

APPELLATE CIVIL.

Before Tek Chand and Skemp JJ.

HARNAM SINGH AND OTHERS (PLAINTIFFS)

Appellants

versus

MST. BHAGI AND ANOTHER (DEFENDANTS)

Respondents.

1935

Jan. 25.

Civil Appeal No 1762 of 1931.

Custom—Adoption—Dhillon Jats — Tahsil Tarn Taran — District Amritsar—whether can adopt a daughter's son—Riwaj-i-am.

Held, that according to custom amongst *Dhillon Jats* of *Mauza Kaka Karyala, Tahsil Tarn Taran, District Amritsar*, a male owner can adopt his daughter's son.

Sohna v. Sundar Singh (1), and *Riwaj-i-am*, followed.

Ajaib Singh v. Lal Singh (2), distinguished.

First Appeal from the decree of Bawa Kanshi Ram, Senior Subordinate Judge, Amritsar, dated 1st August, 1931, dismissing the plaintiffs' suit.

PARKASH CHAND, PRAN NATH MEHTA and J. L. KAPUR, for Appellants.

NIHAL SINGH, for Respondent No.2.

SKEMP J.—This appeal has arisen from the following facts:—Bhag Singh, a *Dhillon Jat* of *Mauza Kaka Karyala, Tahsil Tarn Taran*, gifted 7/8ths of his land to Teja Singh, the gift being effected by means of a mutation on the 7th of August, 1926. The gift was made to Teja Singh as the adopted son of Bhag Singh. Bhag Singh died on the 29th March, 1929, and on the 22nd June, 1929, the mutation of the remainder of Bhag Singh's property was effected in favour of Teja Singh.

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On the 15th April, 1930, the plaintiffs, the real brother and nephews of Bhag Singh, brought a suit alleging that Teja Singh was not the adopted son of Bhag Singh, but was the son of one *Mussammat* Tabo, who was the mistress and not the wife of Bhag Singh. They denied the factum of adoption, and they denied its validity if the factum was proved.

There was a further dispute on the point whether the land was ancestral, but it is now conceded before us that Bhag Singh's land was ancestral.

The Senior Subordinate Judge of Amritsar framed issues dealing with the following main points :—

1. Whether the suit was time-barred?
2. Whether Teja Singh was adopted by Bhag Singh, and
3. If so, whether the adoption was valid?

He found that the suit was within time as far as the gift was concerned, but was barred in reference to the mutation. He further found that *Mussammat* Tabo was the wife of Bhag Singh, that Bhag Singh had adopted Teja Singh and that the adoption was valid by custom among the *Dhillon Jats* of the Tarn Taran *Tahsil*. He dismissed the suit and the plaintiffs have appealed.

Three points have actually been argued before us :—

1. Was *Mussammat* Tabo the wife of Bhag Singh?
2. Was Teja Singh actually adopted by Bhag Singh? and
3. Was the adoption valid by custom?

On the first point the defendants produced a large number of witnesses who say that *Mussammat* Tabo

was left a widow; her husband Gajja Singh dying long ago. Buta (P.W.2), one of the plaintiffs' witnesses, states that he died 50 years ago. The plaintiffs' witnesses go on to say that after his death *Mussammat* Tabo came to live in the house of Bhag Singh and bore him several children, four daughters and a son who died in infancy. One of the daughters died, and the other three are *Mussammat* Aso, *Mussammat* Santo and *Mussammat* Harnamo. *Mussammat* Harnamo, the youngest, is the mother of Teja Singh. Some of the plaintiffs' witnesses have stated that *Mussammat* Tabo never lived in Bhag Singh's house but he used to visit her. But the fact of their having several children cannot be ignored and it is very improbable that if they were not married she would have lived with Bhag Singh who is a *Jambardar* and an owner of a large area of land.

The defendants relied in this connection on some documentary evidence. They relied on certain extracts from *Pandas'* books from Hardwar, but after hearing arguments we are of opinion that these particular entries are inadmissible in evidence. Two witnesses were called, Ram Parshad, a semi-blind old man aged 70, from whose custody the books were produced and his clerk Balmokand. Neither of them wrote the entries in question and neither of them could say by whom they were written. Ram Parshad himself said he never saw Bhag Singh. It, therefore, appears that these particular entries are inadmissible. But in the death certificate of *Mussammat* Tabo, dated the 21st of May, 1914, she is described as the wife of Bhag Singh. Taking all the facts together and the presumption of marriage which arises from long cohabitation I would hold it proved that *Mussammat* Tabo was the wife of Bhag Singh.

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On the second point, the factum of adoption, there is a considerable volume of evidence. The adoption is said to have taken place on the 9th September, 1913. On that occasion Bhag Singh took the precaution of making a memorandum in a *bahi* and getting it signed by a large number of witnesses. There appear to be 29 witnesses who signed the memorandum as to the adoption, of whom seven have given evidence, stating that the adoption was performed with due ceremonies in their presence. On the following day, the 10th September, 1913, Bhag Singh executed and registered a will (Exhibit D.2) which also recited the adoption and stated that after his death Teja Singh should be the owner and possess the testator's entire property. This will is criticised on the ground that whereas the adoption is shown to have taken place the day before the will was executed, in the will Bhag Singh says that he adopted Teja Singh on the day of his birth and that at the time of the will he was two years old. It would appear that Bhag Singh's intention was to adopt him from the day of his birth and no importance is to be attached to this discrepancy. In my opinion the oral and documentary evidence conclusively establishes the factum of adoption.

On the third point, the validity of adoption, the *Riwaj-i-am* of the Amritsar district is in favour of the respondents. This is so, both in the first *Riwaj-i-am* of the year 1865 and the *Riwaj-i-am* prepared at the last settlement of 1914. For the first *Riwaj-i-am*, see Answer 14 of that document printed at pages 86 and 87 of the paper book. This recites that a male owner can adopt the son of any other *Jat* (except from the *Bal* sub-caste) without regard to collateralship, nearness or remoteness of relationship, and without regard to the boy being his daughter's or sister's son

or otherwise. This document refers to the *Dhillon got* of the *Jat* caste in the Amritsar district. In Craik's Customary Law, 1914, the general custom is stated differently. Answer 86 says :—A daughter's or sister's son is not eligible for adoption, except among *Dhillon Jats* of Tarn Taran and *Mughals* of all the three *tahsils*. The parties are here *Dhillon Jats* of Tarn Taran *tahsil* and the *Riwaj-i-am* is in favour of the defendants. Hence according to the rulings of their Lordships of the Privy Council the onus is on the plaintiffs to show that the adoption was invalid *Beg v. Allah Ditta* (1), *Vaishno Ditti v. Rameshri* (2).

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To discharge this onus they have produced a good deal of oral evidence. Thirteen *Dhillon Jats* have come forward to say that among their *got* a daughter's son cannot be adopted and four of them are *lambar-dars*. On the other hand it is quite easy to produce interested testimony of this kind and not one of them has quoted any instances. The defendants have also produced a considerable number of witnesses and from their evidence the learned Senior Subordinate Judge has found that four instances are proved—see page 43 of the paper book.

The plaintiffs also relied on certain judgments and have placed three copies on the record, but all three are instances not of adoption, but of gift. Two of them (Civil Appeal 159 of 1899 and Civil Appeal 193 of 1901 before the Divisional Judge of Amritsar) were considered in a Division Bench judgment of the Chief Court, *Sohna v. Sundar Singh* (3). This found that among *Dhillon Jats* of the Tarn Taran *Tahsil* the validity of an adoption of a daughter's son had been established. This judgment referred to two

(1) 45 P. R. 1917 (P. C.). (2) (1929) I. L. R. 10 Lah. 86 (P. C.).

(3) 85 P. R. 1907.

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other cases which were subsequently printed, one as *Buta Singh v. Ram Singh* (1) and the other as *Bela Singh v. Amar Singh* (2). In all these three Chief Court cases it was held that among *Dhillon Jats* of the *Tarn Taran Tahsil*, a daughter's son could be adopted. There are also two judgments on this record, one of a Subordinate Judge, Amritsar, and one of the District Judge, Amritsar, in both of which the same conclusion has been reached.

We have also been referred to *Ajaib Singh v. Lal Singh* (3) in which a Division Bench of the High Court held that among *Dhillon Jats* of the Amritsar *Tahsil*, the adoption of a daughter's son was not permitted by custom. In this case no instances based on documents appear to have been cited, the judgment proceeds on the onus as laid down in the *riwaj-i-am* and definitely stated that precedents of the neighbouring *tahsil* of Tarn Taran and the neighbouring district of Hoshiarpur are not relevant. This case, therefore, is to be distinguished.

For the above reasons I would reject the appeal with costs.

TEK CHAND J.

TEK CHAND J.—I agree.

P. S.

Appeal dismissed.

(1) 86 P. R. 1907.

(2) 2 P. W. R. 1907.

(3) (1930) 128 I. C. 310.