

Mukund Singh

Vs

Wazir Singh

Civil Appeal No. 1231 of 1967

(Shah, C.J.)

19.01.1971

JUDGMENT

SHAH, C.J. -

1. By the deed dated January 4, 1961 one Harnam Singh made a gift of agricultural land measuring 76 acres 3 bighas in favour of the appellant in appeal. Wazir Singh, respondent to this appeal claiming that he was adopted on July 11, 1947 by Harnam Singh according to Hindu rites and ceremonies challenged the gift of the land which he asserted belonged to the Hindu Joint family of Harnam Singh and himself. The suit filed by Wazir Singh was dismissed by the trial Court. The Court held that Wazir Singh was appointed as heir under the customary law of the Punjab and that he was not adopted according to Hindu rites and ceremonies and on that account Wazir Singh was not competent to challenge the alienation of the gift by Harnam Singh. On appeal, the District Court upheld the claim of Wazir Singh that he was adopted by Harnam Singh according to the Hindu rites and ceremonies and the property which was gifted was part of the coparcenary property and on that account the gift was void. The High Court of Punjab confirmed the decree passed by the District Court. With certificate granted by the High Court, this appeal has been preferred by the appellant.

2. Two contentions are raised in support of the appeal :

(i) In reaching his conclusion that the adoption of Wazir Singh was according to Hindu rites and ceremonies, the District Judge misread documentary evidence and ignored the pleadings of the party.

(ii) That in any case by virtue of Section 30 of the Hindu Succession Act, 1956 it was not open to Wazir Singh to challenge the gift made by his adoptive father Harnam Singh.

3. The deed of adoption which is executed by Harnam Singh in 1947 states that :

"After my death it is necessary that I should have a son to perform any ritual ceremonies. The name of a sonless person vanishes from the mortal world. I have brought up a Wazir son of Mangal, a minor aged 16 years, as a son since his childhood, for the last ten years. Wazir's marriage was also arranged by me and Wazir aforesaid is also looking after me as a natural son. I have adopted Wazir aforesaid, minor son of Mangal, as my son in the presence of the Panchayat, after performing the religious ceremonies. Wazir will be the owner of my property of every kind as my natural son."

4. The recitals in the deed of adoption corroborate the case of Wazir Singh that he was adopted according to Hindu rites and ceremonies in the presence of the Panchayat, and that he was treated as an adopted son. The recitals in the deed are supported by the witnesses examined in the Court of First Instance on behalf of Wazir Singh. Mr. Bishan Narain contended that the District Judge misread the written statement filed by appellant in the Court of first instance and assumed that no plea was raised that the adoption was merely a customary adoption. Granting that a contention was raised that Harnam Singh did not adopt Wazir Singh according to the Hindu rites and ceremonies, the conclusion of the District Judge on appreciation of evidence that the ceremonies of adoption according to Hindu rites were performed, was binding upon the High Court in second appeal. It is conceded, and in our judgment rightly, that a Hindu governed by the customary law in the Punjab is not disentitled to make a formal adoption according to Hindu rites and ceremonies. Harnam Singh could make a customary adoption, he could also make a formal adoption according to Hindu rites and ceremonies. In the present case, the District Judge has found that there was a formal adoption of Wazir Singh according to Hindu rites and ceremonies. That finding was binding upon the High Court sitting in Second appeal. The first contention must, therefore, fail.

5. Section 30 of the Hindu Succession Act provides :

"Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925, or any other law for the time being in force and applicable to Hindus."

"Explanation. - The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavashi, illom, kutumba or kavaru in the property of the tarwad, tavashi, illom, kutumba or kavaru shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this sub-section."

6. Mr. Bishan Narain contended that Section 30 applied not only to disposition by will or other testamentary instruments but also to instruments inter vivos. On the plain terms of Section 30 it is impossible to read Section 30 as applying to disposition inter vivos. Mr. Bishan Narain relied upon Section 13 of the Hindu Adoptions and Maintenance Act of 1964 which reads :

"Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will."

7. But by virtue of his adoption in 1947, Wazir Singh acquired the status of a coparcener. A gift of coparcener's property by a member is void. There is nothing in Section 13 of the Hindu Adoptions and Maintenance Act, 1964 which detracts from that rule.

8. Section 13 applies only where the property after adoption remains capable of being disposed of by the adoptive father as his property. The appeal, therefore, fails and is dismissed with costs.

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