

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

249

FAO-3727-2024

Reserved on 02.07.2025

Date of Pronouncement: **July 11, 2025**

Surender Singh Tewatia

....Appellant

**VERSUS**

Rakhi and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL  
HON'BLE MR. JUSTICE ROHIT KAPOOR**

Present : Dr. Pankaj Nanhera, Advocate for the appellant.  
Mr. Sanjiv Kumar Aggarwal, Advocate for the respondents.  
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**ROHIT KAPOOR, J.**

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984, (hereinafter referred to as the 'Act of 1984'), assailing the correctness of the judgment and decree dated 18.5.2024 passed by the learned Additional Principal Judge, Family Court, Faridabad, whereby the appellant's petition seeking guardianship of the minor child Divyansh, has been dismissed.

**I. BRIEF FACTS OF THE CASE:**

2. The appellant, who is the paternal uncle of the minor, filed a petition under Sections 7, 8, 9 and 10 of the Guardian and Wards Act, 1890 before the Family Court, Faridabad on 16.8.2019 for being appointed as guardian of the minor. Undisputedly the father of the minor, Sh. Jatinder Singh Tewatia, who was the younger brother of the appellant, has died on 5.3.2016. The Appellant in his petition alleged, that after the death of his

brother, the parents of the appellant made a suggestion to respondent No.1, the widow of the deceased and mother of the minor, to get remarried with the younger brother of the deceased, who was settled in USA. However, she did not accede to the said request. It is further alleged that respondent No.1 went away to her parental home at village Badarpur Sed, District Faridabad and took the minor with her. In the last week of December 2016, it was learnt that respondent No.1 had performed second marriage with one Narbir Singh Rawat, and was now residing with him. The parents of the appellant went to her village and asked for the custody of the minor, however, she sought some time for the said purpose. In the last week of February 2017, when they again visited the house of respondent No.1, she apprised them that she had given the child in adoption to respondents No.2 and 3 on 30.10.2017, allegedly due to the reason that they were pressurising her for repayment of a loan advanced to her deceased husband and since the said amount had not been paid by the father of the appellant, therefore, in lieu of the repayment, she gave the minor in adoption to the said respondents. It is also alleged that upon enquiry, they came to know that neither any function was performed regarding adoption where actual giving and taking of boy was done, nor any ceremony was held. Subsequently, upon enquiry it was found that a false deed titled as "Godnaama" was registered on 30.1.2017 in the office of the Registrar, Sub Office at Sub Tehsil Tigaon, Faridabad. It was alleged that the adoption deed dated 30.1.2017 is null and void on several counts and it was ultimately prayed that the appellant be appointed as guardian of the minor.

3. Respondent No.1 in her written statement took preliminary objections regarding maintainability, cause of action and locus standi etc.

besides denying the averments made in the petition on merits. She *inter-alia* took the stand that she being the biological mother was competent to give the minor in adoption to respondents No.2 and 3 and that the minor is living happily with the said respondents since 30.1.2017. It is further stated that there is a presumption regarding the adoption which is duly registered under the law. It was also stated that the appellant, who is married and is having two daughters, is not competent to apply for the guardianship of the minor. It was alleged that the only intention of filing of the petition is to harass the respondents. It was specifically mentioned that the grand-father of the minor had executed a Will dated 23.10.2019 in which he admitted that respondent No.1 is living separately with her child and would not be entitled to any share in the property after his death, thus, showing that there was no love or affection for the minor.

4. Respondents No.2 and 3 in their written statement stated that as a result of the adoption deed dated 30.1.2017, the minor, who has now been re-named as 'Aaditya', is living comfortably with them and has developed deep love and affection with them and they are deemed as a natural guardian of the said minor under Section 12 of the Hindu Minority and Guardianship Act, 1956. They adopted the stand taken by respondent No.1 in her written statement regarding validity of the adoption deed and re-iterated that they have sufficient means and capacity to maintain the minor.

5. From the pleadings of the parties, the following points for determination were formulated by the learned Family Court on 6.12.2021:-

*“1. Whether the petitioner-Surender Singh is entitled to the custody of the child namely Aditya on the grounds pleaded in the petition?OPP.*

*2. Whether the petition is not maintainable?OPR.*

3. *Whether the petitioner was estopped from claiming guardianship of the minor child?OPP.*

4. *Relief.”*

6. The parties led their respective evidence.

7. The learned Family Court after considering the arguments and pleadings of the parties, while deciding issues No.1 and 2 together, held that the appellant in essence was challenging the validity of the adoption deed dated 30.1.2017 in the petition filed under the Guardianship and Wards Act. In the circumstances, the learned Family Court adjudicated the question regarding its jurisdiction to adjudicate an issue pertaining to the validity of an adoption deed. After considering the statutory provisions of the Act of 1984 and by relying upon the decision in “**Kuldeep Kumar and another Vs. Sh. Naveen Kumar and another, 2017 SCC Online ALL 4082** and **Satya Narayan Prasad Gupta @ Sato Sao @ Satya Prakash Prasad Vs. Bijay Kumar Gupta, AIR 2023 Patna 154**, it came to the conclusion that the proceedings relating to ‘adoption’, cannot be considered by the Family Court. It was further held that once the question regarding the validity of the alleged adoption deed is adjudicated by the Court of competent jurisdiction, the question of appointment of the appellant as guardian and consequently handing over the custody of the minor to him, can be adjudicated by the Family Court.

## II. Arguments addressed:

8. Learned counsel appearing on behalf of the appellant has argued that the issue pertaining to custody and guardianship invariably includes the issue pertaining to adoption, as the final result of the adoption deed ultimately bestows the custody and the guardianship of the minor

child. Second argument raised is that the that the harmonious reading of the provisions of Sections 7, 8 and 10 of the Act of 1984, would lead to the conclusion that matters of adoption, which are fundamentally linked to the custody and the guardianship of the minor, fall within the purview of the Family Court's jurisdiction. Lastly, reliance was placed on the judgments passed in '**Geeta Rani and another Vs. General Public, 2021 (4) PLR 673, Thomas P and another Vs. State of Kerala and others, 2022 (1) ILR Kerala 73 and Nasima Banu and another Vs. Shabas Khan and others, 2023 ILR Karnataka 4501**', and it is argued that it has been held in the said judgments, that the Family Courts would have jurisdiction with regard to adoption matters.

9. Per contra, the learned counsel appearing on behalf of the respondents has *inter-alia* argued that language of the statutory provisions of the Family Courts Act, 1984 makes it abundantly clear that jurisdiction regarding adoption matters has not been vested upon such Courts. It is further argued that the decision of the Family Court dated 18.5.2024 does not suffer from any infirmity and the appeal deserves to be dismissed.

### **III. Analysis and Discussion:**

10. The solitary issue that requires adjudication in the present appeal is that whether the Family Courts established under Section 3 of the Act of 1984, have jurisdiction to decide the question pertaining to the validity of an adoption deed.

11. Before we examine the relevant provisions of the Act of 1984, it is apposite to note that under the Hindu Adoption and Maintenance Act, 1956 (HAMA), Chapter II provides for

‘ADOPTION’ while chapter III pertains to ‘MAINTENANCE’. The reason for making a reference to the same, will be clear in our discussion below.

12. From a perusal of the statement of objects and reasons of the Act of 1984, it is clear that the requirement for setting up of Family Courts was felt, when several associations of women, other organizations and individuals urged from time to time, that such courts be set up for the settlement of Family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59<sup>th</sup> Report (1974) had also stressed that in dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts of settlement before the commencement of the trial. The Family Courts Bill *inter-alia* sought to exclusively provide within the jurisdiction of the Family Courts matters *inter-alia* relating to guardianship of a person of the custody of any minor and maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure, 1973.

13. Thus, the Act of 1984 was enacted with the aforementioned objects. Chapter III of the said Act pertains to ‘JURISDICTION’. Section 7 & 8 of the Act, are reproduced hereunder:-

*“CHAPTER III*

*JURISDICTION*

7. *Jurisdiction. - (1) Subject to the other provisions of this Act, a Family Court shall -*

*(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation: and*

*(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.*

*Explanation -The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely: -*

*(a) a suit or proceeding between the parties to a marriage for decree of a nullity marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*

*(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;*

*(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*

*(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship:*

*(e) a suit or proceeding for a declaration as to the legitimacy of any person;*

*(f) a suit or proceeding for maintenance;*

*(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.*

*(2) Subject to the other provisions of this Act a Family Court shall also have and exercise -*

*(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and*

*(b) such other jurisdiction as may be conferred on it by any other enactment.*

8. *Exclusion of jurisdiction and pending proceedings. - Where a Family Court has been established for any area:*

*(a) no district Court or any subordinate Civil Court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;*

*(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);*

*(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) –*

*(i) which is pending immediately before the establishment of such Family Court before district Court or subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and*

*(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act has come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established;”*

14. Thus, from a careful perusal of the aforementioned provisions, it is absolutely clear that the Parliament in its wisdom, did not vest the Family Courts with the jurisdiction to adjudicate the matters pertaining to adoption, while conspicuously, it has inter-alia conferred jurisdiction qua matters specified under Sub-Section (1) Explanation (g) to such courts, which pertains to a suit or proceedings in relation to the guardianship of the person or the custody of, or access to any minor. This has been done despite the fact that both ‘Adoption’ and ‘Maintenance’ of persons covered under Section 2 of the Hindu Adoptions & Maintenance Act, 1956, are governed by the said legislation (HAMA), as mentioned above.

The said exclusion, to our mind is a conscience decision by the Parliament, keeping in view the overall scheme of the Family Courts Act, where a speedy, less formal, and conciliatory procedure is required to be followed, which may not be suitable for deciding disputes pertaining to the validity of an adoption deed.

15. The matter may be examined from another angle. As per Section 9 of the Civil Procedure Code, the Court has jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. However, exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but such exclusion must be either explicitly expressed or clearly implied as **Hon'ble Supreme Court** in '*Dhulabhai v. State of M.P.*, (1968) 3 SCR 662' has held that the jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. The ouster of the jurisdiction of a Civil Court is not to be lightly inferred and can only be established if there is an express provision of law or is clearly implied.

16. Hon'ble Supreme Court in para 41 of '*Ramchandra Dagdu Sonavane v. Vithu Hira Mahr*, (2009) 10 SCC 273' has observed that as regards whether there is valid adoption or not, that question pertains to the status and legal character of an individual, which falls within the purview of Section 34 of the Specific Relief Act, 1963 and a suit for declaration before a civil court is maintainable.

17. Therefore, the first submission of the Appellant that the issue pertaining to custody and guardianship invariably includes the issue pertaining to adoption, as the final result of the adoption deed ultimately bestows the custody and the guardianship of the minor child and therefore the family courts would have deemed jurisdiction in adoption matters, lacks merit. Exclusion of the jurisdiction of the Civil Court has to be express and specifically conferred upon a Special Court and cannot be deemed. As discussed above, the Parliament has not conferred the jurisdiction of suits or proceedings pertaining to 'adoption' upon the Family Courts.

18. The Second argument raised by the Appellant also does not have substance for the same reasons. The reading of the various provisions of the Act of 1984, in no manner leads to the conclusion that matters of adoption, allegedly linked to the custody and the guardianship of the minor, fall within the purview of the Family Court's jurisdiction. It is well settled that while interpreting a law, a court cannot alter its meaning by adding or removing words. The Court's role is to understand the legislature's intent as expressed in the statute's language, and not to rewrite the law.

19. Lastly, the reliance placed by the learned counsel appearing on behalf of the appellant in the order passed by the learned Single Judge of this Court in *Geeta Rani's* case supra, is misplaced, as we find that the observations made, are in fact more in the nature of passing remarks, in a revision petition challenging interlocutory orders, and there was no final or detailed adjudication upon the issue involved before us. The other

decisions relied upon by the learned counsel for the appellant are also distinguishable, in view of the facts and circumstances involved in the present appeal.

20. Rather, the preponderance of judicial opinion is to the effect, that the Family Courts do not have jurisdiction to decide issues pertaining to adoption. The Hon'ble Patna High Court in the matter of **Satya Narayan Prasad Gupta @ Sato Saro @ Satya Prakash Prasad's** case (supra) while examining an identical legal issue *inter-alia* held as under:-

“20. Now coming to the jurisdiction of the Family Courts as provided by the Act of 1984, it is crystal clear that there is no jurisdiction of the Family Court in regard to adoption. None of the clauses from (a) to (g) of the Explanation to Section 7(1) of the Act of 1984 is related with adoption. As such, no suit declaratory or otherwise in regard to adoption comes within the jurisdiction of Family Courts. The declaratory suits as provided in Clause (c) and (e) are also not connected with adoption. As per Clause (b), a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person has been provided and as per Clause (e), a suit or proceeding for a declaration as to legitimacy of any person has been provided. Neither suit is connected with adoption. The legitimacy of any person as provided in Clause (e), must be arising out of marriage and not of adoption or any other thing because the object of the Family Courts Act is to provide jurisdiction to Family Courts in regard to marriage and family affairs and for matters connected therewith and establish Family Court as one spot forum for family litigation's. Adjudication of other civil matters comes within the domain of Civil Courts. As such, Family Courts have no jurisdiction to adjudicate any adoption matters”.

21. Identical views have been taken by the Hon'ble Allahabad High Court in the case of **Kuldeep Kumar's** case (supra), the Hon'ble Bombay High Court in the case of **Carsten Friis and his wife Kirsten Jacobsen Friis Vs. Nil, 2009 SCC OnLine Bom 2500** and the Hon'ble High Court of Kerala in **Anil Kumar and another Vs. Sep. Bikram Singh Bisht and another, reported as 2019 SCC OnLine Ker 15950.**

**IV. Decision:**

22. Keeping in view the aforesaid discussion, no ground to interfere with the judgment passed by the Family Court, is made out.

23. Dismissed.

24. All pending application(s), if any, also stand disposed of accordingly.

**(ANIL KSHETARPAL)**  
**JUDGE**

**(ROHIT KAPOOR)**  
**JUDGE**

**July 11, 2025**

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Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No