

CNR No. PBBR020000892024

Case No. CS/57/2024



Presented on : 16-01-2024

Registered on : 18-01-2024

Decided on : 10-07-2024

**IN THE COURT OF MS. MANPREET KAUR, PCS,
CIVIL JUDGE (JUNIOR DIVISION), BARNALA**

Sajanpreet Singh aged about 17 years minor adopted s/o Darshan Singh s/o Parshotam Singh under the guardianship and custody of his adopted father Darshan Singh residing at House No.65, Dhanaula Road, Opposite PSPCL, Sigma City, Barnala. **...Plaintiff**

Versus

1. Gurwinder Singh s/o Nachattar Singh r/o Village Bhotna, Tehsil & district Barnala now residing at #46-B, Saint Marry St. Brgy. E. Rodriguez Cubao, Quezon City, MANILA-1102.
2. Gurpreet Kaur w/o Gurwinder Singh s/o Nachattar Singh r/o Village Bhotna, Tehsil & District Barnala now residing at # 46-B, Saint Marry St. Brgy. E. Rodriguez Cubao, Quezon City, MALINA-1102.

...Defendants

3. Surinder Kaur w/o Darshan Singh r/o House No.65, Dhanaula Road, Opposite PSPCL, Sigma City, Barnala.

...Performa Defendant

Suit for Declaration to the effect that plaintiff Sajanpreet Singh minor is the adopted s/o Darshan Singh s/o Parshotam Singh and Surinder Kaur w/o Darshan Singh and the plaintiff is entitled to get recorded/incorporated his name as Sajanpreet Singh s/o Darshan Singh and Surinder Kaur in Aadhar Card and in his educational certificates and other relevant documents instead of defendants no. 1&2.

Under Order 7 Rule 1 CPC.

Present: Sh. Anuj Mohan, Advocate, counsel for the plaintiff and
performa defendant No.3.
Ms. Romi Sharma, Advocate counsel for defendant No. 1
and 2.

JUDGMENT

Plaintiff has filed the present suit for Declaration as detailed
in the Head Note of the plaint.

BRIEF FACTS

2. Brief facts, mentioned in the plaint, are that plaintiff is the
natural born son of defendants no.1 and 2 and his date of birth is
03.05.2006. The marriage of defendants No.1 and 2 has been solemnized
in 2005. Defendant no.1 has been residing and working at Manila before
marriage. After marriage, both defendants no.1 and 2 have started residing
at Manila. The defendant no.2 has visited India for delivery of her child at
her parental house. Defendant no.2 has given birth to plaintiff on
03.05.2006 at Barnala. After delivery, the defendant no.2 has left for
Manila leaving behind minor Sajanpreet Singh at the house of Darshan
Singh and Surinder Kaur i.e. maternal grand parents of minor. Since then
plaintiff has been residing with Darshan Singh and Surindeer Kaur who
have been taking care of him. In 2009, the defendants no.1 and 2 have
visited India and have given plaintiff in adoption to Darshan Singh and
Surinder Kaur on 03.03.2009 as per custom in the presence of relatives,
friends and members of locality. The natural parents of plaintiff have put
plaintiff in the lap of Darshan Singh and Surinder Kaur as their natural

son and sweets have also been distributed amongst the near and dear ones. The Akhand Path Sahib has also been performed at the house of Darshan Singh. The photographs regarding said ceremony have been duly clicked. It is averred that plaintiff has been given in adoption with the intention of transferring him from his natural family to adoptive family. It is further averred that since the day of adoption, the plaintiff is being treated as their own son by Darshan Singh and Surinder Kaur and further plaintiff has also been treating them as his parents. It is further stated that plaintiff has never resided with his natural parents and even their friends and relatives treat him as son of Darshan Singh and Surinder Kaur. It is further averred the plaintiff is studying in Mother Teacher Preparatory School, Barnala since the start of his education. It is further averred that Darshan Singh and Surinder Kaur have only one daughter namely Gurpreet Kaur and they do not have any son whereas the natural parents of plaintiff have two other sons namely Gaganpreet Singh and Gagandeep Singh. It is further averred that now defendants no.1 and 2 have started proclaiming plaintiff as their son and are denying adoption. They have been threatening to come back to India to take plaintiff to Manila. Hence, the present suit.

3. Upon notice, the suit has been contested by defendant No. 1 and 2 by filing written statement, wherein, they have admitted the averments of the plaint.

Upon notice, defendant No.3 has also filed written statement and admitted the averments of plaint.

4. Replication has not been filed. Accordingly, from the pleadings of the parties following issues have been framed:-

1) Whether plaintiff is entitled to the relief of Declaration, as prayed for ? OPP

2) Relief.

5. Both the parties have availed sufficient opportunities for adducing their evidence. To prove his case, plaintiff has examined Baldev Singh Nambardar as PW-1 who has deposed through his duly sworn affidavit Ex. PW-1/A and has further proved on record his I'd Card Ex.P-1, copy of his Aadhar Card Ex.P-2, photograph of adoption ceremony Ex.P-3 and he has admitted his presence in said photograph at Mark A.

During his cross-examination, he has stated that he is known to the family of Darshan Singh since last fifty years and he is on regular visiting terms to them. He has stated that plaintiff Sajanpreet Singh has been staying with Darshan Singh and Surinder Kaur since the time of his birth and is being looked after by them.

Further, plaintiff has examined Gurmail Singh Sidhu as PW-2, who has deposed through his duly sworn affidavit Ex.PW-2/A and has proved on record the copy of his Aadhar Card Ex.P-4, photograph of adoption Ex.P-5 and he has admitted his presence in said photograph at Mark B.

During his cross-examination, he has stated that defendant no.1 Gurwinder Singh is his real brother and he is staying abroad since last 25 to 30 years. He has admitted that plaintiff Sajanpreet Singh has been

given in adoption by his brother Gurwinder Singh to Darshan Singh and Surinder Kaur in his presence and presence of other relatives and friends.

Further plaintiff has examined his adoptive father Darshan Singh as PW-3/A, who has deposed through his duly sworn affidavit Ex.PW-3/A and has proved on record the copy of birth certificate of plaintiff Ex.P-6 and Ex.P-7, the card of Akhand Path Sahib Ceremony Ex.P-8, the copies of education certificates of plaintiff Ex.P-9 and Ex.P-10 and the photographs of Akhand Path Ceremony Ex.P-3, Ex.P-5, Ex.P-11 to Ex.P-26.

During his cross-examination, he has stated that birth of Sajanpreet Singh is of Barnala and he has been staying with him and his wife since the time of his birth. He has admitted that he and his wife has only one child i.e. daughter Gurpreet Kaur (defendant no.2). He has stated that his daughter and son in law Gurwinder Singh have two more sons namely Gaganpreet Singh and Gagandeep Singh who are residing with them at Manila.

Thereafter, the counsel for plaintiff has closed evidence on behalf of plaintiff in affirmative. To rebut the case of plaintiff, no evidence has been led by any of the defendants. Further their counsels have closed the evidence on there behalf.

ISSUE NO. 1

6. Burden to prove issue no. 1 has been on plaintiff. From the array of facts, as reproduced above, the case set up by plaintiff is that

defendant no. 1 and 2 are his natural parents but he has been adopted by his maternal grand parents i.e. Darshan Singh and Surinder Kaur from his natural parents during adoption ceremony held in February, 2009. It is his case that he has been given in adoption by her natural parents to his adoptive parents with their free consent and will. It is stated that he has been living with his grand parents since the time of his birth whereas his natural parents are residing at Manila and his mother i.e. defendant no.2 has gone back to Manila after giving birth to him in India and leaving him with his grand parents. It is stated that customary adoption function has been held on 03.03.2009 in the presence of respectables and relatives. Now defendants no. 1 and 2, being real father and mother of plaintiff, are backing out from adoption and claiming his custody in violation of adoption which has necessitated the filing of present suit.

The counsel for the plaintiff Sh. Anuj Mohan, Advocate has argued that the adoption of plaintiff is valid and fact of adoption of plaintiff by his grand parents namely Darshan Singh and Surinder Kaur is duly proved from the testimony of PW-1 and PW-2 who have been personally present at the time of giving of plaintiff in adoption to Darshan Singh and Surinder Kaur. They have stated that plaintiff has been adopted by Darshan Singh and Surinder Kaur in their presence on 03.03.2009. They have also identified their presence in photographs Ex.P-3 and Ex.P-5 i.e. the photographs clicked at the time of Akhand Path Ceremony. Further the adoptive father of plaintiff namely Darshan Singh has examined himself as

PW-3 who has stated on the lines of plaint and has stated that he and his wife have been taking care of education and other requirements of plaintiff since the time of his birth. Lastly, prayed that suit of plaintiff be decreed and minor Sajanpreet Singh be declared as validly adopted son of Darshan Singh and Surinder Kaur.

Per contra, ld counsels for defendant no. 1 to 3 have not rebutted the arguments of the counsel of plaintiff.

After hearing the contentions of both the counsels and going through the material on record, it comes out that the fact of adoption of plaintiff by his maternal grand parents from his natural parents i.e. Gurwinder Singh and Gurpreet Kaur on 03.03.2009 is not disputed as said fact has been admitted by defendants no.1 and 2 in their written statement. Further plaintiff has placed on file the card of Akhand Path Ceremony dated 03.03.2009 organized by Darshan Singh and Surinder Kaur to celebrate the adoption of plaintiff by them. In said card, minor Sajanpreet Singh has been mentioned as son of Sardar and Sardarni Darshan Singh Bajwa reflecting that on 03.03.2009 minor has been socially declared as adopted son of Darshan Singh and Surinder Kaur. Further they have also placed on file the photographs of said ceremony Ex.P-3, Ex.P-5, Ex.P-11 to Ex.P-26 which have been duly proved on record by PW-1 to PW-3 who have identified themselves in said photographs. Further plaintiff has examined the independent witnesses of said adoption ceremony i.e. PW-2 Lambardar Baldev Singh and PW-3 Gurmail Singh who have stated that

minor Sajanpreet Singh has been staying with his grand parents since the time of his birth and they have been taking care of his education and other needs. Further, both PW-1 and PW-2 have stated that they have been part of the adoption ceremony conducted on 03.03.2009 during which minor Sajanpreet Singh has been adopted by his grand parents i.e. Darshan Singh and Surinder Kaur from the natural parents namely Gurwinder Singh and Gurpreet Kaur. Gurpreet Kaur is none else but real daughter of Darshan Singh and Surinder Kaur. PW-1 and PW-2 have identified themselves in the photographs Ex.P-3 and Ex.P-5. It is worthy to note that the entire evidence led by plaintiff has remained un-rebutted and un-challenged on record as no evidence has been led by defendants. As per Section 6 of Hindu Adoption & Maintenance Act, 1956 following four conditions must exists for a valid adoption:-

1. The person adopting must have capacity and right to adopt.
2. The person giving adoption must have capacity to give the child in adoption.
3. The adopted must be capable of being adopted.
4. Other conditions of the Act must be fulfilled.

As far as the capacity of person adopting the child is concerned, it is provided in Section 7 of the Act that a Hindu male has capacity to adopt if he is of sound mind and in a major. If he has a living wife then he can adopt only with her consent and if he has more than one wife living then consent of all wives is necessary. Similarly, as per Section

8 of the Act that a Hindu female has capacity to adopt if she is of sound mind and in a major. She can adopt on her own if she married or can adopt if she is divorcée or her husband is dead or her husband has completely and finally renounced the world or if he has converted to non hindu religion or has been declared lunatic by some competent Court. She can also adopt a son or a daughter. Further Section 10 of the Act provides that a child to be adopted as per provisions of Hindu Adoption & Maintenance Act, 1956 should be unmarried and not below 15 years of age. When a Hindu adopts a child of opposite sex then there must be age gap of atleast 21 years between adopter and adopted. Further, conditions provided under Section 8 of the Act are that when a person either Hindu male or female wants to adopt a son then they shall not have a son, son's son or son's son's son. Similarly, when a person either Hindu male or female wants to adopt a daughter then they shall not have a daughter, son's daughter. Applying these provisions to the present case, it is relevant to mention that PW-1 to PW-3 have stated in one voice that adoptive parents of plaintiff i.e. Darshan Singh and Surinder Kaur have only one daughter i.e. Gurpreet Kaur who is the mother of plaintiff. They have stated that except Gupreet Kaur they do not have any other daughter or son which means that Darshan Singh was eligible to adopt plaintiff on 03.03.2009. Further the validity of adoption is duly proved from the oral testimony of PW-1 to PW-3 and admission of defendants no.1 and 2 in their written statements. After scanning the admissible evidence in relation to the pleadings of the parties,

oral as well as documentary evidence on record and with my observations in foregoing paras, I am of the considered view that the plaintiff has been able to prove the genuineness and validity of his adoption by Darshan Singh and Surinder Kaur, accordingly, issue no. 1 is decided in favour of plaintiff and against defendants no.1 and 2.

RELIEF

9. In view of my observations and findings, on the issue in the foregoing paras, the suit of the plaintiff succeeds and is hereby decreed with cost to the effect that plaintiff is declared as adopted son of Darshan Singh and Surinder Kaur and further he is held entitled to get their names recorded as parents in his Aadhar card, educational certificates and other relevant documents instead of defendants no.1 and 2. Decree sheet be prepared. File be consigned to Record Room.

Pronounced
Date of order:10.07.2024
Umit, Steno III

(Manpreet Kaur, PCS)
Civil Judge (Jr. Division)
Barnala- UID-PB-00403