**PUNJAB AND HARYANA HIGH COURT**

Gurnam Singh

Vs

Ass Kaur

Civil Regular Second Appeal No. 1271 of 1965

(Surinder Singh, J.)

23.03.1976

**JUDGMENT**

**Surinder Singh, J.**

1. The dispute in relation to the suit property is only between Gurnam Singh defendant-appellant and Shrimati Ass Kaur, plaintiff-respondent No. 1. The other respondents are proforma defendants, who did not contest the suit. A detailed pedigree table is not required to be reproduced and it would suffice to mention the following relationship. The suit property originally belonged to Ganda Singh who had two wives, Shrimati Daya Kaur (elder) and Shrimati Sada Kaur (younger). Shrimati Ass Kaur plaintiff-respondent is the daughter of Ganda Singh from Shrimati Sada Kaur. Gurnam Singh is the grandson of Isher Singh who was real brother of Ganda Singh. Ganda Singh died on November 20, 1937 and in the absence of any male issue. The property left by him devolved upon his two widows, Shrimati Daya Kaur and Shrimati Sada Kaur, in equal shares. Shrimati Daya Kaur died on October 4, 1939, with the result that the surviving widow, Shrimati Sada Kaur, became the owner of the whole of the property. Some years later, to be precise, on June 10, 1957, Shrimati Sada Kaur also departed from this planet. The present suit for recovering possession of the property was launched by Shrimati Ass Kaur, being the heir to the same as daughter of Shrimati Sada Kaur.

2. Gurnam Singh appellant who is in possession of the property resisted the suit with various weapons in his armoury by pleading, *inter alia*, that the suit was not properly valued; that he (appellant) had been validly adopted as a son by Ganda Singh; that Ganda Singh had bequeathed the property in his favour by means of a will and that Shrimati Sada Kaur had, in her lifetime, relinquished all her rights to the property in his favour. It may be stated here that on a previous occasion when the case was heard in this Court before remand, one more ground which was projected by Shrimati Ass Kaur respondent in support of her claim was that her mother Shrimati Sada Kaur had become owner of the property by adverse possession. This ground was also controverted by the appellant. All these disputed contentions of the parties crystallised into the following issues which were framed;

(1) Whether the suit has been properly valued for purposes of court fee and jurisdiction ?

(2) Whether Ganda Singh validly adopted Gurnam Singh defendant ?

(3) Whether Ganda Singh made a valid will about the property in question in favour of Gurnam Singh ?

(4) Whether Sada Kaur relinquished her right in the property in suit in favour of Gurnam Singh defendant, during her lifetime ?

If so what is its effect ?

(4-A) Whether Sada Kaur mother of the plaintiff had become owner of the property in dispute by adverse possession over 12 years ?

Note : This issue was framed after remand by the High Court.

(5) Relief.

3. The decision of the trial Court, in regard to the various issues, may be summarised, issue No. 1 became redundant after the deficiency in the Court fee was made up within the period allowed by the Court. Under issue No. 2, it was held that the appellant was duly adopted by Ganda Singh. The effect of this finding is, however, disputed. The findings under issue No. 3 relating to the due execution of the will by Ganda Singh in favour of Gurnam Singh was returned in the negative. Relinquishment of rights by Shrimati Sada Kaur in favour of the appellant was not found to have been established under issue No. 4. The next issue No. 4-A was also decided in favour of the plaintiff-respondent. As a cumulative result of these findings, based on the conclusion that even though the adoption of the appellant by Ganda Singh stood proved, he could not succeed to the property in the hands of the younger widow, Shrimati Sada Kaur, the suit was decreed in favour of the contesting respondent for the whole of the land in dispute, Gurnam Singh appealed against the verdict of the trial Court but as per decision of the Additional District Judge, Ferozepur, dated July 26, 1965, he failed to obtain any relief. He has cast the net again to catch the illusive fish of success. Let us examine the haul made by him.

4. It would be useful to enumerate the various points stressed upon by the learned counsel for the appellant during the course of his address so that attention may be focussed on these points seriatim. These points are; (i) the will execution whereof is attributed to Ganda Singh in favour of the appellant may be deemed to be duly executed; (ii) Shrimati Sada Kaur, during her lifetime, had relinquished all the rights in the property in dispute in favour of the appellant; (iii) in the alternative, the appellant being the adopted son of Ganda Singh is entitled to share the property in dispute to the extent of one-half along with Shrimati Ass Kaur respondent; and (iv) the finding of the trial Court to the effect that Shrimati Sada Kaur had become owner of the property by adverse possession is not correct and this point though not agitated before the lower Appellate Court, may be considered in this appeal.

5. Point (i) This point is covered by issue No. 3 as framed in the case. Both the Courts below after a detailed scrutiny of the evidence on the record have come to a concurrent finding that the due execution of the will does not stand proved. The lower Appellate Court has given cogent and impressive reasons for coming to this conclusion. The will in question is Exhibit D. 6. It is obvious that the document bears the signatures, purporting to be of Ganda Singh testator, at one

place in the margin and not where such signatures are usually expected to be found, that is, at the conclusion of the document. It is not shown to have been attested by any witness though there is a mention that the document was scribed by Ram Lal Sharma Petition Writer of Ferozepur. It appears that this will was deposited with the Registrar under the provisions of section 4 of the Indian Registration Act (hereinafter called the Act) because the cover (Exhibit D. 7) in which the will was so deposited, contains some sort of an endorsement by use of the word "admitted." Two persons (Mastan Singh and Kala Singh) are indicated as being the identifiers of the deposit of the will. From these circumstances it is sought to be argued that the due execution of the will may be presumed. There is, however, no warrant for this proposition. The execution of a will is to be proved withiin the four corners of section 63 of the Indian Succession Act which clearly lays down that before a will can be accepted as validly executed the same has to be attested by two or more witnesses, each of whom has seen the testator signing the will or to whom the testator has given a personal acknowledgment of his signatures on the will. There is a further provision that each of these two witnesses should have signed the will in the presence of the testator. It cannot be disputed that the law requires strict compliance of this provision of law in the interest of sanctity attached to the document, the author of which is no more in the world. This matter has been coming up for consideration before Courts from times immemorial and the necessity for strict compliance of the provisions of law as aforesaid, has always been emphasised. The learned counsel for the appellant has placed reliance on an English authority cited in *In the Goods of Mann, Deceased*[1], wherein the execution of a will placed in a sealed envelope was accepted. The facts in this case are quite distinguishable. The testatrix had written out her will on a sheet of paper in the presence of two attesting witnesses and after completing the document had placed it in an envelope on which she made an endorsement that this was her last will and testament. Thereafter on the request of the testatrix, the two witnesses in the presence of the testatrix and one another made their attestation on the above mentioned endorsement. All the documents are subsequently placed in another led envelope and delivered to the executrix who kept the same. It was in these premises that it was held that the circumstances were so plain and well-ascertained as to preclude all possibility of fraud, emphasis having been laid on the fact that the will as well as the endorsement on the envelope were written in the presence of the attesting witnesses. This is not so in the case in hand. The only attesting witness produced at the trial, that is, Mastan Singh was found to be not reliable as he made a patently wrong statement that the will was presented before the Registrar within minutes of its execution, although according to documentary evidence the will is shown to have been presented before the Registrar after more than a month of its execution. The statement of Mastan Singh was also found to be contradictory in various other material particulars. The learned counsel for the appellant has made a faint attempt to gain support from certain observations in *Umakanta Das Bairiganjan Bhuyan Mahapatra v. Biswambhar Dass Mahapatra*[2], wherein it was held by on of the Judges constituting the Division Bench that the attestation made by the identifier at the time of presentation of the will under Section 43 of the Registration Act, can be considered as attestation of the will itself. This view was, however, not charged by the other learned Judge who was of the opinion that such a witness was purely a witness to the deposit of the will and not of the will itself as he had no *animus attestandi*. The authority is, therefore, hardly of any utility to the learned counsel for advancing his argument on this point.

6. As against this, there is a clear and to the point decision in *Kunwar Surendra Bahadur Singh v. Thakur Behari Singh*[3], holding that in the absence of evidence to prove that the identifying witnesses who had made an endorsement under Sections 58 and 59 of the Act, were present at

the time of the actual execution of the document, the reason being that the endorsements made at the time of the registration are relevant to the matter of registration alone and for no other purpose. Similarly, in *Sarkar Barnard and Company v. Alok Manjary Kuari*[4], it was held that a person who puts his signature to a deed not in the capacity of a witness but only for signifying his approval of the transaction is not an attesting witness. In a later decision of the Supreme Court reported in *Girja Datt Singh v. Gangotri Datt Singh*[4], , the signatures of two persons appearing at the foot of the endorsement of registration of a will was not construed to have been appended in their capacity as attesting witnesses as the provisions of section 68, Indian Evidence Act, had not been complied with. In regard to the attestation made by the Registrar, on which facts the learned counsel for the appellant seeks to fall back, there is no dearth of authority that the Registering Officer can ever be regarded as an attesting witness if he had not appended his attestation *animo attestandi*, that is, for the purpose of attesting the fact that he had been the executant sign or had received from him a personal acknowledgment of his signatures (*M.L. Abdul Jabbar Sahib v. H. Venkata Sastri and sons*[6], and *Chhaju Ram v. Surindar Kumar*[7], ). In face of these clear dicta of law, there is no scope to accept the contention of the learned counsel as advanced under point (i).

7. Point (ii) coming to the question of relinquishment of the rights by Shrimati Sada Kaur in favour of the appellant, on the basis of some documents, namely, (a) statement said to have been made by Shrimati Sada Kaur before the Panchayat on July 14, 1952 (Exhibit D. 4); (b) the application made by her for sanction of mutation (sought to be proved by Exhibit D. 2); and (c) the report of the Patwari dated August 20, 1953 (Exhibit D. 5), the same have rightly been ignored by the Courts below for the reasons indicated in their judgments. The document (Exhibit D. 4) was found to be inadmissible in evidence. In any case Kartar Singh D. 1/W. 4 had stated that Shrimati Sada Kaur did not thumb mark this document. Arjan Singh P.W. 2, who is supposed to be associated with this document deposed that Shrimati Sada Kaur had not made any such statement in his presence. The document being compulsorily registerable and not having been registered, could not be utilised for proving title to the property. The other document (Exhibit D. 2) being a copy from an entry in a Petition Writer's register was rightly excluded in the absence of proof regarding the original application to which the entry pertained. The report of the Patwari (Exhibit D. 5) also fared no better treatment. There appears to be no escape from a glaring circumstance that a special power of attorney (Exhibit D. 1) was executed by Shrimati Sada Kaur in favour of Gurnam Singh on June 1, 1954, authorising him to recover rent of the suit property from one Sucha Singh. If Shrimati Sada Kaur had actually relinquished all her rights in the property in favour of the appellants as alleged, there was no occasion for the execution of a power of attorney in his favour on a much later date. The conclusion is obvious that the appellant had been from time to time making strenuous efforts to obtain some documentary proof about his supposed title to the property which did not vest in him. The conclusion of the Courts below in regard to this point are quite correct and are hereby affirmed.

8. Point (iii) There is no dispute at this stage that the appellant was adopted by Ganda Singh at the relevant time but what has been mooted is the effect of this adoption. The parties are obviously agriculturists of Punjab to whom the customary law of the State would be applicable. Hardly any reference to a treaties on Customary law would be necessary to state that in the case of application of an heir under the Punjab Customary Law, only a personal relationship is established between the appointed heir and the appointer. There is no transplantation of the adopted son from his natural family into the family of his adoptive father and the appointment affects only the parties thereto. This result is materially different from the effect of an adoption

under the Hindu Law. The learned counsel for the appellant has, however, tried to advance an ingenuous argument that after his adoption by Ganda Singh, the appellant became his son for all intents and purposes and he (appellant) could legally follow the estate in the hands of the widow of Ganda Singh, that is, Shrimati Sada Kaur. It is submitted that for the purpose of succession to the property of Shrimati Sada Kaur the appellant may be treated as her stepson and thus, entitled to share the estate equally with the daughter, that is, Shrimati Ass Kaur respondent. After giving a careful thought to this argument, I find that the same is not tenable. Indeed the trumpcard of the argument in this behalf is *Ram Katori v. Prakashwati*[9], to which we may advert to straightaway. Before doing so, it may be usefully observed, that at the time of death of Shrimati Sada Kaur which took place on June 10, 1957, the Hindu Succession Act had come into force and the rights of the parties are to be determined in the light of that enactment. The relevant provision of the Act is section 15 which may be reproduced for ready reference :

> "15(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 :
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> (a) firstly, upon the sons and daughters (including the children of any predeceased son or daughter) and the husband;
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> (b) secondly upon the heirs of the husband;
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> (c) thirdly, upon the mother and father;
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> (d) fourthly, upon the heirs of the father; and
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> (e) lastly, upon the heirs of the mother.
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> (2) Notwithstanding anything contained in sub-section (1) :
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> (a) Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs is of the father; and
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> (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (i) in the order specified therein, but upon the heirs of the husband."

The dispute in Ram Katori's case (supra) was between the daughter of the last male holder and his daughter from his previous wife, who had predeceased the second wife. While interpreting the various segments of section 15 of the Hindu Succession Act, the Bench drew a distinction in the phraseology "sons and daughter" as used in sub-section (1) clause (a) and the words "son or daughter of the deceased" occurring in sub-section (2) clauses (a) and (b). It was observed that the Legislature had made this distinction to bring all the children of the deceased husband of the female Hindu, within the ambit of the rule laid down in section 15(1)(a) and that the expression "sons and daughters" as used in that clause did not refer only to the sons and daughters of a

female Hindu dying intestate but would also include all the sons and daughters of her deceased husband. This conclusion was drawn only on account of the circumstance that the words "of the deceased" had been deleted from section 15(1)(a). An anxious consideration of this matter, however, leads me to a different conclusion and with due respect to the Hon'ble Judges constituting the Bench, I have not been able to convince myself with the line of argument adopted in that case. In my view, the mere absence of the words " of the deceased" is not so meaningful as to give rise to a conclusion that the same was intended to protect the interests of all other children of the husband of a Hindu female dying intestate, whether in cases where the female had inherited the property from her husband or otherwise. If the intention of the Legislature was to protect the rights and interests of such children, there was nothing to preclude the Legislature from making a specific provision for this purpose either in section 15(2)(b) which relates particularly to the case of property inherited by female Hindu from her husband or at some other convenient part of the statute. To my mind, the exclusion of the words "of the deceased" from sub-clause (a) of sub-section (1) was only a matter of convenience and to avoid repeated use of this phraseology in all the sub-clauses of the sub-section, that is, (a) to (e). Section 15(1) has obviously a reference to the property of female Hindu dying intestate and it enumerates the list of persons upon whom the property is to devolve in the order as shown. There would have been no purpose to use the words "of the deceased", every time a reference was made to the heirs of the Hindu female and if it had been done, it would have served no useful purpose. The omission of the words "of the deceased" in sub-section (1) is therefore, hardly of any significance. On the other hand, if these words had not been used in sub-section (2), there could be a likelihood of confusion which has been avoided. There is another reason for the conclusion which seek to draw in this behalf. If section 15(1)(a) is to be interpreted to mean that all sons and daughters of the husband of the deceased Hindu female are to be considered under its purview, it would cover not only real sons and daughters but even step children and illegitimate children of the husband who can all claim to be "sons and daughters". I am sure, this was not the intention of the Legislature.

9. A reference may be made to some other decisions in regard to the interpretation of the word "son" as used in section 15(1)(a). The observations made in *Mallappa Fakirappa Sanna Nagashetti and others v. Shivappa*[9], may be referred to with advantage. It was held that in the absence of any definition or explanation to the effect that the word "son" would also include a step-son, that word should be given its natural meaning, that is, the male issue of the body of the deceased female. Similarly, in *Rama Ananda Patil. v. Appa Bhima Redekar*[10], emphasis was laid on the fact that the plain and natural implication of the words "sons or daughters of the deceased" is that the son or the daughter should be hers, even though she might have married once or more than once and may have, thus, given birth to children from these marriages, the reason being that these off springs are capable of establishing their blood relation to the female Hindu as a son or a daughter. There is no reason to disagree with this conclusion.

10. While we are on this subject, it may also be observed that the appellant cannot in any case make a claim to the property in the hands of Shrimati Sada Kaur because even if he is treated to be an adopted son of Ganda Singh, the adoption having taken place at the time when the elder widow, Shrimati Daya Kaur, was alive, the appellant can at the most be treated to be the son of Shrimati Daya Kaur and not of Shrimati Sada Kaur. There is evidence on the record to show that at the time of the adoption the appellant was taken in the lap of Shrimati Daya Kaur. If the inheritance was to the state of Shrimati Daya Kaur, the appellant might have put forward a claim

on the basis of being an adopted son but after the death of both parents of the appellant, the link between him and the family of Ganda Singh was disjoined. Shrimati Sada Kaur having become full owner of the property by virtue of the provisions of Hindu Succession Act, it is only her personal heir, that is, her daughter Shrimati Ass Kaur who would inherit her estate to the exclusion of all other relations. I find no merit in the contention of the learned counsel as raised in relation to point (iii).

11. Point (iv) The attack in regard to the finding of the trial Court about Shrimati Sada Kaur having acquired title of the property by adverse possession would not detain us long. The question as to whether Shrimati Sada Kaur had remained in possession as such for the statutory period, is a pure question of face. No grievance in regard to this finding was made before the lower Appellate Court, as is apparent from a perusal of the judgment of that Court. There is no occasion to permit this matter being taken up at the stage of second appeal. More so when, as already observed it is a finding of fact which cannot be disturbed at this stage. The decision on this point must also meet the same fate as the case of other points.

In conclusion, the appeal is found to possess no merit and the same is consequently dismissed. I, however, deem it proper to leave the parties to bear their own costs of the appeal.

Appeal dismissed.

Cases Referred.

11942 Probate Division 146
2AIR 1929 Pat 401
3AIR 1939 PC 112
4AIR 1925 PC 89
5AIR 1955 SC 346
6 AIR 1969 SC 1147
7AIR 1951 Pun 305
8ILR 1968(1) All. 697
9AIR 1962 Mys 140
10AIR 1969 Bom 205