



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-82-1998 (O&M)

Rajinder Singh and Others **Appellants**
Vs.

Smt. Vidya Devi and Another **Respondents**

Reserved on: 13.01.2026
Pronounced on: 19.01.2026
Pronounced fully/operative part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Pritam Singh Saini, Advocate and
Mr. Deepak Saini, Advocate for the appellants.

Mr. Amit Jain, Senior Advocate with
Ms. Aeshna Jain, Advocate for
respondent No.1.

DEEPAK GUPTA, J.

Background : The defendants of the suit are before this Court in the present second appeal, assailing the judgment and decree passed by the learned Additional District Judge, Hisar dated 29.10.1997, whereby the appeal filed by the plaintiff-respondent Smt. Vidya Devi (*respondent herein*) was accepted; the judgment and decree dated 08.02.1995 passed by the learned Trial Court of Sub Judge 1st Class dismissing the suit were set aside, and the suit for declaration was decreed.

2. For the sake of convenience and to avoid confusion, the parties are being referred to as per their status before the Trial Court. The Trial Court record, as available on the DMS, has been perused.

3.1 ***Admitted facts :*** The factual matrix emerging from the record is that one Harchand had three sons, namely Richhpal, Bhagwana and Naurang,



besides three daughters, namely Chandrapati, Lakshmi and Basanti. The plaintiff Smt. Vidya Devi is admittedly the daughter of Bhagwana, who was married to Smt. Sarti Devi (proforma defendant No.4). Defendant No.2 i.e. Kulwant Rai is the son of Naurang, whereas defendant No.1 Rajinder Singh is the natural son of Kulwant Rai and defendant No.3 Smt. Tarawanti.

3.2 ***Plaintiff's Case :*** It is the case set up by the defendants that Rajinder Singh, the grandson of Naurang, and son of Kulwant Rai and Smt. Tarawanti, was given in adoption to Bhagwana in November, 1977, and that an adoption deed dated 13.11.1981 was executed and registered in that regard. The said adoption of Rajinder Singh by Bhagwana forms the core of the dispute and has been specifically challenged by the plaintiff Smt. Vidya Devi.

3.3 Bhagwana was a co-sharer of agricultural land in different Khewats situated in three villages. After his death, the suit land owned by him was mutated in favour of his widow Smt. Sarti, daughter Smt. Vidya Devi and the alleged adopted son Rajinder Singh. The plaintiff has assailed these mutations as being illegal and void.

3.4 Apart from the above, it is further pleaded that proforma defendant No.4 Smt. Sarti had suffered a judgment and decree dated 25.09.1985 in Civil Suit No.485 of 1985 in favour of defendant No.1 Rajinder Singh, regarding her share in the suit property. Consequent mutations in respect of the properties situated in the three villages were also sanctioned on the basis of the said decree. The plaintiff has challenged the said judgment & decree dated 25.09.1985 as well as the consequent mutations.

3.5 The case of the plaintiff is that Rajinder Singh was never legally adopted by Bhagwana. It is pleaded that Bhagwana was an illiterate and simple person and that he was taken to the Tehsil office by Kulwant Rai on the pretext of execution of a power of attorney for management of his agricultural land. It is alleged that under the garb of the said power of attorney, the adoption deed was fraudulently got executed. It is further the specific plea of the plaintiff that



Smt. Sarti, the wife of Bhagwana, had neither consented to nor participated in the alleged adoption, rendering the same invalid in law.

3.6 On the basis of these allegations, the plaintiff sought a declaration that the adoption deed dated 13.11.1981 executed by Bhagwana in favour of defendant No.1 Rajinder Singh is illegal, null and void as a result of fraud and misrepresentation. Consequential relief was also sought declaring the inheritance mutations in favour of defendant No.1 to be illegal and void. The plaintiff further prayed for setting aside the judgment and decree dated 25.09.1985 suffered by Smt. Sarti in favour of Rajinder Singh, along with the consequent mutations.

4. ***Defendant's Stand :*** Defendant No.3 Smt. Tarawanti, wife of Kulwant Rai, was proceeded against ex parte. Defendant Nos.1, 2 and 4 contested the suit, raising preliminary objections in their written statement regarding limitation and locus standi of the plaintiff. On merits, it was pleaded that Rajinder Singh was given in adoption by his natural parents, namely Kulwant Rai and Smt. Tarawanti, to Bhagwana in the year 1977 with the consent of his wife Smt. Sarti, in accordance with Hindu rites and ceremonies. It was further pleaded that the adoption deed was subsequently executed and registered on 13.11.1981. It was also pleaded that after the death of Bhagwana, Rajinder Singh continued to reside with his adoptive mother Smt. Sarti, who performed his marriage and acknowledged him as her adopted son. Proforma defendant No.4 Smt. Sarti admitted having suffered the decree dated 25.09.1985 in favour of her adopted son Rajinder Singh. On these premises, the defendants prayed for dismissal of the suit.

5. Necessary issues were framed by the learned Trial Court. The parties led their respective evidence, which was duly taken on record.

6. ***Trial Court's Findings :*** Upon appreciation of the evidence, the Trial Court held that there was no material to establish that the alleged adoption was the result of fraud, misrepresentation or undue influence. Relying upon



the provisions of the Hindu Adoptions and Maintenance Act, 1956, particularly the presumption arising from a registered adoption deed, the Trial Court observed that the registered adoption deed dated 13.11.1981 carried a statutory presumption of validity. The contradictions appearing in the statements of the witnesses examined on behalf of the defendants were held to be minor and insignificant. The judgment and decree dated 25.09.1985 suffered by Smt. Sarti in favour of defendant No.1 Rajinder Singh were also held to be valid. On the basis of these findings on the material issues, the suit was dismissed by the Trial Court vide judgment and decree dated 08.02.1995.

7.1 ***First Appellate Court's Findings :*** However, the appeal filed by the plaintiff Smt. Vidya Devi was accepted by the learned First Appellate Court. The First Appellate Court held that Smt. Sarti Devi, the wife of Bhagwana, was not a consenting party to the adoption. Specific reference was made to the registered adoption deed dated 13.11.1981, wherein there was no recital showing consent of Smt. Sarti Devi. It was noticed that she was neither shown as a consenting party nor was she a witness to the adoption deed. Even Bhagwana, the adoptive father, while executing and registering the adoption deed, did not state that the adoption was effected with the consent of his wife and, rather, the deed recited that he alone had taken Rajinder Singh in adoption.

7.2 The First Appellate Court further noticed that in the year 1982, i.e. much after the date of the alleged adoption, Bhagwana had received compensation for crop damage on behalf of Rajinder Singh describing himself as his guardian and not as his father. It was also noticed that in the judgment and decree dated 06.01.1981 suffered by the sisters of Bhagwana, Rajinder Singh was shown as son of Bhagwana but through Kulwant Rai, his natural father. Further, in the school records of Rajinder Singh, despite the alleged adoption having taken place in 1977, he continued to be recorded as the son of Kulwant Rai and not as the son of Bhagwana. The First Appellate Court held that any subsequent consent of Smt. Sarti Devi could not cure the defect, as consent of the adoptive mother is mandatory at the time of the adoption.



7.3 It was further held that the judgment and decree dated 25.09.1985 suffered by Smt. Sarti Devi in favour of defendant No.1 Rajinder Singh were null and void, as Rajinder Singh did not have any pre-existing right in her property and the decree was not supported by any valid registration as required in law.

7.4 On the basis of these findings, the suit was decreed by declaring the adoption deed dated 13.11.1981 to be null and void. The judgment and decree dated 25.09.1985 and the mutations based thereon, as well as the inheritance mutations regarding the estate of Bhagwana, were also declared null and void.

8. Aggrieved by the aforesaid reversal vide judgment and decree dated 29.10.1997 passed by the First Appellate Court, the defendants have approached this Court by way of the present second appeal.

9.1 ***Contentions of Appellants – defendants :*** Learned counsel for the appellants–defendants contends that the registered adoption deed dated 13.11.1981 carries a statutory presumption of validity in terms of Section 16 of the Hindu Adoptions and Maintenance Act, 1956. Though the presumption is rebuttable, it is argued that the plaintiff failed to produce cogent and convincing evidence sufficient to rebut the same.

9.2 Learned counsel further submits that the subsequent conduct of the parties clearly supports the adoption, inasmuch as Rajinder Singh lived with his adoptive parents, performed the last rites of Bhagwana after his death, and his marriage was performed by Smt. Sarti Devi, which are strong indicators of a valid adoption. Specific reliance is placed upon the testimony of DW-12 Smt. Sarti Devi, the adoptive mother, who supported the case of adoption having taken place with her consent.



9.3 It is further argued that the adoption allegedly took place in 1977, whereas the suit was filed in the year 1985, and the long silence of the plaintiff amounts to acquiescence.

9.4 Learned counsel submits that minor contradictions in the statements of rustic village witnesses, deposing after a long lapse of time, ought not to have been treated as fatal to the case of adoption.

9.5 On these grounds, it is prayed that the judgment and decree passed by the First Appellate Court be set aside and that of the Trial Court be restored.

10.1 ***Contentions of Respondent - Plaintiff*** : *Per contra*, learned senior counsel appearing for the respondent-plaintiff submits that the adoption deed dated 13.11.1981, though bearing the signatures of the natural parents, namely Kulwant Rai and Smt. Tarawanti, does not bear the signatures or thumb impression of Smt. Sarti Devi, the adoptive mother. It is contended that the deed merely bears the thumb impression of Bhagwana and is conspicuously silent regarding the consent of his wife. Attention is drawn to the contents of the adoption deed, wherein Bhagwana specifically recites that he had taken the child in adoption, without stating that the adoption was with the consent of his wife.

10.2 Learned senior counsel further draws attention to the testimony of DW-12 Smt. Sarti Devi, wherein she stated that a writing had been executed soon after the alleged adoption in 1977, prepared by a Brahmin and signed by about ten persons, and that the said writing was in the custody of Kulwant Rai. However, no such document was ever produced on record. It is further pointed out that despite the alleged adoption in 1977, all subsequent school records continued to describe Rajinder Singh as the son of Kulwant Rai and not of Bhagwana.



10.3 Learned senior counsel submits that the consent of the adoptive mother is mandatory at the time of the adoption ceremony and that any subsequent affirmation is immaterial in the eyes of law.

10.4 With these submissions, learned counsel prays for dismissal of the appeal.

11. This Court has considered submissions of both the sides and has appraise the record carefully.

12. ***Substantial questions of law*** : On hearing learned counsel for the parties and on perusal of the record, the following substantial questions of law arise for consideration:

(i) Whether the learned First Appellate Court committed a perversity or legal error in holding that the adoption of defendant No.1 Rajinder Singh was invalid for want of consent of the adoptive mother, despite the existence of a registered adoption deed, in view of Section 16 of the Hindu Adoptions and Maintenance Act, 1956?

(ii) Whether the statutory presumption attached to a registered adoption deed under Section 16 of the Hindu Adoptions and Maintenance Act is conclusive, or whether the same stands rebutted by evidence demonstrating non-compliance with mandatory requirements of Section 7 of the Act?

(iii) Whether the First Appellate Court exceeded its jurisdiction in declaring the judgment and decree dated 25.09.1985 suffered by Smt. Sarti Devi in favour of defendant No.1 to be null and void, on the ground that defendant No.1 had no pre-existing right in the property?

Discussion and Answers :

13. ***Substantial Question No. (i) & (ii)*** : Both these questions being interlinked are taken up together.



14. Section 7 of the Hindu Adoptions and Maintenance Act, 1956 mandates that where a male Hindu has a living wife, the consent of the wife is a sine qua non for a valid adoption, unless the wife has completely and finally renounced the world or has ceased to be Hindu or has been declared of unsound mind by a competent court. This requirement is mandatory and goes to the very root of the validity of adoption.

15. Section 16 of the Act raises a rebuttable presumption in favour of a registered adoption deed, to the effect that the adoption has been made in compliance with the provisions of the Act. However, the presumption is neither conclusive nor irrebuttable. Once credible evidence is brought on record showing non-compliance with mandatory statutory requirements, the presumption stands displaced.

16. In the present case, it is undisputed that proforma defendant No.4 Smt. Sarti, the wife of Bhagwana, was alive at the time of the alleged adoption in November 1977. None of the statutory exceptions contemplated under the proviso to Section 7 have been pleaded or proved. Consequently, her consent was mandatory and foundational to the validity of the adoption.

17. Though the adoption deed dated 13.11.1981 is a registered document and is duly signed by the natural parents, namely Kulwant Rai and Smt. Tarawanti, who gave the child in adoption, as well as by Bhagwana, who purportedly took the child in adoption, and therefore attracts an initial statutory presumption under Section 16 of the Hindu Adoptions and Maintenance Act, 1956, though the said presumption is not conclusive and is expressly rebuttable.

18. A careful scrutiny of the evidence on record establishes that the mandatory requirement of consent of the adoptive mother, as stipulated under the proviso to Section 7 of the Act, was not complied with. The adoption deed does not contain any recital that the adoption was effected with the consent of Smt. Sarti Devi, the wife of Bhagwana, nor does it bear her signature or thumb impression in any capacity. The scribe Om Prakash (DW7) of the document has



categorically deposed that had Smt. Sarti Devi been present at the time of execution, her signature or thumb impression would necessarily have been obtained. Smt. Sarti Devi herself admitted that she did not enter the Tehsil office at the time of execution of the adoption deed.

19. Further, the alleged contemporaneous writing said to have been executed at the time of adoption in the year 1977, as per DW12 Sarti, though stated to be in the possession of Kulwant Rai, was never produced on record, warranting an adverse inference. Additionally, the consistent subsequent conduct reflected in school and official records, wherein Rajinder Singh continued to be described as the son of his natural father Kulwant Rai even years after the alleged adoption, coupled with Bhagwana himself describing Rajinder Singh as his ward and not as his son, cumulatively rebuts the statutory presumption.

20. The subsequent oral affirmation of consent by Smt. Sarti Devi cannot cure the foundational defect, as consent under Section 7 of the Act must exist at the time of adoption. Consequently, the presumption under Section 16 stands fully displaced, and the alleged adoption of Rajinder Singh by Bhagwana cannot be held to be valid in the eyes of law.

21. The law laid down in ***Hari Ram v. Surja, 1993(3) LJR 647***, squarely applies, wherein this Court held that consent of the concerned parent is mandatory and absence thereof renders the adoption invalid notwithstanding a registered deed.

22. The reliance placed by the appellants on ***Laxmibai (dead) thr Irs and anr. v. Bhagwantbuva and ors., (2013) 4 SCC 97***, is misplaced. In that case, the adoptive mother had affixed her thumb impression on the adoption deed, and the natural parents had signed as attesting witnesses and not as executors. The challenge pertained only to the capacity in which the natural parents signed the document. The Hon'ble Supreme Court held such an objection to be technical. In the present case, the adoptive mother has not signed the deed at all, making the factual foundation entirely distinct.



23. The First Appellate Court, therefore, rightly held that the presumption under Section 16 stood successfully rebutted by cogent and unimpeachable evidence showing non-compliance with the mandatory requirement of Section 7 of the Act. Such finding is neither perverse nor contrary to law. Accordingly, Substantial Question No. (i) & (ii) are answered against the appellants and in favour of the respondent-plaintiff.

24. ***Substantial Question No. (iii) :*** Once the adoption of Rajinder Singh is held to be invalid, he does not acquire the status of a son or heir of Bhagwana or Smt. Sarti. Consequently, he had no pre-existing right in the property of Smt. Sarti.

25. A consent or compromise decree creating rights in immovable property in favour of a person having no antecedent title operates as a conveyance and compulsorily requires registration. In the absence of such registration, no right, title or interest can pass.

26. The ratio laid down in ***Natha Singh @ Nathu Singh v. Jarnail Singh, 2012 (4) RCR (Civil) 244***, fortifies this conclusion, holding that the status of an adopted child cannot be conferred merely by subsequent documents when the adoption itself is not validly proved.

27. The First Appellate Court has correctly applied this settled principle in holding that the decree dated 25.09.1985 and the consequent mutations were null, illegal and void. Accordingly, Substantial Question No. (iii) is also answered against the appellants.

28. All the substantial questions of law framed by this Court stand answered against the appellants. The findings recorded by the First Appellate Court are based on a correct appreciation of statutory provisions, binding precedents, and the evidence on record. No perversity, misapplication of law, or jurisdictional error is made out warranting interference in second appeal.



29. **Scope of Interference under Section 100 CPC :** It is trite that in second appeal, interference is permissible only when findings are shown to be perverse, based on misreading of evidence, or in disregard of mandatory statutory provisions. The First Appellate Court, being the final court on facts, has meticulously reappraised the evidence and recorded findings which are not only plausible but are firmly rooted in statutory mandate and settled legal principles. The appellants, in essence, seek reappreciation of evidence and substitution of factual conclusions, which is impermissible in second appeal.

30. **Conclusion :** In view of the answers returned to the substantial questions of law and for the reasons recorded above, this Court finds no merit in the present second appeal. The judgment and decree dated 29.10.1997 passed by the learned Additional District Judge, Hisar are hereby affirmed. The adoption deed dated 13.11.1981, the judgment and decree dated 25.09.1985, and the mutations based thereon have been rightly declared null and void.

31. Accordingly, the present second appeal is dismissed. No order as to costs.

(DEEPAK GUPTA)
JUDGE

19.01.2026

Neetika Tuteja

Whether speaking/reasoned?	Yes
Whether reportable?	Yes

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