

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

CR No. 3230 of 2004 (O&M)
Date of decision: 30.10.2015

Dev Karan (dead) thr. his LRs and others ... Petitioners
versus
Ranbir Singh (dead) thr. His LRs and another Respondents

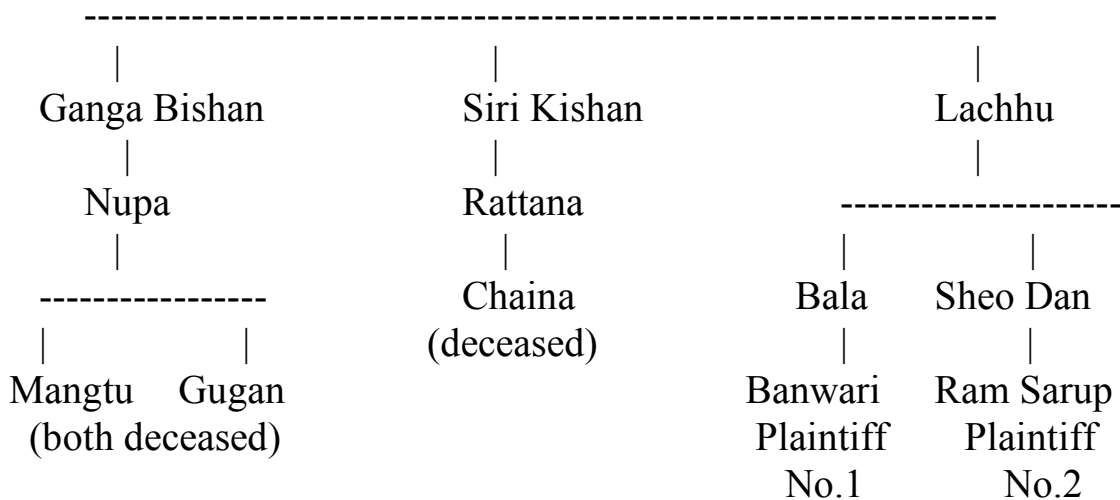
CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Alok Mittal, Advocate for the petitioners.
Mr. B.R. Gupta, Advocate for respondent No.1.

K.Kannan, J.

The revision is against the order allowing for the decree passed in the year 1982 to be set aside on an application filed by the 3rd party in the year 1985. The suit was for the declaration of presumptive death of Mangtu, Gugan and Chaina, first two being sons of Nupa and 3rd being son of Rattana. Their common ancestor was Tokha. Tokha had 3 sons, of whom Lachuu was one. Lachuu had two sons and the 1st plaintiff was the son of the 1st son and was the son of yet another son. The relationship between the parties is set out as under :

Tokha



The plaintiffs filed a suit in the year 1982 on the presumptive death of the representatives of Nupa and representatives of

two of the sons of Toka and that the plaintiffs must be taken as having become the owners of the property. Evidently, in a suit where the presumptive death was raised, there was but a publication in *munadi* and the Court proceeded to grant decree when there was no appearance of persons said to have died. However, 13 years later Mangtu who was said to have suffered a civil death, was reported to have left behind a son and the person claiming to be such soon moved an application for setting aside the ex-parte decree. The Court allowed the same on his plea that he came to know about the decree recently and since he was setting up his status as a son of one of the persons said to have died, the case would require an adjudication on merits.

Learned counsel appearing on behalf of the plaintiffs-decree holders would contend that the newspaper publication had been made in a popular daily in circulation and the applicant-respondent must have taken notice of such a publication. If his contention that the respondent was stating that he had come to know about the decree through some persons in the village but none of them had been referred to by names and the vague contention itself was a proof of the falsity. Counsel would argue that the applicant was stated to be actually cultivating the property on 1/3rd *batai*, but, there is no proof that he had any enjoyment in respect of the property.

I do not think that these contentions must stand in the way for consideration of the application for setting aside the decree and allowed for the an adjudication on merits. Even an argument made by the counsel that there is no proof offered by the respondent that he was the son of the Mangtu could be taken up now, for, that is typically an issue at the trial itself. If the plaintiff is contending that Court must declare Mangtu as civilly dead and there is a person interested in denying such an assertion, it requires an adjudication in the manner contemplated under Section 34 of the Special Relief Act where a legal status of the party is denied, the confirmation of such a

status shall be done only by a Civil Court in a declaratory action and the plaintiff cannot secure a presumption of death when there is some person interested in saying that he is the son of Mangtu. Such an assertion that he is the son of Mangtu will have to be proved only by the person who makes such assertion, namely, the respondent himself and that Court will frame an appropriate issue regarding the respondent's status as the son of Mangtu and cast the burden on him to prove the same and test the relevance of such relationship for the claim to the property which he claims in contest to the plaintiff's claim as a heir including two other persons including Mangtu. Needless to state that the same fact that the respondent has been allowed to enter the contest ought not to be understood as rendering the adjudication regarding the status as having become final. That will have to be established at the trial.

The order already passed requires no intervention and the revision petition is dismissed with above observations.

(K.KANNAN)
JUDGE

30.10.2015

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