

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

RSA-1934 OF 1988

Decided on: 07.08.2015

Zora Singh and anotherAppellants

vs.

Sumit Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: None for the appellants.
Mr.Gurcharan Singh, Advocate for respondent no.1.
**

G.S.SANDHAWALIA, J

1. The present appeal is directed by defendants no.5 and 6 / present appellants against the concurrent findings recorded by two Courts below, whereby the plaintiff was declared owner to the extent of ½ share of land measuring 1 bigha 13 biswas falling in khasra no.1897/1, as per jamabandi for the year 1978-79 situated in village Maqsoodra, Tehsil and District Ludhiana.

2. The suit was filed on the instance of the revenue record by the plaintiff/respondent claiming to be adopted son of one Nathu. It is alleged that since revenue authorities were not processing the application for partition of the joint property, the clouds on the title, the suit was filed.

3. The defence of the defendants no.5 and 6, / present appellants, was that the plaintiff was not the owner. The property in dispute was given to a 'Sadh' by Fattu who was the joint owner along with Nathu and reliance was placed on the order of the Consolidation Officer dated 22.09.1956. In lieu whereof, Fattu was allotted another patch of land of the same area out of 'Shamlat deh'.

4. The suit was contested by defendants no.5 and 6 only.
5. The following issues were framed by the trial Court:

1. Whether the plaintiff is the owner of the disputed property?OPP
2. If issue no.1 is proved, whether the order of Asstt. Collector Ist Grade is illegal and void?OPD
3. Whether the disputed property was given in an exchange to Sadh by Fattu by predecessor in interest of defendants? If so its effect?OPD
4. Whether the plaintiff is an adopted son of Nathu Singh?OPP
5. Relief.

6. Trial Court examined the record and took into consideration the evidence of PW1 who was the plaintiff and defendant DW1 and came to the conclusion that Karnail Singh had admitted that the plaintiff was the adopted son of Nathu and that his grand father namely Fattu was the brother of Nathu. Accordingly, the revenue record was relied upon and the fact that brothers Fattu and Nathu were co-owners was taken into consideration as per the khatoni paimaish for the year 1955-56 Ex.P8. The defence that some land had been given to some 'Sadh' was brushed aside on the ground that even the defendant would lose right in the land and accordingly the suit was decreed to the extent of $\frac{1}{2}$ share on 26.11.1985.

7. The lower Appellate Court vide its judgment dated 03.05.1988 noticed that locus standi of the plaintiff could not be questioned in lieu of the admission by Karnail Singh. It was further noticed that after the death

of Nathu, the plaintiff had been recorded as owner in equal share with Fattu

vide jamabandi for the year 1978-79 Ex.D2, therefore, upheld the order of the trial Court and dismissed the appeal.

8. Both the Courts below have recorded the actual finding as to the right of the plaintiff/respondent placed on the revenue record and the fact that the parties are closely related.

9. The argument now raised on the ground of appeal that additional evidence should have been permitted thereby the right of the plaintiff in contesting is in lieu of actual finding recorded as per the statement of the appellant no.2 Karnail Singh that the grand father were *inter se* related.

10. Accordingly, no substantial question of law arises for consideration by this Court and the judgments do not suffer from any infirmity or patent illegality which would warrant interference.

11. The present regular second appeal is, therefore, dismissed.

07.08.2015
mamta

(G.S.SANDHAWALIA)
JUDGE