

## LAHORE HIGH COURT

Chanan Singh

Vs

Buta Singh

(Addison, J.)

04.07.1934

### JUDGMENT

#### **Addison, J.**

1. The following pedigree table is necessary in order to understand, the points in dispute in these Appeals Nos. 2209 and 2659 of 1929:

2. The suit relates to the property left by Amar Singh son of Dallu, who died on 27th May 1928. His mother, Mt. Tabo, on the death of her husband Dallu married Kahn Singh and bore Kahn Singh a son Sundar Singh, defendant 5. Chanan Singh, defendant 1, is the grandson of Sundar Singh the half brother of the deceased. Upon the death of Amar Singh this Chanan Singh claimed to have been appointed an heir under the Customary law by Amar Singh when he was 13 or 14 years old about 1921, and the revenue authorities mutated the estate in his favour on 9th July 1928, an appeal to the Collector being also unsuccessful. The branches of the family then sued for a declaration that defendant 1 was not the adopted son of Amar Singh and that they were entitled to get two-thirds of the property left by the deceased. They claimed possession of certain properties which were not in their possession and asked for a declaration with respect to certain properties which were lying unoccupied or which were in the occupation of tenants. Sundar Singh and Jagta, defendants 5 and 4, supported the plea of defendant 1, Chanan Singh, that he was the appointed heir of Amar Singh. Ran Singh and Jowala Singh, defendants 2 and 3, as well as Indar Singh, defendant 6, sided with the plaintiffs as regards the adoption while the two former contended that the deceased had nothing to do with a specified site which belonged to them or with a certain occupancy tenure which they claimed had become theirs by adverse possession. Defendant 1 also raised the plea that the plaintiffs' suit was barred by time as they knew of the adoption more than six years before the suit and took no steps to contest it within that period.

3. The trial judge held that the combined facts proved might have been sufficient to establish a valid adoption but as the appointor had not declared the appointment in the presence of the brotherhood and did not distribute sweets on that occasion, the adoption could not be considered

to be valid for want of this ceremony. He found the suit to be within time except as regards the share which had come to Harnam Singh who was held to have known of the adoption more than six years before suit. As regards the site claimed by defendants 2 and 3, it was held that it did not belong to Amar Singh. It was further held that these two defendants had not established that they had acquired the occupancy tenancy by adverse possession. Lastly it was held that Babu, the appointed heir of Jaimal had no right to succeed to the property left by Amar Singh as an appointed heir did not succeed collaterally. A decree was accordingly given in the following terms: (a) that the plaintiffs' suit for possession of the site claimed by defendants 2 and 3 was dismissed; (b) that the suit so far as Harnam Singh plaintiff was concerned, was dismissed as barred by time; (c) that the suit, so far as Babu plaintiff was concerned was dismissed because he had no right to succeed being an appointed heir, and (d) that the suit so far as the remaining plaintiffs were concerned was decreed to the extent of their ancestral shares in the suit property with the exception of the site claimed by defendants 2 and 3.

4. Defendant 1, Chanan Singh, was ordered to pay half the costs of the successful plaintiffs. Against this decision Chanan Singh appeals while Babu. (and Harnam Singh have preferred a joint appeal against the dismissal of the suit so far as they are concerned.

5. No document was written with reference to the alleged appointment of Chanan Singh as Amar Singh's heir. Amar Singh sold a vacant site to certain carpenters of his own village. Harnam Singh and his son Bhagat Singh brought a suit for a declaration that this sale was without consideration and legal necessity and should not affect the reversionary rights upon the death of Amar Singh while Gurdit Singh, Buta Singh and Ran Singh brought a suit to preempt this site. The plaintiffs in both the suits were reversioner's. The site had been purchased by Amar Singh at ACourt auction and this was a Complete defence to both actions. In the declaratory suit the plaintiffs alleged that Amar Singh had no sons. In the pleas of Amar Singh this was neither denied nor admitted and it had no bearing on the case. Amar Singh was however examined as a witness by the vendees in the declaratory suit and in the course of his statement on the 10th June 1922, he said that his son had died two years before and that he thereafter adopted Chanan Singh, a grandson of his half brother, and that he was going away that day to celebrate his marriage. There is no doubt that Harnam Singh was present when this statement was made and probably also the other plaintiffs in both the suits which were proceeding together. No cross-examination was directed against this statement which appears to have either been accepted or already well known.

6. It has also been established that the next day Amar Singh married Chanan Singh whom he described as his son to Mhhu daughter of Jawala Singh. The entry as regards the name of the bridegroom with his parentage, caste, etc., was written by Amar Singh himself. The marriage was celebrated by Indar Singh Granthi and witnessed by Dalip Singh, lambardar and Dalel Singh. The entry was also signed by Labhu Ram, the keeper of the register. There is ample evidence to establish this marriage and to prove that Chanan Singh was married on 11th June

1922, by Amar Singh as his son. There is also ample evidence that thereafter Chanan Singh lived with Amar Singh and was treated as his son till the day he died. Before his appointment as Amar Singh's heir Chanan Singh was already reading at the Alawalpur School, his father's name being then entered as Dalip Singh. The name "Dalip Singh" continued for sometime, but was altered to "Amar Singh" when he was withdrawn from, that school on 26th April 1924. Thereafter he went to the High School, Jullundur, and the College at Jullundur, and his father's name was then given as Amar Singh. The Head Master and the Principal have come forward to state that Amar Singh used to come to make arrangements about the boy and to look after his interests.

7. There is another document which shows that Amar Singh was treating Chanan Singh as his son. On 19th October 1925, one Budha got a loan of ₹ 40/- from the Co-operative Credit Society to purchase a buffalo. Amar Singh was the president and stood surety for Budha. Amar Singh signed the bond as surety and it was witnessed by Chanan Singh described as the adopted son of Amar Singh. It is thus clear that Amar Singh made a statement in Court on 10th June 1922, alleging the appointment or adoption in question, that the next day he celebrated the marriage of the boy as his son, that thereafter he looked after his education and that he allowed the boy to describe himself as his adopted son or appointed heir and that the boy lived with him as his son.

8. There is also evidence that Amar Singh did call the brotherhood together and distributed sweets at the time when he appointed Chanan Singh as his heir, but this evidence has been rejected by the learned Subordinate Judge. One of the witnesses to this ceremony is Bakhshish Singh, a Jagirdar of the village, in whose house Amar Singh was living at the time. He has deposed that the adoption took place in his presence and in the presence of the brotherhood and that sweets were distributed. This was sometime in 1921. He deposed further that some of the plaintiffs were also present on that occasion. He has not been believed because after the death of Amar Singh he handed over certain bonds left by Amar Singh to the collaterals and not to Chanan Singh and took a receipt from them on 3rd June 1928, when the mutation proceedings were pending. He explained this by saying that he handed over the documents to them because they threatened him with bodily injury. A better explanation can be found in the receipt itself which recited that there was a bond executed in favour of Bakhshish Singh and Amar Singh jointly which would become the property of Bakhshish Singh. In any case the fact that Bakhshish Singh once sided with the collaterals does not injure the case of Chanan Singh; nor can the testimony of Bakhshish Singh be completely rejected on this account. Narinjan Singh Zaildar was not present on the occasion of this adoption, but heard from Amar Singh himself about it. Isa Khan, lambardar, has also deposed to it and he is an independent witness belonging to another community. He had a preemption case with Gurdit Singh plaintiff, but this is not a sufficient reason for rejecting his evidence. Tabu, a jat of the village, has deposed to this ceremony which took place on the platform outside the Qilla or fort of the Jagirdar. There is also no reason to reject his testimony. His son was prosecuted in the Court of the Cantonment Magistrate, but it has not been established that any of the plaintiffs appeared as a witness against him. Budha the person for whom Amar Singh stood surety to the Cooperative Credit Society has deposed that he

was present and so have Sunder Singh, grand-father of the adopted boy, and Jagta his cousin. Taking all this evidence into account as well as the public declaration in Court, the public marriage of the boy as appointed heir or son of Amar Singh and the subsequent treatment I have no hesitation in holding that there was a gathering of the brotherhood at which the boy was publicly declared to be the appointed heir of Amar Singh.

9. any case it seems to me that it would not matter in the circumstances of this case whether there was or was not a gathering of the brotherhood at the time. What is essential is some unequivocal declaration of the appointment which may be manifested by a normal declaration before the brother, hood, by a written declaration or by a long course of treatment. The performance of ceremonies is not essential. Even if we look at the Customary law of this District the same result follows. The relevant portion of the *riwaj-i-am* reads thus:

Q. 71:--Are any formalities necessary to constitute a valid adoption, if so, describe them. State expressly whether the omission of any customary ceremonies will vitiate the adoption?

A:--The essence of adoption is that the fact of adoption be declared before the brotherhood or other residents of the village. The usual practice is that the *Baradari* gathers together and the adaptor declares in their presence the fact of the adoption. Sweets are distributed and a deed of adoption is also drawn up. If these formalities are not observed the adoption is not considered valid.

10. What this answer means obviously is that the appointment should be manifested by some declaration or course of treatment evidencing an unequivocal intention to appoint a specified person as heir. In the answer it is stated that the essence of the adoption is that it should be clearly declared. The succeeding sentence begins with the qualified phrase that the usual practice is that the brotherhood gathers together and a deed is drawn up. It does not lay down that this is essential. What is essential is given in the first sentence. It follows therefore that in this case, whether it be held proved or not proved that there was a gathering of the brotherhood, there was a valid adoption. There are many decisions to the effect that details given in the answers to questions in the various Customary laws are not necessarily mandatory, but may be merely indicative such as, for example, *Shitab Singh v. Hazari Singh*<sup>1</sup> In the answer to question 71 of the *Jullundur riwaj-i-am* this question scarcely arises as what is essential is distinguished from what is not essential in the reply itself. For all the reasons given I would hold that it has been established beyond doubt that there was a valid appointment of Chanan Singh by Amar Singh as his heir under Customary law.

11. It also seems to me that the suit is clearly barred by time. Under Article 3 of the schedule to the Punjab Act 1 of 1920, a suit for a declaration that the alleged appointment of an heir is invalid as being opposed to custom or in fact never took place must be instituted within six years from the date on which the alleged appointment of Jan heir became known to the plaintiff. This suit is for a declaration that the alleged appointment of an heir never took place or in any case

was invalid; so that the period is only six years, from the date on which the alleged appointment became known to the plaintiffs. It is quite clear that Harnam Singh and the other plaintiffs in the two suits tried in 1922, knew that an adoption was alleged to have taken place before that date. It must also have been known to the plaintiffs that Amar Singh married Chanan Singh as his son on 11th June 1922, the day after he had given evidence in Court,. They also knew that thereafter he treated the boy as his son. In my judgment it must be held that the plaintiffs knew on 10th or 11th June 1922, that there

<sup>1</sup>1926 Lah. 20

was an alleged adoption. They did not challenge this adoption within six years and the suit is therefore barred by time.

12. As a result I would accept Appeal No. 2209 of 1929, and dismiss the plaintiffs' suit with costs throughout. As regards the other Appeal No. 2659 of 1929, preferred by Babu and Harnam Singh it automatically fails by the acceptance of the appeal of defendant 1. It also would fail on the merits as an appointed heir does not succeed collaterally and as it is clear that Harnam Singh, certainly knew of the alleged adoption more than six years before the suit was brought. I would therefore dismiss the appeal of Babu and Harnam Singh, but would make no order as to costs in this appeal.

**Beckett, J.**

13. I agree.