



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**114**

**Date of decision: 09.04.2025**

**Khushi Ram** **RSA-1060-1989(O&M)**  
**...Appellant(s)**

**Vs.**

**Sat Narain** **...Respondent(s)**

**\*\*\***

**Khushi Ram** **RSA-1240-1989(O&M)**  
**...Appellant(s)**

**Vs.**

**Satnarain** **...Respondent(s)**

**CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rahul Jaswal, Advocate  
for the appellant.

**\*\*\***

**NIDHI GUPTA, J.**

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff for declaration, has been dismissed by both the Courts below. The appellant/plaintiff had filed Civil Suit No.24 of 09.08.1980 which was dismissed by the learned Sub-Judge, 1<sup>st</sup> Class, Sonapat vide judgment and decree dated 28.02.1986. Against the said judgment and decree dated 28.2.1986, two appeals were filed: 1) bearing Civil Appeal No.15/13 of 1986 titled as "Khushi Ram Vs. Satnarain" which was filed by the plaintiff; and 2) Civil Appeal No.55/13 of 1986 titled as "Satnarain Vs. Khushi Ram" which



was filed by the defendant/respondent Satnarain. Vide common judgment and decree dated 09.02.1989, the learned Additional District Judge, Sonapat has dismissed the appeal of plaintiff Khushi Ram; whereas the appeal of defendant Satnarain was allowed; and consequently, suit of plaintiff Khushi Ram was dismissed. Hence, present 2 second appeals.

2. Both the present appeals are being disposed of by this common order as they emanate from common judgment and decree of the learned Courts below; as also the facts and issues involved in both the second appeals are identical.

3. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant as the “plaintiff” and the respondent as “the defendant”. For the sake of convenience, the facts are being drawn from RSA-1060-1989 titled as “Khushi Ram Vs. Sat Narain” dated 19.04.1989.

4. Brief facts of the case are that the plaintiff/appellant herein, had filed a suit seeking declaration that he being adopted son of deceased Chhelu is the Dholdhar of the suit land measuring 8 kanal 11 marlas as described in the plaint. It was pleaded in the plaint that Chhelu was issueless. As such, on 16.04.1969, he had adopted the plaintiff in the presence of the brotherhood in respect of which registered Adoption Deed was also executed. It was further pleaded that during the lifetime of Chhelu, his father and plaintiff used to cultivate the suit land though the Revenue



Entries continued in the name of father of Chhelu. However, the defendant in connivance with Halqa Patwari got mutation of inheritance sanctioned in his favour by misrepresenting that he was adopted son of Chhelu; even though no adoption deed was produced by the defendant before the Revenue Authorities nor was any such executed by Chhelu in favour of defendant nor Chhelu had ever treated defendant as his adopted son. It was alleged that the defendant on the basis of mutation of inheritance sanctioned in his favour on 14.06.1979, wanted to take forcible possession of the suit land. Hence, present suit was filed on 9.8.1980.

5. The defendant contested the suit by denying that plaintiff was ever adopted by Chhelu. Specific stand of the defendant was that in actual fact, he/defendant was validly adopted by Chhelu vide registered Adoption Deed dated 7.1.1953. As such, Chhelu had been treating the defendant as his son since 07.01.1953. It was further alleged that plaintiff had no concern with or right in the suit property. Mutation of inheritance of late Chhelu was sanctioned in favour of defendant in respect of which even the appeal of the plaintiff was dismissed. Thus, defendant is owner in possession of the suit land as successor in interest of late Chhelu. Adoption Deed, if any, executed by plaintiff is outcome of fraud and misrepresentation. Accordingly, dismissal of the suit was prayed for.

6. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 26.05.1981:-



- “1. Whether the plaintiff is adopted son of Chhelu deceased and is entitled to inherit Dolidar rights in the suit property as alleged? OPP.
2. Whether defendant is adopted son of Chhelu deceased and is entitled to inherit Dolidar rights in the suit property as alleged? OPD.
3. Whether the suit is not maintainable as alleged? OPD.
4. Whether suit has been properly valued for the purpose of court fee and jurisdiction? OPD.
5. Relief.”

7. On the basis of evidence led by the parties, the learned trial Court decided Issue No.1 against the plaintiff holding that the plaintiff had failed to establish that he was lawfully given in adoption by his natural father with the consent of his natural mother to Chhelu. Issue No.2 was decided against the defendant holding that “...defendant has failed to establish that he was validly adopted as a son by Chhelu...”. Issue No.3 was not pressed at the time of arguments. Issue No.4 was also not pressed by the defendant at the time of arguments; and accordingly, vide judgment and decree dated 28.02.1986, the learned trial Court dismissed the suit of the plaintiff holding that “...plaintiff is not established to be the adopted son of deceased Chhelu and, otherwise as well, he has failed to establish any right in the suit land, as such, his suit fails and the same is hereby dismissed...”.

8. As noted above, 2 appeals, one by the plaintiff and one by the defendant, were filed against the said judgment and decree dated



28.02.1986. Vide common judgment and decree dated 09.02.1989, learned Additional District Judge, Sonapat had dismissed the appeal of plaintiff Khushi Ram bearing No.15/13 of 1986 titled as “Khushi Ram Vs. Satnarain”; whereas the appeal of defendant Satnarain bearing No.55/13 of 1986 titled as “Satnarain Vs. Khushi Ram” was allowed; and consequently, suit of Khushi Ram was dismissed. Hence, present second appeal by the plaintiff.

9. Learned counsel for the plaintiff assails the concurrent judgments and decrees of the learned Courts below by submitting that the learned Courts below have erred in law in deciding the issues No.1 and 3 against the plaintiff as it was fully proved on record that plaintiff was in possession of the suit property. It is submitted that this fact is evident even from the Revenue Record. Moreover, the plaintiff was also proved to be the adopted son of deceased Chhelu, by way of a registered Adoption Deed. It is submitted that registered Adoption Deed would carry the presumption of truth under the mandatory provisions of Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as “the HAM Act”). The said presumption has not been rebutted by the defendant by any cogent evidence. As such, the learned Courts below ought to have held that the plaintiff is proved to be the adopted son of Chhelu.

10. It is further submitted that the learned Courts below have erred in coming to the conclusion that adoption of plaintiff was bad



in law as the said adoption was not proved to be with the consent of natural mother of plaintiff. It is submitted that in this regard, the Id. Courts below have misread the evidence led by the plaintiff especially the testimony of the appellant and other witnesses including the father of the plaintiff which leaves no manner of doubt that adoption was valid and lawful adoption and was made with the consent of the natural mother of the plaintiff.

11. It is further submitted that the Id. lower Appellate Court erred in coming to the conclusion that defendant was proved to be adopted son of Chhelu. It is contended that the factum of said adoption was never proved by the defendant. Furthermore, even if factum of adoption of the defendant by Chhelu was to be assumed, defendant could not possibly have been adopted by Chhelu as defendant was the son of sister of Chhelu and was also the only son of his natural parents. Therefore both, under custom and Hindu Law, no person could adopt the son of a lady whom he could not marry, as also no person could adopt the only son of natural parents.

12. It is lastly contended that learned lower Appellate Court has also erred in law in overlooking the fact that there was absolutely no evidence to show that defendant had ever lived with Chhelu or was ever described as his son or was married by him or was brought up



by him or served by him. It is accordingly prayed that the impugned judgments and decrees of the learned Courts below be set aside.

13. No other argument is made on behalf of the appellant.

14. I have heard learned counsel for the appellant and perused the case file in great detail.

15. I find no merit in the submissions made on behalf of the appellant. The plaintiff in support of his case had produced 7 witnesses including himself and his natural father. At this stage, it may be noted that although natural mother of the plaintiff was alive however, she was not examined. In my considered opinion, the factum of non-examination of natural mother of the plaintiff gives weight to the assertion that the alleged adoption of plaintiff by Chhelu was not with the consent of his natural mother.

16. It is also to be noted that except for the plaintiff/PW2 and uncle of the plaintiff/PW3, none of the other witnesses produced by the plaintiff have deposed that the alleged adoption was with the consent of both the parents. Needless to say, the statement of the plaintiff to this effect that his adoption was with the consent of his natural mother, is to be discounted keeping in view the fact that he is interested witness and would not give a statement contrary to his own interest. However, it is to be noted that in fact, even father of the plaintiff/PW7 has not admitted in his evidence that at the time of alleged adoption his wife was also present



along with him; or that plaintiff was given in adoption by him and his wife together. Moreover, the time of execution of Adoption Deed (Ex.P1) given by PW7 differs from that given by PW3/uncle of the plaintiff. Furthermore, other plaintiff witnesses, namely, PW4, PW5 and PW6 all of whom claimed themselves to be witness of the adoption ceremonies, do not mention the presence or consent of natural mother of the plaintiff at the time of alleged adoption. Even further, these witnesses i.e. PW4, PW5 and PW6 had made another contradictory statement to be effect, that plaintiff was given in adoption by his natural father to the adopted father of Chhelu, and not to Chhelu. Furthermore, no documentary evidence like ration card, voter list, etc. was produced by the plaintiff on record to show that plaintiff was son of deceased Chhelu. From the above facts, it stands established that neither the presence nor the participation of the natural mother of the plaintiff at the time of alleged adoption is made out, let alone her consent.

17. Next, in order to prove the Adoption Deed (Ex.P1), the scribe was not examined as he was dead. Only one attesting witness PW4 was examined. However, PW4 had deposed to the effect that the alleged adoption, and execution, and registration of the Adoption Deed were made in his presence on the same day i.e. 16.4.1969. This is contrary to the evidence of the other plaintiff witnesses including PW7/father of the plaintiff who had deposed that Adoption Deed (Ex.P1) was executed and



registered the day *after* the adoption had taken place. As such, credibility and veracity of Adoption Deed could not be proven in accordance with law.

18. Further, in holding that defendant was also not proven to be adopted son of Chhelu, the learned trial Court had observed that defendant had always been recorded as son of Kanwar Singh and never as the son of Chhelu. Learned trial Court further took note of the fact that Adoption Deed of the defendant (Ex.DW4/1) is not properly proved, the scribe is dead, and although DW4 (Parshautam Dutt) had identified the signature, handwriting etc. of the scribe but the said Adoption Deed (Ex.DW4/1) was not put to any of the other witnesses i.e. DW2, DW3 and DW5 who claimed to be witnesses thereto. The said witnesses DW2, DW3 and DW5 were not asked to depose if the produced Deed (Ex.DW4/1) was original and were also not asked if the said document carried their thumb impressions, etc. Thus, signatures, thumb impressions of any of the witnesses on the Adoption Deed (Ex.DW4/1) were not proven; and therefore, the authenticity of said Deed Ex.DW4/1 was held to be not proven. However, in appeal, the learned lower Appellate Court set aside the above said findings of the learned trial Court in respect of the defendant by taking into account several other relevant factors which had been ignored by the learned trial court.



19. It is admitted fact on record that the defendant had been earlier adopted by Chhelu vide registered Adoption Deed dated 7.1.1953; whereas the plaintiff is alleged to have been adopted several years subsequent thereto vide Adoption Deed dated 16.4.1969. In this admitted circumstance, it would be but natural that the subsequent Adoption Deed in favour of the plaintiff (Ex.P1) would mention the factum of the previous adoption of the defendant by Chhelu and whether the said adoption was cancelled or not. However, Adoption Deed Ex.P1 made no such mention. Thus, as Ex.P1/Adoption Deed in favour of the plaintiff did not contain any writing with reference to the earlier adoption of defendant by Chhelu, or whether the same was cancelled, it cast shadow of doubt upon the Adoption Deed (Ex.P1). Moreover, attesting witness of Ex.P1 namely Bharta who was the only witness from the village, was not examined. It had further been claimed by plaintiff that he had started living with Chhelu after adoption. As such, it is to be presumed that plaintiff would know the names and details of the relatives of Chhelu but in his evidence, he could not tell the names of any of the three sisters of Chhelu.

20. Further, it was established on record that at the time of adoption, the defendant was 3-and-a-half years old as also recorded in the Adoption Deed (Ex.DW4/1); whereas as per his own statement, the plaintiff has admitted that he was 15 years old at the time of adoption.



Thus, as per provisions of Section 10 HAM Act, 1956, adoption of plaintiff is barred; whereas, as adoption of defendant was of the year 1953 as such, provisions of HAM Act 1956 would not be applicable to the said adoption.

21. Further, although the argument to this effect has been raised by Id. counsel for the plaintiff, yet he has been unable to point out any custom that bars the adoption of defendant by his maternal uncle. On the contrary, it is more feasible and likely that Chhelu would want to adopt someone from amongst his own family and kinsmen. In fact, though DW5 Kanwar Singh/father of the defendant had specifically deposed that there was a custom amongst them in which sister's son could be validly adopted, yet DW5 was not cross-examined on that point by the plaintiff. Learned lower Appellate Court has also taken note of the fact that it is clearly provided in *Riwaz-e-am* of Sonapat Tehsil in question No.86 that a sister's or daughter's son can be validly adopted as a son.

22. Moreover, the DW2 and DW3 who were not interested witnesses had consistently deposed that defendant was adopted by Chhelu. This evidence was corroborated by evidence of Kanwar Singh/father of the defendant. By the consistent testimony of all the defendant witnesses, it was proven that the defendant was given in adoption to Chhelu with the consent of both his natural parents. It is also to be noted that the adoption of the defendant was of 1953; whereas the



suit was filed by the plaintiff 27 years thereafter in 1980. Thus, with passage of time presumption would be drawn in favour of the defendant. It was in this background that the lower Appellate Court had reversed the findings of the Id. trial Court in respect of the defendant and had held that the defendant had been validly adopted by Chhelu.

23. Learned lower Appellate Court further held that it was not established that Adoption Deed (Ex.P1) in favour of the plaintiff was got executed by Chhelu as neither its contents were proved by the plaintiff from the plaintiff evidence nor did it carry any mention of the previous adoption of defendant and whether the same was subsisting or cancelled. As such, it was held that there was no presumption of valid adoption by registered Adoption Deed in this case.

24. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. I am in agreement with the above findings and observations of the learned Courts below.

25. In view of the above, present appeals are **dismissed**.

26. Pending application(s) if any also stand(s) disposed of.

**09.04.2025**  
Sunena

**(Nidhi Gupta)**  
Judge

Whether speaking/reasoned: Yes/No  
Whether reportable: Yes/No