



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-1025-2012(O&M)

Date of Decision: 24.07.2025

Abdul Rashid and others

....Appellants

Versus

Smt. Parmina and others

....Respondents

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

Present: - Mr. Sukhandeep Singh, Advocate for  
Mr. Lokesh Sinhal, Advocate for the appellants.

Mr. Akshit Mehta and Mr. Johan Kumar, Advocates  
for respondents No. 1 and 2.

**NIDHI GUPTA, J.**

1. The plaintiffs are in second appeal against the concurrent judgments and decrees of both the Courts below whereby the suit for declaration filed by the appellants, has been dismissed by both Courts.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants is being referred to as 'the plaintiffs, whereas the respondents as 'the defendants'.

3. Brief facts of the case are that the plaintiffs had filed a suit seeking declaration that the Adoption Deed dated 15.03.2007 executed by defendant No. 1 in favour of defendant No. 2 is wrong, illegal, null and void and against existing custom. The facts as pleaded in the plaint were that late Mustaq S/o Abdul Majid, husband of defendant No. 1 was co-owner-sharer in the suit land. The suit land was ancestral land of plaintiffs in the hands of defendant No. 1. Defendant No. 1 had executed Adoption Deed Ex. D-1 in favour of the son of the real sister of the plaintiffs. It was



pleaded that the said Adoption Deed was illegal, null and void as, as per Muslim law, land could devolve only upon male collaterals. With these pleadings, civil suit was filed on 02.05.2007.

4. Upon notice, the suit was resisted by the defendants No. 1 and 2 by way of filing written statement, taking preliminary objections regarding maintainability of suit; *locus standi*; estoppel; and that the suit is barred by Order II Rule 2 CPC.

5. No replication was filed by the plaintiffs. On the basis of the pleadings of the parties, following issues were framed by the trial Court: -

- “1. *Whether the plaintiffs are entitled to the relief of declaration as prayed for? OPP*
2. *Whether the suit of plaintiffs is not maintainable? OPP*
3. *Whether the plaintiffs have no locus standi to file the present suit? OPD*
4. *Whether the plaintiffs are estopped from filing the present suit by their own act and conduct? OPD*
5. *Whether the suit is barred by Order 2 Rule 2 CPC? OPD?*
6. *Relief.”*

6. Upon appraisal and consideration of the pleadings, as also the evidence adduced by the parties, the learned trial Court had decided issues No. 1, 2 and 3 against the plaintiffs; issue Nos. 4 and 5 in favour of the plaintiffs and against the defendants; and accordingly vide judgment and decree dated 06.10.2020, the suit of the plaintiffs was dismissed. The appeal filed by the plaintiffs-appellants was dismissed by the learned lower Appellate Court vide impugned judgment and decree dated 01.11.2011. Hence, the present second appeal by the plaintiffs.



7. It is, *inter alia*, submitted by learned counsel for appellant-plaintiffs that both the Courts below were in patent error in non-suiting the appellants as the appellants have duly proved that they were entitled to decree of declaration. It is submitted that both the Courts below have failed to appreciate that defendant No.1 being the Muslim widow has only limited right in the estate left behind by her husband. She could not have appointed anybody to succeed her as, after her death, as per Muslim custom after the death of the widow, the property left behind by her husband would vest in the nearest male collaterals. It is contended that both the Courts below have non-suited the plaintiffs by relying upon the judgments which are not applicable in the present case. All the judgments as have been relied upon by the learned Courts below while holding that widow could have adopted any child as per her choice even without the authority of her deceased husband are in the case where parties were Hindus and not Muslims. Both the Courts below have also wrongly upheld the adoption deed Ex.D1. The plaintiffs have proved on record by leading cogent evidence that the adoption deed is only paper transaction and no ceremony of adoption had taken place. The Courts below failed to notice the statements of DW1, DW2 and DW5 examined by defendants to prove the adoption deed, are contradictory to each other and are therefore, not trustworthy. The Courts below have wrongly relied upon the statements of the above said witnesses to hold that the adoption deed Ex. D1 was duly executed.

8. Further, it is submitted that there is no concept of adoption under the Muslim Law. It is argued that therefore, as per law laid down by



the Hon'ble Supreme Court, Secular Law would apply viz the Juvenile Justice (Care and Protection of Children) Act, 2015; and adoption if any would be governed by CARA. On the other hand, while non-suiting the appellant-plaintiffs the Lower Appellate Court has wrongly relied upon Section 16 of the Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'the 1956 Act') while drawing presumption that adoption deed Ex. D1 being the registered document would be presumed executed and registered in the manner prescribed in the 1956 Act. Admittedly, all the parties to the suit as well as to the adoption deed are Muslims and, therefore, provisions of the Act, 1956 would not be applicable in the present case. It is accordingly prayed that the judgments and decrees of both the Courts below dated 06.10.2010 of the learned trial Court and dated 01.11.2011, passed by the learned lower Appellate Court may be set aside and suit of the plaintiff be decreed.

9. *Per Contra*, learned counsel for the defendant-respondents vehemently opposes the submissions made on behalf of the plaintiff and submits that the plaintiffs are *Meo Muslims* and as such, they were governed by the Customary Law wherein adoption is admitted. It is submitted that in actual fact, the *Meo Muslims* have converted to *Rajputs*, therefore, they are governed by *Riwaz-i-am*.

10. It is further submitted that DW-5 collateral and brother of the plaintiffs had deposed that collaterals themselves have consented to the adoption. It is also submitted that Adoption Deed Ex. D-1 is a registered document, therefore, presumption of truth is attached to it. Furthermore, the Lower Appellate Court had only referred to Section 16



of the 1956 Act; and has not relied upon the provision to non-suit the plaintiffs.

11. No other argument is raised by ld. counsel for the parties.

12. I have heard ld. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant/plaintiffs.

13. Lt. Mustaq s/o Abdul Majid, husband of defendant No. 1 was co-owner sharer in agricultural land. It is admitted fact that Suit land was/is ancestral land of plaintiffs in the hands of defendant No. 1 previously in the hands of Mustaq. Defendant No. 1 and her husband had no male issue; and plaintiffs and defendants No. 3 and 4 are nearest collaterals of husband of defendant No. 1. Parties to the suit are Meo by Caste and governed by Agricultural Custody prevailing in area District Gurugram/Mewat in the matter of alienation and succession. As per said custom property in the hands of Meo proprietor is inherited by his widow in the absence of son, as limited owner. She can only enjoy the same during her lifetime for her maintenance and survival and on her death same is inherited by the nearest collaterals of said proprietor. A sonless Meo proprietor can only adopt his Kinsman and appoint him his heir by way of adoption with the consent of his collaterals and adoption and alienation made in contravention of existing customs is null. Mustaq died without leaving any Male Issue except Defendant no.1. As such, suit land inherited by her. It was alleged by the plaintiffs that the Defendant No. 1 in order to deprive the plaintiffs from their legal rights, was bent upon to alienate the suit land illegally. In this background, the plaintiffs had



previously filed a Civil Suit for permanent injunction restraining defendant No. 1 from alienating suit land and also appointing heir by way of Adoption before Civil Court. Said suit was pending and after issuance of notice defendant No. 1 in collusion with father and mother of defendant no. 2 and defendants No. 3 and 4 to defeat rights of plaintiffs executed present impugned Adoption Deed No. 19 dated 15.03.2007 in favour of defendant No. 2.

14. However, the said contentions of the appellant are liable to be rejected as first and foremost, the Adoption Deed stood proven from the voluminous evidence led by the defendant no.1. DW-1 Jameel who was witness in the Adoption Deed deposed that Parmina W/o Mustaq adopted Zakir Houssain S/o Farukh. Ceremonies of adoption were performed in village. Sweets were distributed. Adoption deed was executed and registered. He (DW-1) appended his signatures on the adoption deed as witness. DW-2 Farukh who is the natural father of defendant no. 2 (Zakir Hussain), specifically deposed about the factum of the adoption. DW-3 Subhash Chand who was photographer, duly proved the photographs and its negatives taken at the time of adoption. DW-4 Tula Ram (Advocate) who has scribed the Adoption Deed Ex. D-1 led evidence to prove the same. DW-5 Israil (Defendant no. 3) who is real brother of plaintiff no. 1 and uncle of remaining plaintiffs, deposed about the factum of adoption ceremonies, photographs of adoption ceremonies and execution and registration of Adoption Deed and he categorically stated that Defendant no 1 adopted Defendant no. 2 with the consent of plaintiffs and defendants no. 3 & 4. DW-6 Maqsood also deposed on the



lines of other witnesses. No evidence was placed on record to prove the plaintiffs' allegation that adoption deed Ex. D-1 is forged document. Hence, it is proved that defendant no. 1 adopted defendant no. 2. Execution and registration of Adoption deed in question is also proved on record.

15. Defendant no.1 also produced sufficient documentary evidence in the form of Ex. P-12 is the Certified copy of Mutation No. 1860 which was sanctioned in favour of defendant No. 1 after the death of Mustaq. Ex. P-14 is the certified copy of Mutation No. 1425 which was sanctioned in favour of Mustaq after the death of Mohd. Majid. Defendant No. 1 produced original Adoption Deed Ex. D-1; and Ex. D-2 copy of Ration Card wherein defendant No. 2 has been shown as adopted son. Ex. D-3 certificate issued by the Inspector Food Supply to prove that name of defendant No. 2 was deleted from Ration Card of Farukh.

16. Furthermore, is to be noted that the Ex.D1 is a registered document and validly executed by the parties concerned. Being a registered document, there is a presumption of truth and genuineness attached to it. In support of this principal reference may be made to judgment of the Hon'ble Supreme Court in **Prem Singh and others v. Birbal and others, (SC) : Law Finder Doc Id # 120585.**

17. The appellants have failed to rebut this presumption on the basis of the evidence available on the record.

18. With regard to argument of the appellants regarding application of Section 16 of the 1956 Act, suffice it to say that in the present case, even if the presumption under Section 16 of HAMA doesn't



applies on the Muslims, this case is covered under the presumption held in the case of **Prem Singh's case (supra)**.

19. As regards, the argument of the appellant that the Muslim widow has no right to appoint any heir without there being a definite authority in this regard by her husband, it is an admitted fact by the appellants that the present parties are governed by the Meo Customs prevalent in the locality. By virtue of these customs the Adoption was done. Here it is pertinent to mention that, even if it is presumed that there is no authority by the husband for the adoption, the Adoption still remains valid as the customs governing are not mandatory in nature but are merely directory. In the case of **Hem Singh and another Vs. Harnam Singh and another, Law Finder Doc Id # 113348**, the Hon'ble Apex Court has held that while determining the nature of custom has to be seen whether it is mandatory or directory, the essential characteristics has to be seen. However, where the question is related to adoption and where the object of adoption is to appoint heir under the customary law, such kind of governing customs are held to be directory in nature. Para No. 17 of the judgment is relevant: -

*“17. Whether a particular rule recorded in the Riwaj-i-am is mandatory or directory must depend on what is the essential characteristic of the custom. Under the Hindu Law adoption is primarily a religious act intended to confer spiritual benefit on the adopter and some of the rules have, therefore, been held to be mandatory and compliance with them regarded as a condition of the validity of the adoption. On the other hand, under the Customary Law in the Punjab, adoption is secular in character, the object being to appoint an heir and the rules relating to ceremonies and to preferences in selection have to be held to be directory and adoptions made in disregard of them are not invalid.”*



20. On a direct Court query, learned counsel for the appellants has admitted that the appellants are *Meo Muslims* and are therefore governed by Customary Law. It is admitted that there have been numerous adoptions of Sister's son in *Meo* community in the Gurgaon region of Haryana; and that it has now become a recognised and established precedent. Moreover, the prevalent customary law is secular in nature and as per said customary law a widow can adopt a child as per her choice and even the authority of husband is directory in nature, but not mandatory. On the other hand, the plaintiff has not been able to prove custom with regard to his case and could not cite any law.

21. As regards, the question whether a Muslim widow being a limited life interest in the property left behind by her husband can defeat the rights of the male collaterals by appointing an heir, it is to be noted that the DW-5 Isrial has deposed that the appellants and other collaterals have given their consent to adopt the child. Hence, this is a case where no rights are defeated but the rights are voluntarily waived by the appellants. The defendant no. 2 (Zakir Hussain) was adopted with the consent of the plaintiff and Defendants no. 3 & 4 who are real brothers of the plaintiff (Collateral). It is settled law that requirements as to ceremonies or selection of person to be adopted or husband authority are not mandatory but directory in nature. The Id. Courts below also relied upon case laws while deciding the issue relating to the adoption and held that even if the consent of collateral is not obtained it makes no difference to the validity of adoption as such kind of requirement is only directory in nature under local customs applying to the *Meo Muslims*.



22. In view of the facts and submissions noted here-in-above,  
the present appeal is **dismissed**.

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

**24.07.2025**  
*rishu*

**( NIDHI GUPTA )**  
**JUDGE**

**Whether speaking/reasoned Yes/No**

**Whether Reportable Yes/No**