



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1655-1997

Sube Khan and Others

. . . . Appellants

Vs.

Asgari and Another

. . . . Respondents

**Reserved on: 23.03.2026
Pronounced on: 27.03.2026
Pronounced fully/operative part: Fully**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate for the appellants.

Mr. Sachin Mittal, Advocate and
Mr. Akshat Mittal, Advocate for the respondents.

DEEPAK GUPTA, J.

The present appeal has been preferred by the plaintiffs against the judgment & decree passed by the learned first Appellate Court dated 23.03.1997, whereby the suit for declaration instituted by the plaintiffs was dismissed, reversing the judgment & decree dated 25.11.1995 passed by the learned trial Court of Additional Sr. Sub Judge, Nuh.

2. For the sake of convenience, the parties are referred to as per their status before the trial Court. The record of the Courts below, available on DMS, has been perused.

3. The foundational facts, which are either admitted or stand concluded by concurrent findings, deserve to be noticed at the outset. The parties belong to the Meo community and are governed by customary law in matters relating to alienation and adoption. The suit property was ancestral in the hands of Zahur Khan son of Rustam. Upon his death, the property devolved upon his



widow, Smt. Asgari, who inherited the same as a limited owner. The plaintiffs are collaterals of Zahur Khan.

4. It is also not in dispute that earlier litigation between the parties culminated in a decree dated 22.01.1981, whereby Smt. Asgari was restrained from alienating the suit property without the consent of the collaterals of her husband, and the said finding attained finality upto the High Court.

5. The present suit was instituted by the plaintiffs claiming that upon the death of Smt. Asgari, being only a limited owner, the property would revert to them as collaterals. The plaintiffs challenged the adoption of defendant No.2 by Smt. Asgari vide registered adoption deed dated 04.02.1991, contending that such adoption was illegal, void and not binding upon their reversionary rights, primarily on the ground that the consent of the husband's collaterals had not been obtained and that the adoptee was not from the husband's lineage.

6. The defendants contested the suit by asserting that defendant No.2, being the daughter's son of Smt. Asgari, was validly adopted by her and that under the applicable customary law, no consent of the collaterals was required. It was further pleaded that upon the death of Smt. Asgari, defendant No.2, being her legally adopted son, was entitled to succeed to the estate.

7. The learned trial Court, on the basis of evidence led by the parties, accepted the case of the plaintiffs and decreed the suit. However, the learned first Appellate Court, upon re-appreciation of the evidence and consideration of the legal position, reversed the findings and upheld the validity of the adoption.

8. Assailing the above reversal, learned counsel for the appellants has contended that under the customary law applicable to Meo Caste, a widow cannot adopt without the authority of her husband or without the consent of his collaterals, and therefore, the adoption in the present case is void. It is further argued that the ancestral nature of the property and the status of the plaintiffs as collaterals entitle them to succeed as reversioners.



9. *Per contra*, learned counsel for the respondents has relied upon authoritative pronouncements, including ***Hem Singh v. Harnam Singh, 1954 AIR (SC) 581***, to contend that customary adoption in Punjab is essentially secular in nature and amounts to appointment of an heir, and that requirements regarding authority, ceremonies or preference in selection are directory and not mandatory.

10. This Court has considered the rival submissions and has carefully perused the record.

11. The principal question that arises for consideration is whether the adoption of defendant No.2 by Smt. Asgari is invalid for want of consent of the husband's collaterals or absence of express authority.

12. The learned first Appellate Court has undertaken a detailed examination of the customary law governing the field and has rightly concluded that customary adoption among Meos is primarily a mode of appointing an heir and does not strictly adhere to the rigours of classical Hindu law. The reliance placed on judicial precedents holding that the requirements relating to authority or choice of adoptee being directory in nature are well-founded.

13. In ***Hem Singh v. Harnam Singh (supra)***, the Hon'ble Supreme Court authoritatively held that adoption under Punjab customary law is secular in character and the rules relating to ceremonies and preferences in selection are merely directory. Consequently, an adoption made in deviation thereof is not rendered invalid. This principle has consistently been followed by this Court in subsequent decisions.

14. Applying the aforesaid legal position, it becomes evident that the absence of consent of the collaterals of the husband does not vitiate the adoption. Similarly, the fact that the adoptee is the daughter's son of the widow cannot be treated as a disqualification, as the choice of the person to be adopted falls within the discretion of the adopter and such preference rules are not mandatory.



15. The evidence on record, as meticulously examined by the first Appellate Court, clearly establishes the factum of adoption. The adoption deed dated 04.02.1991 is a registered document. The same has been duly proved by the testimony of the executant, attesting witnesses, the natural father of the adoptee, and the scribe. The subsequent conduct of the parties also supports the fact that defendant No.2 was treated as the adopted son of Smt. Asgari. There is, thus, no infirmity in the finding that the adoption was validly effected.

16. Once the adoption is held to be valid, the consequence in law is that the adopted son steps into the shoes of a natural-born son for the purposes of succession. In such a situation, the claim of the collaterals as reversioners stands excluded. The plaintiffs, being distant collaterals, cannot assert a superior right in the presence of a validly adopted son.

17. The earlier decree restraining alienation by Smt. Asgari also does not advance the case of the plaintiffs. The said decree did not impose any restriction upon her right to adopt, nor did it curtail her capacity to appoint an heir under the customary law.

18. It is well settled that in a second appeal, interference is warranted only when a substantial question of law arises. The findings recorded by the first Appellate Court are based on proper appreciation of evidence and correct application of the settled legal principles governing customary adoption. No perversity or illegality has been pointed out so as to warrant interference.

19. In view of the above discussion, this Court finds no merit in the present appeal. The same is accordingly dismissed.

(DEEPAK GUPTA)
JUDGE

27.03.2026

Neetika Tuteja

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No

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