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(c) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(d) without observance of procedure required by law;

(e) unsupported by any evidence.

I have gone through the report and the evidence mentioned above and am satisfied that the report is not open to exception on any of the grounds mentioned above.

Mr. Narsa Raju then draws my attention to charge 2 and says that there is no allegation of any corrupt motive and in finding the petitioner guilty the Inquiry Officer has indulged in speculation and drawn an inference against the petitioner merely because the transaction was concluded in one day. He further says that besides the fact that he has drawn an adverse inference from an undue haste there is no evidence in support of the charge. He has taken me through the report of the Inquiry Officer regarding charge No. 2 as well. I am satisfied that the said finding is based on inference of facts drawn from certain facts and is not open to review by this Court.

In the result, this petition must fail and is dismissed but there will be no order as to costs.

B.R.T.

APPELLATE CIVIL.

Before I. D. Dua, J.

INDER SINGH AND ANOTHER,—*Appellants*

versus

KARTAR SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 1120 of 1964

1965

September, 10th

Punjab Pre-emption Act (1 *of* 1913)—*S.*15(1)(*a*) *Thirdly*—*Right of pre-emption—Whether available if relationship is created by adoption or appointment of an heir—Adoption under Hindu Law and Punjab Customary Law—Object, purpose and effect of—Adoptee—Rights of.*

Held, that the right of pre-emption conferred by section 15(1)(a) Thirdly of the Punjab Pre-emption Act, 1913, on the father's brother or father's brother's son of the vendor is available even if the relationship is created by adoption or appointment of an heir as the terms "father" and "son" include "adoptive father" and "adopted son" in the case of those whose personal law permits adoption.

Held, that the theory of adoption under the Hindu Law contemplates a complete severance of the adopted child from the family of his birth, both in respect of his paternal and maternal lines, and his complete substitution into the adoptor's family as if he were born in it, except in certain limited respects. The adoption has, indeed, the effect of transferring the adoptee from his natural family into that of his adoptor conferring on him thereby the same rights and privileges in the adoptor's family as the legitimate son except in matters of marriage, adoption and perhaps in regard to share on partition between an adopted and an after-born son. The adoptee loses all the rights of a son in his natural family. As a matter of fact, the adoptee is deemed to be the continuation of his adoptive father's line; the fiction of adoption operating virtually as his civil death in the natural family and a new birth in the adoptive family, subject to the exceptions mentioned above. Broadly put, adoption under Hindu law is the admission of a stranger by birth to the privileges of a child by a legally recognised form of affiliation and, in contemplation of Hindu Law, an adopted child is deemed to be begotten by the father who adopts him or for and on behalf of whom he is adopted. "Taking of a son" is a substitute for the failure of male issue and its object is two-fold: (1) to secure the performance of the funeral rights of the person to whom adoption is made and (ii) to preserve the continuance of his lineage. In other words, the main object of adoption under strict Hindu Law seems to be to secure spiritual benefit for the adoptor, though its secondary object is to secure an heir to perpetuate an adoptor's name.

Held, that under the rules of Punjab Custom, however, adoption is in no sense connected with religion and it is a purely secular arrangement resorted to by a sonless owner of land in order to nominate a person to succeed him as his heir, the object being not to secure spiritual or religious benefit but to obtain practical temporal benefit. It is in essence an appointment of heir and creates only a personal relationship between the appointed heir and the appointer, in that the appointed heir does not become the grandson of the appointer's father and his son does not become the grandson of the appointer.

Regular Second Appeal from the decree of the Court of Shri Isher Dass Pawar, Additional District Judge, Ambala at Patiala, dated the 17th day of July, 1964, reversing that of Shri Mohinder Singh, Sub-Judge Ist Class, Bassi, dated 29th August, 1963 and dismissing the plaintiff's suit and leaving the parties to bear their own costs.

ACHHRA SINGH, ADVOCATE, for the Appellants.

RAJINDAR SACHAR, ADVOCATE, for the Respondents.

JUDGMENT

DUA, J.—The short point argued at the bar before me is whether the right of pre-emption conferred by section **Dua, J.**

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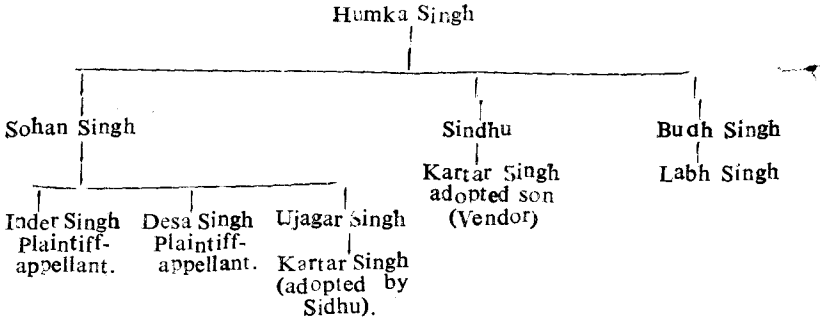
15(1)(a) THIRDLY, on the father's brother or father's brother's son of the vendor is available if the relationship is created by adoption or appointment of an heir. In order to appreciate the facts, it is desirable to reproduce the pedigree-table of the parties:—



Kartar Singh was adopted by Sidhu as per registered deed on 29th April, 1957. On 13th November, 1961, Kartar Singh sold the agricultural land in dispute which he had inherited from Sidhu to the vendee-defendants by means of a registered sale-deed. The plaintiffs, sons of Sohan Singh, instituted the present suit for pre-emption out of which the present appeal has arisen.

In the court of first instance, it was contended on behalf of the plaintiffs that if the adoption in question were to be treated as having been made under strict Hindu law, then Kartar Singh vendor must be deemed to have been transplanted from the family of Ujagar Singh, into that of Sidhu, with the result that the plaintiff-pre-emptors would be the vendor's father's brother's sons, and in case it was to be treated as appointment of heir under the customary law, even then the plaintiffs were the real brothers of the vendor's natural father. In either case, they had a preferential right of pre-emption. Apparently in the Court of first instance, this proposition of law was not challenged by the learned counsel for the defendants and all that was urged was that Sidhu and Ujagar Singh, being Jats and the appointment of heir being under the customary law, Labh Singh (shown in the pedigree-table as son of Budh Singh) had no right of pre-emption and, therefore, Inder Singh and Desa Singh had also lost their right of pre-emption on account of having joined with

them a stranger. In support of this contention, a decision of the Allahabad High Court reported as *Badri Datt* v. *Shrikishan* (1) was cited. The trial Court did not agree with this contention and it was also noticed that Labh Singh had in fact withdrawn from the suit. It is unnecessary to state the other points urged before the trial Court because they have not been agitated before me. Suffice it to say that the plaintiffs were granted a decree for possession of the land in suit on payment of Rs. 6,200 to the vendee-defendants.

An appeal was preferred to the District Court and was disposed of by Shri Isher Dass Pawar, Additional District Judge, Ambala at Patiala. In the lower appellate Court, the only point argued was that the relationship created by adoption under the Hindu Adoption and Maintenance Act (78 of 1956) is not covered by section 15(1)(a) THIRDLY, of the Punjab Pre-emption Act, and this contention was upheld by the learned Additional District Judge, who felt that the *ratio decidendi* of the Supreme Court decision in *Gulraj Singh* v. *Mota Singh* (2) supported this submission. On this view, the Court held that the plaintiffs had no right to pre-empt the sale in question; the word "appellants" in the judgment is apparently a mistake for the plaintiff. The appeal was thus allowed and reversing the judgment and decree of the trial Court, the suit dismissed.

On second appeal in this Court, on behalf of the appellants, the short submisison made is that the Court below has completely misconceived the legal position and misunderstood the true *ratio decidendi* of the Supreme Court decision in the case of *Gulraj Singh*. I may here reproduce, so far as relevant for our purpose, the provision of the Pre-emption Act in question:—

> "15. (1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—
>
> (a) where the sale is by a sole owner,—
>
> * * * * *;
>
> THIRDLY, in the father's brother or father's brother's son of the vendor;
>
> * * * * *;

(1) A.I.R. 1954 All. 94.
(2) 1964 P.L.R. 746 (S.C.).

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According to the Punjab General Clauses Act (No. 1 of 1898), in all Punjab Acts, unless there is anything repugnant in the subject or context, "son" in the case of anyone whose personal law permits adoption, shall include an adopted son : section 2(54). Similarly "father" in the case of anyone whose personal law permits adoption, shall include the adoptive father: section 2(18). While construing the Punjab Pre-emption Act, therefore, it appears to me that the words "father" and "son" include adoptive father and adopted son. Indeed, this seems to be the policy of the law in the whole of the Union of India because under the General Clauses Act (No. X of 1897) also, in all Central Acts and Regulations, unless there is anything repugnant in the subject or context, "father" and "son" include adoptive father and adopted son, provided the personal law of the parties permits adoption; section 3(20) and (57). The position appears to me to have been made clearer still by section 12 of the Hindu Adoption and Maintenance Act which lays down that 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. By the proviso, some exceptions have been made in the matter of marriage and vesting of property before adoption.

On behalf of the respondents, however, it has been urged that the ratio of the Supreme Court decision would apply to this case and an adopted son or appointed heir under the customary law must be equated with an illegitimate child. Except for the bald assertion, no authority has been cited, nor has any precedent or sound principle been appealed to in support of this proposition and I find myself wholly unable to assent to it.

It is fairly well recognised that the theory of adoption under the Hindu Law contemplates a complete severance of the adopted child from the family of his birth, both in respect of his paternal and maternal lines, and his complete substitution into the adoptor's family as if he were born in it, except in certain limited respects. The adoption has, indeed, the effect of transferring the adoptee from his natural family into that of his adoptor conferring on him

thereby the same rights and privileges in the adoptor's family as the legitimate son except in matters of marriage, adoption and perhaps in regard to share on partition between an adopted and an after-born son. The adoptee loses all the rights of a son in his natural family. As a matter of fact, the adoptee is deemed to be the continuation of his adoptive father's line; the fiction of adoption operating virtually as his civil death in the natural family and a new birth in the adoptive family, subject to the exceptions mentioned above. Broadly put, adoption under Hindu law is the admission of a stranger by birth to the privileges of a child by a legally recognised form of affiliation and in contemplation of Hindu law, an adopted child is deemed to be begotten by the father, who adopts him or for and on behalf of whom he is adopted. As I view things "taking of a son" is a substitute for the failure of male issue and its object is two-fold: (i) to secure the performance of the funeral rights of the person to whom adoption is made and (ii) to preserve the continuance of his lineage. In other words, the main object of adoption under strict Hindu Law seems to be to secure spiritual benefit for the adoptor, though its secondary object is to secure an heir to perpetuate an adoptor's name.

Under the rules of Punjab custom, however, adoption is in no sense connected with religion and apears to me to be a purely secular arrangement resorted to by a sonless owner of land in order to nominate a person to succeed him as his heir, the object being not to secure spiritual or religious benefit but to obtain practical temporal benefit. It is in essence an appointment of heir and creates only a personal relationship between the appointed heir and the appointer, in that the appointed heir does not become the grandson of the appointer's father and his son does not become the grandson of the appointer. There are quite a few decisions of the Lahore High Court clarifying this position.

In the trial Court, the legal position was not challenged but the learned Additional District Judge seems to have permitted the appellants in the Court of first appeal to argue the legal effect of adoption. In that Court also, it was stated to be common ground between the parties that the adoption was under he Hindu Adoption and Maintenance Act of 1956. If that was so, then it is not understood how

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the provisions of section 12 of the said Act could be excluded or got over.

The respondents' learned counsel has, however, tried to seek some assistance from the rules of customary law, but I am unable to see how that law can sustain the contention that the appointed heir becomes an illegitimate son of the appointer. My attention has not been drawn to any provision of the customary law as in force in the Punjab, nor to any provision of Hindu Law, which can have the legal effect of degenerating the adopted son or the appointed heir to the level of an illegitimate child.

As a last resort, it has been submitted that the right of pre-emption being a piratical right, it should not be extended to an adopted son or an appointed heir under the customary law and should be strictly confined to natural born sons. I am again unable to sustain this contention. When it is said by Courts that the right of pre-emption is a piratical right, and that Courts do not view it with favour, it seems to me to mean that there are no equities in favour of a pre-emptor and that a vendee or vendor can both avoid, escape or steer clear of the law of pre-emption by all legitimate and lawful methods and such attempts need not be considered as fraud on the part of the vendee or vendor. A pre-emptor can successfully pre-empt a sale only by strictly bringing his case within the four corners of the law. The right of pre-emption validly created by Legislature in its wisdom, however, deserves to be sustained by the Courts, and this is so out of respect and deference to wisdom and patriotism of the legislative wing of the Government, and reverence to the Constitution. In the case in hand, the Legislature has expressed its intention in quite clear terms and it is not for the Courts to put an unduly strained construction on the clear language used in the legislative instrument. The Legislature must be presumed to have used the clearest way of expressing its intention and it is, therefore, not only proper but necessary to give credit to the Legislature for employing words which most clearly express its meaning. Had the Legislature intended to exclude the adopted son, I dare say, it was quite easy for it to say so in clear words.

For the foregoing reasons, this appeal succeeds and allowing the same, I reverse the judgment and decree of

the learned Additional District Judge and restore that of the Court of first instance. I am informed at the bar that the pre-emption money has already been deposited as directed by the Court of first instance. The appellants are entitled to their costs in this Court as also in the lower appellate Court.

B.R.T.

LETTERS PATENT APPEAL.

Before D. Falshaw, Chief Justice and Mehar Singh, J.

TELU RAM AND ANOTHER,—*Appellants.*

versus

NATHU RAM AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 137 of 1965.

1965

September, 13th

Punjab Panchayat Samitis (Primary Members) Election Rules (1961)—Rules 22 and 28—List of voters prepared under rule 22(4) of the representatives of co-operative societies—Whether exhaustive—Representatives of co-operative societies, whose names not included in the list, appearing with resolutions constituting them representatives—Whether entitled to vote—Constitution of India (1950)—Art. 226—Parties—Whether must confine to pleadings—Petition to challenge election—Whether should be rejected if the grounds stated are such that can be raised in election petition.

Held, that a duly selected representative of a co-operative society whose name could not reach the Assistant Registrar for one reason or the other and whose name was, therefore, not included in the list prepared under sub-rule (4) of rule 22 of the Punjab Panchayat Samitis (Primary Members) Election Rules, 1961, is entitled to vote in the election provided that the Returning Officer is satisfied that such a person had in fact been properly selected by the society. The list prepared by the Assistant Registrar under rule 22(4) is not an ordinary electoral roll in which there is an elaborate procedure for challenging the names entered therein or getting names entered therein which are omitted. It is not an electoral roll at all in the ordinary sense, but merely a list of an electoral college the members of which are to be selected by their own Co-operative Societies. Sub-rule (4) of rule 22 cannot be construed to mean that if duty selected representatives of Co-operative Societies turn up at the election with proper credentials, they should not be permitted to vote under rule 28(3).

Held, that in a writ petition under Article 226 of the Constitution, no party should be allowed to depart from his pleadings and set up a new case.