit land as alleged? OPP

6. Whether if the adoption deed if any is a result of forgery as alleged? OPD

7. Whether gift deed dated 8.2.1985 is liable to be set aside as alleged? OPP

8. Whether the present suit is not maintainable in the present form? OPD

9. Whether the suit is bad for non joinder of necessary parties? OPD

10. Whether the defendants are entitled for special costs? OPD

11. Whether the plaintiff has no cause of action to file the present suit? OPD

8. The trial court in its judgment dated 31.08.2007 after analyzing the evidence and considering the facts of the case recorded its findings and decided Issue Nos.1 and 6 in favour of the plaintiff holding that the plaintiff is the legally adopted son of deceased defendant No.1 Sarup Singh. However, the trial court decided Issue Nos. 2 and 7 against the plaintiff and in favour of defendant-respondents. So far Issue No.3 is concerned, the trial court held that the suit property was not the ancestral property; hence, Sarup Singh was entitled to alienate the property. Consequently, the suit filed by the plaintiff was dismissed.

A 9. Aggrieved by the judgment passed by the trial court, the plaintiff-appellant filed appeals before the District Judge being Civil Appeal Nos. 84 and 85 of 2007. The first appellate court while narrating the facts in its judgment dated 13.12.2007, first of all noticed that the suit was filed by the plaintiff during the B lifetime of his adoptive father Sarup Singh making him defendant No.1. The said Sarup Singh contested the suit by filing written statement denying the averments made in the plaint that he ever adopted the plaintiff-appellant as his son. The said Sarup Singh also denied the allegations that the gift deed was C executed by him in favour of the defendant-respondents under any pressure or coercion. After analysing the pleadings and the evidence, the appellate court observed that although the plaintiff came up with a definite plea that he was being treated as adopted son of Sarup Singh since 1970 but the alleged actual D giving and taking ceremony took place in the year 1982; hence the plaintiff-appellant was not sure as to whether the adoption had taken place in the year 1970 or in the year 1982. Strangely enough, no date or month has been provided in the pleadings of the year 1970 when the alleged adoption might have taken place. Admittedly, when the appellant was taken in adoption, E he was about 23 years old in the year 1982 and was a married man having children. The appellate court held that since the appellant was more than 15 years of age in 1982, it was incumbent upon him to prove that there was valid customs amongst Jats under which he could have been given in F adoption. The appellate court after noticing the fact that custom prevalent amongst the community has not been pleaded or proved, relied upon the decision of Lahore High Court in *Kishan Singh and Others vs. Shanti and Others,* AIR 1938 Lahore 299 for the proposition that if any party wants the Court G to rely on a custom, onus is on that party to plead the custom in the precise terms and lead evidence to establish the said custom. The first appellate court while dismissing the appeals discussed the other decisions on the point of custom and finally recorded the following findings:-

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" I have considered the respectful submissions of the learned counsel for the appellant at length but before the appellant could succeed in his claim it was incumbent upon the appellant to at least plead that his adoption is in consonance with the custom prevalent amongst his community. This fact has no where been pleaded in the plaint. This court is further of the view that it should have been established beyond doubt that there existed such custom in the area of district Ambala that jats can adopt a child who may be more than fifteen years of age and may be married. The cited ruling of Madhya Pradesh High Court and of our own Hon'ble High Court pertains to the area of M.P. and district Rohtak are of no avail to the case of the appellant as custom differs from place to place and from tribe to tribe. It cannot be laid down as a general rule that simply because there was a custom in Rohtak amongst Jat to adopt even a married person, the same will hold good in District Ambala also. There was no dispute about this proposition of law that once a custom is recognized through judicial pronouncements, then it need not be proved in subsequent cases but at the same time this court is constrained to lay down that no judgment has been produced by the learned counsel for the appellant with respect to jats living in the area of District Ambala. The custom amongst jats who are habitants of district Ambala may be different then custom of jats who are residents of district Rohtak. It reminds this court that our own Hon'ble High Court has laid down in one of the decided case reported in **Hari Singh** Vs. **Bidhi Chand** as reported in 1997 MLJ 224 that jats of tehsil Naraingarh district Ambala lack the capacity to adopt. From all this it can be safely inferred that the custom differs from place to place and from tribe to tribe and as such evidence should have been led beyond shadow of doubt that there existed custom amongst jats of Ambala under which a married man and man beyond age of 15 years could have been given in adoption. Strangely enough, the custom has not

A been pleaded in the present case and thus findings cannot be returned on issues no.1 and 6 in favour of the appellant. Not only this, the suit was filed during the life time of Sarup Singh, alleged adopted father of the appellant and in pursuance to the notice given by the court Sarup Singh duly
B put in appearance before the court and filed a written statement wherein he denied the very factum of adoption. Once the adoptive father himself is alleging that he never took the appellant in adoption, this court cannot substitute its own decision that the appellant was taken in adoption
C by Sarup singh. Prima facie the alleged adoption is violative of the provision of section 10 of the Hindu Adoption and Maintenance Act 1956 and accordingly the same cannot be held to be a valid adoption. The findings of the learned trial court on issues no.1 and 6 thus cannot
D be sustained and are accordingly reversed."

10. The plaintiff-appellant assailed the judgment of the first appellate court by filing second appeals in the High Court being R.S.A. Nos. 122 and 123 of 2008. The High Court after discussing the judgments relied upon by the first appellate court
E and considering the facts and evidence on record came to the conclusion *vide* judgment dated 11.05.2009 that no fault could be found with the findings recorded by the first appellate court holding that in absence of pleading and proof of custom, no reliance could be placed on adoption deed, specially when the
F stand of the plaintiff-appellant himself in the suit was that he was governed by personal law, and the plea of custom was in the alternative. The High Court, therefore, affirmed the findings recorded by the first appellate court and dismissed the appeals. Hence, the plaintiff-appellant has moved this Court by filing the
G instant appeals by special leave.

11. Ms. Jyoti Mendiratta, learned counsel appearing for the appellant assailed the judgment and order passed by the first appellate court and that by the High Court as being contrary to law settled by judicial pronouncements that there is a custom
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prevalent amongst the Jats in Haryana to adopt even a married person. Learned counsel submitted that in view of the judicial pronouncements both the courts have misdirected itself by holding that neither the custom has been pleaded nor the same has been proved. Learned counsel submitted that it is well recognized that the Hindu Jats are governed by their customs and, therefore, even in the absence of a pleading, the appellate courts ought to have affirmed the judgment passed by the trial court. Learned counsel drew our attention to various decisions favoured and against on this issue which have been fully discussed by the courts below.

12. Section 10 of the Hindu Adoption and Maintenance Act, 1956 needs to be quoted hereinbelow:-

> **"10. Persons who may be adopted** - No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:-
>
> (i) he or she is a Hindu;
>
> (ii) he or she has not already been adopted;
>
> (iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;
>
> (iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption."

13. Under clause (iv) of Section 10, one of the conditions *inter alia* is that the person who may be adopted has not completed the age of 15 years unless there is a custom and usage applicable to the parties which permit persons who completed the age of 15 years being taken in adoption. The other condition for a valid adoption has been provided in Section 11 of the Act which reads as under:-

A "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, son's son or son's son'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 or in the case of an abandoned child or a child whose parentage 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 *datta homam* shall not be essential to the validity of adoption."

14. Clause (vi) of Section 11 specifically provides 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 the intent to transfer the child from the family of its birth. A child who is abandoned or whose parentage is not known may also be taken in adoption provided the given and taken ceremony is done from the place of family where it has been brought up to the family of its adoption.

15. Both the first appellate court and the High Court have considered all the decisions relied upon by the parties and finally came to the conclusion that neither the custom has been proved nor the factum of adoption has been established by conclusive evidence. Normally, the concurrent findings recorded by the two courts need not be interfered with unless the findings appear to be perverse in law.

16. Without going into the question with regard to the custom prevalent amongst the Jats to take in adoption a married man having children, the evidence which has been brought on record goes against the plaintiff-appellant on the basis of which it cannot be held that there was a valid adoption.

17. The plaintiff-appellant impleaded his adoptive father Sarup Singh as defendant No.1 and alleged that he was adopted by defendant No.1. Curiously enough, defendant No.1, the so called adoptive father, contested the suit by filing written statement making an averment that he never adopted him as his son. If the adoptive father himself asserted that he never took the appellant in adoption, the court cannot come to the conclusion that appellant was taken in adoption by defendant No.1. It is strange enough that when during the pendency of the case defendant No.1 adoptive father died the plaintiff-appellant who claims himself to be the adopted son has not even performed the last ritual and other ceremonies of the deceased. It has also come in evidence that during the period when the alleged adoption took place, the appellant's natural father was *Sarpanch* of the village and the register which was produced in court to show that there was some entry with regard to adoption remained with the said *Sarpanch*. Apart from that, defendant No.1 adoptive father in his detailed written statement

A has denied each and every allegation and claimed to be in cultivating possession of the land and further denied that the appellant ever resided with him in his house or helped him in cultivating the land. The evidence, in our view, goes against the appellant and, therefore, it cannot be held that there is perversity
B in the judgment passed by the two appellate courts.

18. In the light of the findings recorded by the two appellate courts and the discussion made hereinbefore, we do not find any reason to interfere with the judgments passed by the first appellate court and the High Court.
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19. For the reasons aforesaid, we do not find any merit in these appeals which are accordingly dismissed.

B.B.B. Appeals dismissed.