

LETTERS PATENT APPEAL

Before D. K. Mahajan and H. R. Sodhi, JJ.

SOHAN SINGH, ETC.,—Appellants.

versus

GURTEJ SINGH, ETC.,—Respondents.

Letters Patent Appeal No. 119 of 1970.

July 21, 1971.

Punjab Pre-emption Act (1 of 1913)—Section 15—Adopted son—Whether has the right to pre-empt the sale affected by his adoptive father—Adoption being under Punjab Customary law—Whether makes any difference to such right of pre-emption.

Held, that an adopted son has the right to pre-empt the sale affected by his adoptive father. The fact that the adoption is by way of appointment of heir under the Punjab Customary Law makes no difference to the right of pre-emption of the adopted son. Whenever an adoption takes place, the adopted son is as much a son of the father as of the mother. A son is adopted only when there is no natural son and after adoption if a natural son is born he shares equally with the adopted son. This clearly indicates that the adopted son has the same status *vis-a-vis* his adoptive parents as a natural born son. The only difference between an adoption under the customary law and an adoption under the Hindu Law is that if the son is appointed under the customary law he does not lose all connections with the natural family. He retains the right of collateral succession in his natural family, whereas in the case of an adoption under Hindu Law he is left no connection with the natural family. Besides this, there is no material distinction which is to be found between an adoption under the Hindu Law and an adoption under the customary law. (Para 9)

Letters Patent Appeal under Clause X of the Letters Patent from the decree of the Court of Hon'ble Mr. Justice D. S. Tewatia, dated the 9th day of February, 1970 passed in R.S.A. 1474/67 affirming that of Shri Ved Parkash Sharma, Additional District Judge, Bhatinda, dated the 6th December, 1967 which affirmed that of Shri Sukhdev Singh Tiwana, Additional Sub Judge, III Class, Bhatinda, dated the 31st May, 1966 and granted a decree for possession of the suit land by Pre-emption on payment of Rs. 9,000 less the amount already deposited up to 30th June, 1966 and in case the said amount was not paid up to the fixed date, the suit of the plaintiff would stand dismissed with costs.

The suit of Harchand Singh plaintiff for possession of the suit land on the basis of the pre-emption against the defendants was however dismissed. Both the Courts left the parties to bear their own costs.

PURAN CHAND AND P. C. KHUNGAR, ADVOCATES, for the appellants.

HARBANS LAL, ADVOCATE, for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

MAHAJAN, J.—This is an appeal under Clause X of the Letters Patent and is directed against the decision of a learned Single Judge of this Court. The learned Single Judge confirmed the decision of the lower Appellate Court, which in turn had affirmed the decision of the trial Court.

(2) The facts are fairly simple. The land in dispute was sold by Ajmer Kaur to Sohan Singh, Major Singh and Gurjant Singh, appellants. The sale was pre-empted by Harchand Singh, husband of Ajmer Kaur and Gurtej Singh, an adopted son. In the plaint, Gurtej Singh stated that he was the adopted son of Ajmer Kaur.

(3) The suit was contested by the defendants and a large number of pleas were raised, but we are now not concerned with them. The only issue that was debated in the Courts below was issue No. 1, that is, the right of the plaintiffs to pre-empt the sale.

(4) The trial Court came to the conclusion that Harchand Singh, husband of Ajmer Kaur, had no right to pre-empt the sale, but Gurtej Singh, the adopted son, had the right to do so. Therefore, Gurtej Singh's suit was decreed.

(5) An appeal by the vendee-defendants against this decree to the lower Appellate Court met with no success. In the lower Appellate Court, only issue No. 1 was debated.

(6) Dissatisfied with the concurrent decisions of the Courts below, a second appeal was taken to this Court. The learned Single Judge dismissed the appeal and affirmed the decision of the lower Appellate Court.

(7) The principal ground that was urged before the learned Single Judge was that in the plaint the plea of Gurtej Singh was that he was the adopted son of Ajmer Kaur and evidence had been led that he was the adopted son of Harchand Singh. In fact there is no change of front. Adopted son of Harchand Singh would naturally be the adopted son of Ajmer Kaur, wife of Harchand Singh. Moreover, the parties were not misled by this averment in the plaint. They knew

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what had to be proved, that is, the validity of adoption of Gurtej Singh had to be proved. All the three Courts have found as a fact that the adoption is valid. That being so, the only question that is to be decided is whether an adopted son can pre-empt. On this point there can be no two opinions and the matter stands concluded by a decision of this Court in *Inder Singh and another v. Kartar Singh and others* (1).

(8) Mr. Puran Chand, learned counsel for the appellants, has advanced an ingenious argument. This argument was not advanced in the two lower Courts, and also before the learned Single Judge. The argument is that the appointment of an heir under the Punjab Customary Law is a personal appointment. The plaintiff Gurtej Singh, was adopted by Harchand Singh. Therefore, he can only succeed to Harchand Singh's property. He thereby does not become the adopted son of Ajmer Kaur.

(9) We are unable to agree with this contention. In the first place, this point was not taken in the Courts below and cannot be permitted to be raised in a Letters Patent Appeal. Secondly, this contention is without any force. Whenever an adoption takes place, the adopted son is as much a son of the father as of the mother. A son is adopted only when there is no natural son and after adoption if a natural son is born, he shares equally with the adopted son. This clearly indicates that the adopted son has the same status vis-a-vis his adoptive parents as a natural born son. The only difference between an adoption under the customary law and an adoption under the Hindu Law is that if the son is appointed under the customary law he does not lose all connections with the natural family. He retains the right of collateral succession in his natural family, whereas in the case of an adoption under Hindu law he is left no connection with the natural family. Besides this, there is no material distinction which is to be found between an adoption under the Hindu Law and an adoption under the customary law.

(10) No other contention has been advanced.

(11) For the reasons recorded above, the appeal fails and is dismissed, but there will be no order as to costs.

K.S.K.

(1) A.I.R. 1966 Pb. 258.