

Bal Ram Singh Vs. M/s Escorts Ltd.

In the Court of Vivek Kumar Agarwal, Civil Judge, Junior Division, Faridabad.

RBT No. 31
Date of Institution: 13.08.2014/18-01-2016
Date of Decision:- 30.01.2016
C. S. No:- 0055477 of 2014
Bal Ram Singh (Token No. 31243) Manager/Retd.,
Resident of Trikha Colony, Tehsil Ballabgrah,
District Faridabad (Haryana)

.....Plaintiff

Versus

1. M/s. Escorts Limited Powertrac Division (EVM),
Plot no. 3, Sector-13
Faridabad (Haryana)
Through its Managing Director.
2. General Manager /ER
M/s Escorts Limited (Tractor Division)
Plot NO. 3, Sector-13,
Faridabad (Haryana)
3. Personnel Manager
M/s Escorts Limited (Tractor Division)
Plot NO. 3, Sector-13,
Faridabad (Haryana)

Suit for Declaration & Damages with Permanent/Mandatory Injunction

Present:- Sh. P. S. Menchu, Adv. for plaintiff

Sh. Amit Behl, Adv. for defendants no. 1 to 3

JUDGMENT :-

1. The present suit has been filed by the plaintiff seeking declaration of the rejection letter dated 20.01.2014 and 13.05.2014 issued by the defendant company as wrongful and to be set aside and further declaration of entitlement of adopted son of plaintiff for employment in defendant company and again consequential mandatory injunction

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for direction to defendant to consider employment of adopted son of the plaintiff.

2. The plaintiff has come with the averment that the plaintiff remained working in the capacity of Manager in Tractor Assembly Parts Units and on attaining the age of retirement, plaintiff retired from the defendants' organization on 30.06.2014 and there is a settlement Agreement Memorandum-2013 vide which there is a provision to provide ex-gratia employment to one qualified (12th Class passed with physical fit) dependent son of the retiree/superannuated staff of the organization. The plaintiff submitted the particulars of his adopted son namely Munendra singh with his academic qualification along with registered adopted deed No. 186 of dated 07.08.2013. However, the defendants while considering the case of training of employment of plaintiff's dependant son raised the objection regarding adoption of Munendra Singh as above 15 years and the said adoption deed was not accepted stating that adoption deed is not valid vide their letter no. EAM/ER/31243 dated 20.01.2014
3. It has been averred that the plaintiff submitted the request cum representation that in their Hinud Jat Community the adoption of a son above the age of 15 years is valid and duly recognized by the society as well as legal authorities. It is also pointed out that the defendants informed the plaintiff regarding enrollment of his son as trainee pre-employment and directed to produce the application of his son alongwith educational qualification with Shri S .P. Tyagi in

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Personnel Department vide letter no. AMG/ER/31243 dated 17.04.2014 and in compliance to the aforesaid direction the plaintiff re-submitted the application along with educational qualification of 12th Class Passed alongwith registered adoption deed no. 186 dated 07.08.2013 for consideration are providing employment in terms of settlement Agreement Memorandum 2013 read with Clause 17 (17.1) (A to G) and the said application again was rejected by the defendants organization vide its letter no. EAM/ER/31243 dated 13.05.2014 with the ground that the registered adoption deed dated 07.08.2013 regarding plaintiff's son Munendra Singh is about the age of 15 years and the said adoption deed is not valid under Section 10 of the Act. After rejection letter dated 13.04.2014 served the legal notice no. PVM/126/2014 dated 28.05.2014 but the defendants neither responded the legal notice dated 28.05.2014 nor reviewed the grievance of the plaintiff, then the plaintiff got served the reminder cum final notice dated 04.07.2014 which also neither responded nor the grievance reviewed, hence this suit.

4. Upon notice being served the defendant vide their written statement have taken preliminary objection of no cause of action with the plaintiff to file the suit and suit being false and frivolous, the plaintiff having not come in the court with clean hands. In reply on merits, it has been admitted that plaintiff was working with the defendants and retired on 30.06.2014. Again execution of a settlement agreement in 2013 has also been admitted. The defendant has also admitted the

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fact that plaintiff had submitted the particulars of his adopted son alongwith adoption deed. However, it has been submitted the said adoption deed was rejected in view of the Section 10 of Hindu Adoption Maintenance Act, 1956 which bars taking into adoption of a child above age of 15 years. It has been denied that under Hindu Jat Community adoption of a son above age of 15 years is recognized by the society. It has been again denied that the rejection letter given by the defendant no. 3 was illegal and on the other hand it has been submitted that as adoption made by the plaintiff is not legal as per law and accordingly he is not entitled to any relief and suit be dismissed.

8. From the pleading of the parties following issues were framed :-

- 1) Whether the plaintiff is entitled to a decree of declaration ? OPP
- 2) Whether the plaintiff is entitled to a decree of permanent injunction against the defenants. OPP
- 3) Whether the plaintiff is entitled to a decree of mandatory injunction against the defendants ? OPP
- 4) Whether the present suit is not maintainable ? OPD
- 5) Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts from the Court ? OPD
- 6) Whether there is no cause of action to file the present suit ? OPD
- 7) Whether this Court has no jurisdiction to try the present suit ? OPD
- 8) Relief.

4. To prove its case the plaintiff has examined himself as PW2, PW 1 S. P Tyagi, and one Sh. Mohan Singh as PW 3 and that apart he has relied upon following documents:-

Ex. P1	Memorandum in original
Ex PW2/1	Adoption deed dated 07.08.2013
Ex .PW2/2	Copy of Intermediate marksheet of Munender Singh
Ex. PW2/3	Copy of High School marksheet of Munender Singh

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Ex. PW2/4	Copy of letter by defendnat to plaintiff dated 20.01.2014
Ex. PW2/5	Copy of letter by defendnat to plaintiff dated 17.04.2014
Ex. PW2/6	Copy of letter by defendnat to plaintiff dated 13.05.2014
Ex. PW2/7	Legal notice dated 28.05.2014
Ex. PW2/8	Postal receipts
Ex. PW2/9	Reminder of legal notice dated 04.07.2014
Ex. PW2/10	Postal reciepts.

And thereafter the evidence was closed on behalf of the plaintiff.

5. To resist the claim of the plaintiff, the defendant examined one witness namely Bipan Sharma Chief Manager of the defendant company as DW1 and that apart he has relied upon following documents :-

Ex. D1	Copy of the Authority letter
Ex. D2	Authority Letter
EX D3	Copy of letter by defendnat to plaintiff dated 03.06.2014
Ex. D4	Copy of company letter dated 20.01.2014
Ex. D5	Copy of company letter dated 13.05.2014
Ex. D6	copy of details of employee wards

And thereafter the evidence was closed on behalf of the defendant

- 6 The rival contentions raised by the Ld. Counsel for both the parties have been heard and the material available on record in the file has been carefully and minutely perused and my issue vise findings are as under :-

ISSUE NO. 1 to 3.

All the three iseus being interlinked are taken together for consideration. Onus to prove these issue was upon the plaintiff and to prove the same the plaintiff has relied upon Ex. P1 i.e. Settlement dated 11.09.2013 between the defendant and plaintiff represented through his employee union and again on Ex. PW2/A i.e. adoption deed dated 07.08.2013. It has been argued that vide settlement dated 11.09.2013 i.e. Ex. P1 the defendant had agreed to provide the job to a dependent son of plaintiff on his retirement on age of supperanuation

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and as he retired on 13.06.2014, a letter Ex. PW2/5 was issued by the defendant company seeking the concerned documents regarding the qualification of his son for providing him a job and thereafter he had given representation to the defendant company regarding his adopted son namely Munender Singh born on 01.08.1996 who was adopted vide adoption deed dated 07.08.2013 i.e. Ex. P2/A. It has been further argued that as the essential qualification in seeking job in the defendant company as per the settlement agreement was being intermediate or 12th standrad passed and his son has qualified the siad examination in 2013 as reflected from Ex. PW2/2. It has been further submitted that the defendant did not accept his claim and issued rejection order Ex. PW2/4 dated 20.11.2014 and again letter Ex. PW2/6 dated 13.05.2014. It has been furhter submitted that as the plaintiff is a Hindu Jat, he is governed by the custom prevalent in the area and his residence and accoridngly the plea of the defendant that adoption deed is not valid, is not admissible. He has contended that a custom has full effect of formal adoption under Hindu Law/Hindu Jat Community and such customs/usages cannot be ignored and the adoption has recognized as valid, hence the breath of agreement memorandum-2013 on the plea of letter dated 20.01.2014 and 14.05.2014 cannot sustain in eye of law and the breach and rejection liable to be set aside/quashed and accordingly it has been prayed that suit be decreed. To prove the prevalnce of custom, he has relied upon firstly upon the Rattigan's digest Customary law and upon the following authorities:

(i)

7. On the other hand defendant has dully admitted the execution of Ex. P1 as well as the genuineness of Ex. P2/1 and P2/2. However the substantial argument raised by Ld. Counsel for defendant is that adoption deed Ex. PW2/A is not valid as Section 10 of Hindu Adoption and Maintenance Act, 1956 provides that a Hindu can adopt a child only till age of 15 years and not more than that and as

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admittedly the date of birth of child is 01.08.1996 and he was adopted on 07.08.2013, he was more than 15 years of age at the time of on his adoption therefore adoption not being valid, the plaintiff cannot avail the benefit under the settlement Ex. P1. He has further argued that plaintiff has failed to establish that any such custom is prevalent in his community or area as he has not led any evidence on this point. In this regard, he has also referred to following authorities:

(i) **Harnek Singh v. Pritam Singh & Ors. SC decided on 17**

April, 2013

(ii) **Balkrishna Raghunath v. Sadashiv Hiru Gharat, Bombay HC, 21
december, 1976**

(iii) **Joginder Singh And ors. v. Savitri P7 H HC decided on 28 August,
2002**

and argued that even if any custom is prevalent in a particular area, it cannot be presumed to be in practice in other area as well among the same community. The plaintiff belongs to Meerut and has not placed on record any evidence to prove the prevalence of any such custom in Hindu Jats in Meerut. Accordingly, the suit of the plaintiff is liable to be dismissed.

8. After having heard the rival submissions of both the counsels, it is apparently clear that only point for determination in the present suit is ***“whether the adoption deed dated 7.8.2013 i.e. Ex. PW2/1 is valid as per law”***. In this regard the relevant provision is Section 10 of HAMA, 1956 which provides that no person shall be capable of being taken into adoption unless the following conditions are fulfilled, namely:—(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage. On plain reading of this provision, it is very clear that general rule is that person being adopted should not be more than 15 years of age, however same is subject to exception of custom or usage. Again to prove the existence of any such custom as alleged by the plaintiff either he had to examine the persons who were likely to know of existence of such

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custom or to prove the custom being recognised either through Riwaz-e-Aam or through judicial pronouncements.

9. Coming to the case of the plaintiff as admittedly the adopted son namely Munender was more than 15 years of age on the date of adoption, only saviour for the plaintiff was to prove the existence of a custom in his favor. To prove the same, the plaintiff though has not examined any witness, however has submitted that the custom is not only recognised in Riwaz-e aam prepared by Delhi District in 1880 as well as has been given a due status by the courts in various judgments. It has been argued that in case of **Kunwar Basant Singh vs Kunwar Brijraj Saran Singh (1935) 37 BOMLR 805** the question was whether Khushal Singh, when he left Ballabgarh in 1858, was governed by the customary law of the Delhi District and it was observed by the Bombay High Court:

“That the Jats are included and also that the enquiries included Ballabgarh as part of the Delhi District. The value of the riwaj-i-am as evidence of customary law is well established before this Board.”

The court also referred to the decision in **Vaishno Ditti v. Rameshri(1928) L.R. 55 I.A. 407**, in which the judgment of the Board was delivered by Sir John Wallis, who stated:-

“It has been held by this Board that the riwaj-i-am is a public record prepared by a public officer in discharge of his duties and under Government rules ; that it is clearly admissible in evidence to prove the facts entered thereon subject to rebuttal ; and that the statements therein may be accepted even if unsupported by instances.”

Having referred to the judgment of Board, the court stated:

“Answer 87 in the 1911 manual does not prescribe such giving as a formality necessary to constitute a valid adoption, answer 83 shows that a brother can be given in adoption, and answer 86 shows that a sister's son or a daughter's son may be adopted ; and, further, answer 8 shows that a boy may be adopted even after tonsure or investiture with the sacred cord, and that there is no age limit, except, that the age of the adoptive son should be less than that of the adoptive father.

In view of this authority, it can be safely concluded that a custom was in existence in Hindu Jats in Ballabgarh to adopt a son irrespective of the age and marital status. Again, it follows that it had the ordinary attributes of a custom, that is to say that it was ancient and unless there is evidence to the contrary, that it existed even in 2013.

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10. Now coming to the merits of claim of the plaintiff, it is to be observed that that admittedly the plaintiff is a Hindu Jat who has been working and residing in Ballabgarh, District Faridabad as mentioned in the plaint as well as in the adoption deed Ex. PW2/1. Accordingly, the case of the plaintiff is squarely covered by the judgment of ***Kunwar Basant*** (supra). The plea raised by the counsel for the defendant that the adopted son has been studying in Meerut is completely irrelevant as it is not the place of study of adopted son but the residing place of the adoptive father which is material.

11. In view of aforesaid discussion, I am of the considered and confirmed view that it can be safely concluded that the adoption deed i.e. Ex. PW2/1 is completely valid and sustainable in eyes of law. Again, it is an admitted fact that the adopted son of the plaintiff is possessed with requisite qualification for seeking job in the defendant company in accordance of the conditions of the Settlement i.e. Ex. P1, accordingly, the rejection letter i.e. PW2/4 and PW2/6 are invalid and against the conditions of Ex. P1 and therefore are hereby quashed.

12. Again, as the rejection letter stand quashed, the defendants are directed to consider the employment case of the adopted son of the plaintiff namely Munender Singh in view of the fact that adoption deed i.e. Ex. PW2/1 is completely valid.

13. Accordingly, all the three issues are decided in positive in favor of the plaintiff.

ISSUES NO. 4 to 7:

All the issues being interlinked are taken together for consideration. Onus to prove these issues was upon the defendant, however no evidence has been led to prove any of these issues. Again, these issues were not pressed during arguments at bar and accordingly are decided in negative against the defendant.

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ISSUE NO. 8 RELIEF:

In view of findings of issue no. 1 to 3 the suit of the plaintiff is hereby decreed with costs to the effect that the adoption deed i.e. Ex. PW2/1 is completely valid and sustainable in eyes of law. Again, it is an admitted fact that the adopted son of the plaintiff is possessed with requisite qualification for seeking job in the defendant company in accordance of the conditions of the Settlement i.e. Ex. P1, accordingly, the rejection letter i.e. PW2/4 and PW2/6 are invalid and in breach of the conditions of Ex. P1 and therefore are hereby quashed. Again, as the rejection letter stand quashed, the defendants are directed to consider the employment case of the adopted son of the plaintiff namely Munender Singh as per his entitlement for the job.

14. Decree sheet and memo of cost be prepared accordingly and file be consigned to the record room after due compliance.

Pronounced in open court:
Dated 30.01.2016

(Vivek Kumar Agarwal)
Civil Judge Junior Division, Faridabad,
Faridabad.

Note :- This Judgment/order contains Ten pages and all the pages have been checked and signed by me.

(Vivek Kumar Agarwal)
Civil Judge Junior Division, Faridabad,
Faridabad. 30.01.2016

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Present:- Sh. P. S. Menchu, Adv. for plaintiff

Sh. Amit Behl, Adv. for defendants no. 1 to 3

Vide my separate judgment passed today, the suit of the plaintiff has been decreed. Decree sheet and memo of cost be prepared accordingly. File be consigned to record room after due compliance.

(Vivek Kumar Agarwal)

Civil Judge Junior Division, Faridabad,
Faridabad. 30.01.2016