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INDER SINGH

April xo.

GURDIAL SINGH

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Adoption—Custom—Jats of Ludhiana—lf general treatment as son essential.

N, a Jat of Lüdhiana district, was the last male holder of the property in dispute. He adopted the appellant before the village panchayat by distributing 'gur' and executed a deed of adoption in his favour. For a short period N lived with the appellant. A few weeks later N left the appellant, cancelled the deed of adoption within five months and repudiated any association with the appellant as his son. N died three years later. The appellant claimed the properties of N contending that he had been validly adopted by N and that the adoption once validly made could not be revoked.

Held, that the appellant was not validly adopted by N. The formalities necessary for customary adoption in accordance with the rules prevalent amongst Jats of Ludhiana district are: (i) a declaration of adoption and (ii) general treatment of the appointed heir as a son. A mere declaration or even the execution of a deed of adoption unaccompanied by precedent or subsequent treatment as son is insufficient. In' the present case the second formality «,vas lacking. There was no evidence that N treated the appellant as his son; on the contrary there was evidence to show that he repudiated the declaration that he had made earlier.

Gurbachna v. Bujha, (1911) 46 Punj. Record 151, Baj Singh v. Pratap Singh, (1923) 77 1. C. 473, Chhajiu v. Mehr Singh, (1930) 31 P.L.R. 997, Chanan Singh v. Buta Singh, A.I.R. 1935 Lah. 83 and Kishen Singh v. Taru, A.I.R. 1949 East Punjab 342, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 141 of 1956.

Appeal from the judgment and decree dated September 2, 1954, of the Punjab High Court at Chandigarh in Civil Regular Second Appeal No. 337 of 1952. Achhru Ram, R. Ganapathy lyer and G. Gopalakrishnun, for the Appellant.

Indev Singh

v.

Gurdial Singh

S. P. Sinha and V. N. Sethi, for the respondents.

1961. April 10. The Judgment of the Court was delivered by

S. K. DAS, J.—This is an appeal on a certificate granted by the High Court of Punjab on March 7, 1955. The only question which falls for decision is whether Inder Singh, plaintiff in the court of first instance and appellant herein, was validly adopted by Das J' one Nathu in accordance with the rules of customary adoption prevalent amongst Jats of the Ludhiana district in the State of Punjab.

The relevant facts are these. Nathu, the last male holder of the property in dispute, was a Jot of Ludhiana district. He was blind, not married and had no issue. He was a resident of village Mohanpur. Inder Singh, a resident of the same village,. was his nephew by collateral relation of the fifth degree. Inder Singh's case was that he looked after Nathu since his childhood and on March 24, 1946, Nathu adopted him, according to the custom prevalent amongst them, before the village Ponchayat by distributing "gur" (jaggery) and on the next day, that is, March 25, 1946, Nathu executed a deed of adoption in his favonr and got registered on the same day. For a short period thereafter Nathu lived with Inder Singh. Then Gujar Singh, defendant in the suit, who was a nearer collateral of Nathu, gained influence over the latter. Nathu left Inder Singh and on September 6, 1946, cancelled the deed of gift. Nathu died three years after, that is on October 27, 1949. On Nathu's death Gujar Singh got the property of Nathu mutated in his name in the revenue records. Inder Singh then brought the suit out

of which this appeal has arisen for possession of the property of Nathu Singh, which consisted of about 16 bighas odd of land and a house, on the footing that he was the adopted son of Nathu. The suit was contested by Gujar Singh who alleged inter alia that Inder Singh was not validly adopted by Nathu in accordance with the custom prevalent amongst the Jats of Ludhiana.

The trial Judge held that the story of the alleged adoption before the village Panchayat was not substantiated and the recitals in the deed of adoption were incorrect. He further found that according to

the customary rules of adoption the deed of adoption could not have any effect unless after its execution Indev Singh there was a continuous course of conduct showing that Nathu treated Inder Singh as his son; and inasmuch Gurdia! Singh as there was no evidence to show such association, Inder Singh had failed to make out his case. The suit was, accordingly, dismissed. Inder Singh then preferred an appeal which was heard by the District Judge of Ludhiana. On a consideration of the evidence the learned District Judge came to the conclusion that it established tbat Na,thu did declare Inder Singh as his heir before the village Panchayat on or about March 24, 1946, and that Nathu lived with Inder Singh for a very short period thereafter. This, in the opinion of the learned District Judge, was suffcient to establish a valid adoption according to the customary rules and no further evidence of association as father and son between the two was necessary. In this view of the matter, the learned District Judge held that the cancellation of the deed of adoption by Nathu on September 6, 1946, was of no effect, because an adoption once validly made could not be revoked, Accordingly, he allowed the appeal.

Gujar Singh died sometime after the appellate decision, and the present respondents as heirs and legal representatives of Gujar Singh carried a second appeal to the Punjab High Court. The learned Judges of the High Court held that the rules of customary adoption prevalent

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amongst the parties required two essential elements: (a) an intention to appoint an heir and (b) an act of association between the two as father and son. They held that the short period of about six weeks during which Nathu lived with the appellant after the execution of the deed of adoption was not suffcient to prove that Nathu treated Inder Singh as his future heir; there was, therefore, no such association as would make the adoption valid according to the customary rules prevalent amongst the Jats of Ludhiana district. On this view the High Court set aside the jud.gment and decree of the learned District Judge and restored those of the court of first ins. tance.

The judgment being a judgment of reversal and the value of the property in dispute more than Rs. 20,000 the High Court gave a certificate under Art. 133 of the Constitution read with ss. 109 and 110 of the Code of Civil Procedure. On that certificate the present s. R. Das J. appeal has come to us.

The finding of the Learned District Judge that the evidence on record established that Nathu declared Inder Singh as his heir before the village Panchayat on or about March 26, 1946, is clearly a finding of fact and binding in second appeal. The correctness or otherwise of that finding cannot now be canvassed. The controversy in the High Court as also before us centered round the question whether under the customary rules of adoption prevalent amongst the Jats of Ludhiana, a second element for a valid adoption, namely, an act of association or general treatment of the appointed heir as a son is essential.

Mr. Achhru Ram appearing on behalf of the appellant has contended that the view expressed by the learned District Judge is the correct view. He has

referred us to the general statement of the customary rule in the matter of the appointment of an heir in paragraph 35 at p. 5() of Rattigan's Digest of Customary Law (seventh edition). That paragraph, with Explanation 1, reads as follows:

"35. A sonless propietor of land in the central and eastern parts of the Punjab may appoint one of his kinsmen to succeed him as his heir.

Explanation l. Such an appointment may be manifested, in the absence of any special custom prescribing a different mode, in any of the following ways: By (a) a formal declaration, before the brother-hood, (b) a written declaration, either preceded or followed by some treatment consistent with a deliberate appointment, or (c) a long course of treatment eviden cing an unequivocal intention to appoint the specified person as heir."

The argument of learned Counsel is that according to general rule stated above, the appointment of an heir by adoption may be manifested in one of the following ways: (a) by a formal declaration, before the

brotherhood, (b) by a, written declaration, either prece- ded or followed by some treatment consistent with a deliberate appointment or (c) a long course of treatmenb evidencing an unequivocal intention to appoint Sin gh the specified person as heir. Learned Counsel contends

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that •in view of the finding of the learned District Judge that a formal declaration of the adoption was made by Nathu before the village Panchayat, there was sumcient manifestation of the appointment. He has submitted that a somewhat different rule embodied in the thirteenth edition of Rattigan's Digest as revised by O. P. Aggarwala, is not a correct statement of the law; the statement there being that the two elements which are essential to constitute the factum of adoption are (i) an intention to

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appoint an heir and (ii) an act of association (see p. 497). We consider that it is unnecessary in this case to examine the more general question of the exact scope and ambit of the rule in other parts of the Punjab; for we have unimpeachable evidenco of the scope of the rule in the district of Ludhiana. In the Customary Law of the Ludhiana District (rewaj-i-am), compiled and attested by J. M. Dunnett, Settlement Offcer, the formalities of customary adoption amongst Jots of the Ludhiana 'disbricb are stated in the form of the following question and answer (see p. 102):

"Question 68. What formalities are necessary for adoption?

Answer—As adoption is not a religious ceremony, no special formalities are considered necessary. The adopter usually calls the neighboürs and his rela. tions together, and distributes gur, saying that he hag adopted (god lia) so and so. Sometimes a deed of adop!ion is executed. But a declaration of adoption and general treatment as a son are looked upon as sumcient."

The compiler then observes:

"Case-law agrees. It•is well-established principle that customary adoption. requires absolutely no • formalities. ..... The evidence required to establish the factum of adoption is merely evidence

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of intention clearly expressed and treatment shown.

In 79, Punjab Record of 1882 (Jats of Mauza Baga Kalon tahsil Samrala) the execution of a deed and general conduct were held sufficient, but in 94, Punjab Record, 1893, among Dhaliwal Jots, the mere execution of a deed unaccompanied by precedent or subsequent treatment was held insumcient." Mr. Achhru Ram has very fairly conceded that the statement of customary law of the Ludhiana district in the rewåj-i-a,m is authoritative, though the many details mentioned in the answers given are not necessarily mandatory. It is clear, however, that so far as the Jats of Ludhiana distriét are concerned, the formalities necessary for adoption are, firstly, a declaration of adoption and, secondly, general treatment of the appointed heir as a son. A mere declaration or even the execution of a deed of adoption unaccompanied by precedent or subsequent treatment is insuffcient. That being the position, the High Court was clearly right in its decision.

The same position is established by the authorities bearing on the subject. The earliest decision to which our attention has been drawn is Gurbachna v. Bujha([1]). In that case it was stated that where th.e power of customary adoption by a sonless proprietor was not disputed, all that was necessary to constitute an adoption w,as the clear expression of an intention on the part of the adoptive father to adopt the boy concerned as his son and a suffcient manifestation of that intention by the execution and registration of a deed of adoption coupled with a clear declaration in court and subsequent treatment as adopted son. It was pointed out, however, that in a case where soon after the execution of the deed of adoption the reversioners of the adoptive father brought a suit, it was not reasonable to demand proof of subsequent treatment. In the case before us, Nathu died three years after the execution of the deed. He left Inder Singh a few weeks after the execution of the deed, cancelled the deed within about five months and instead of treating

(1) (1911) 46 Punjab Record 151.

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Singh as his son repudiated any such association with him. In these circumstances the High Court rightly held that there was no suffcient manifestation of the intention to adopt Inder Singh as his son by Nathu. In Baj Singh v. Partap Singh (1) it was observed:

"There is ample authority for holding that the appointment in order to be valid must be made in some unequivocal and customary manner and the execution of a deed coupled with a, long course of treatment has always been recognised as one of the modes of manifestating such an appointment." • In Chhajju v. Mehr Singh (2) it was held that the execution of a deed by the adoptive father was not enough and continuous subsequent treatment not having been proved, the adoption was not established. In Chanan Singh v. Buta Singh (d) the decision proceeded on the customary law of the district of Jullundur and on that basis it was held that the appointment should be manifested by some declaration or course of treatment evidencing an unequivocal intention to appoint a, specified person as heir; it was pointed out that the question and answer recorded in the rewaj.iam concerned showed that the essence of the custo ma,ry rule was that it should be clearly declared. Their Lordships were dealing with a case in which there was not merely a public declaration in court but also subsequent treatment of the appointed heir as a, son by the adoptive father. In Kishan Singh v. Taru (4) , it was observed that all that was necessary to constitute an adoption under customary law was the clear expression of intention on the adoptive father's part to adopt the boy goncern ed as his son, and the executio n of the deed of adoption coupled with a clea,r

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declaration before a registering offcer and continuous subsequent treatment as adopted son were sufficient manifestation of the intention.

We are of the view that the High Court rightly held that in the circumstances of thig case the declaration made by Nathu before the village Panchaya,t

(I) (1923) 77 1.c. 473• (2) (1030) 31 P.L.R. 997.
(3) A.I.R. 1935 Lab. 83. (4) A.I. R. 1949 East Punjab 342.

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THE STATE OF PUNJAB (P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. mS GUPTA and N. RAJAGO

s. K. Das J.

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on March 24, 1946, and the execution of a deed of adoption which he cancelled within a short time were not a suffcient manifestation of the intention of Nathu to adopt Inder Singh as his son. There was no evidence that Nathu Singh treated Inder Singh as his son; on the contrary, there was evidence to show that he repudiated the declaration that he had earlier made.

For the reasons give above, we see no merit in the appeal which is, accordingly, dismissed with costs.

Appeal dismissed.

RAMDHANDAS AND ANOTHER

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PALA AYYANGAR, JJ.)

Shop Establishments—Enactment to Provide for regulation of hours of work—ConstitutionaI validity—Forty eight hour week— Opening and closing hours—ReasonabZe restrictions—Punjab Shops and Commercial Establishments Act, 1958 (Pun}. 15 of 1958), .ss. 4, 7, 9, xo—Constitution of India, Arts, 19(6).

Section 7 of the Punjab Shops and Commercial Establishments Act, 1958, provided that no person shall be employed about the business of an establishment for more than forty eight hours in any week and nine hours in any one day. Under s. 9 of the Act no establishment Shall, save as otherwise provided by the Act, open earlier than ten o'clock in the morning or close later than eight o'clock in the evening. The petitioners challenged the constitutional validity of the aforesaid provisions of the Act on the ground that having regard to the nature of their business, it would be impossibie for them to carry it on in the manner in which they were doing unless the Act permitted them to work without regard to the restrictions imposed by the fimitation as to hours ot work of employees under s. 7(1) or the hours for the opening and closing of the establishments under s. 9, and that,