

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

R.S.A.No.3953 of 2008 (O&M)

Date of Decision: September 2nd, 2015

Baldev Singh (since deceased) through L.Rs.

...Appellant

Versus

Mohan Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr.Sarju Puri, Advocate,
for the appellant.**

**Mr.Sarwan Singh, Senior Advocate with
Mr.N.S.Rapri, Advocate,
for respondent Nos.1 & 6 to 9.**

AMIT RAWAL, J.

The appellant-plaintiff has assailed the impugned findings of the Lower Appellate Court, whereby the suit for declaration to the effect that plaintiff and defendant No.13 are owners in possession in equal share of the estate of Karam Singh and Jagat Singh sons of Bhagwana on the basis of the registered Will executed by Karam Kaur on 13.12.1989, who succeeded to the estate of Jagat Singh and Karam Singh being their real sisters as sole heirs with a consequential relief of permanent injunction restraining defendant Nos.1 to 12 from interfering into the possession of the

plaintiff over the suit land and in the alternative, suit for joint possession of the land measuring 5 kanals 16 marlas out of land measuring 26 kanals 4 marlas, has been dismissed.

Mr.Sarju Puri, learned counsel appearing on behalf of the appellant-plaintiff submits that Bhagwan Singh @ Bhagwana was owner of the land and after his death, the same was succeeded by his two sons, namely, Karam Singh and Jagat Singh and a daughter, named, Karam Kaur in equal share, i.e., 1/3rd share. Karam Singh died on 30.4.1989, whereas Jagat Singh died after a few months thereafter, i.e., on 3.8.1989 and, therefore, the entire land belonging to Bhagwana was to be inherited by Karam Kaur being the only successor-in-interest being collateral. Mutation was also sanctioned in her favour. A Will dated 13.12.1989 was executed by Karam Kaur in favour of the appellant-plaintiff, namely, Baldev Singh and defendant No.13 Resham Singh son of Naranjan Singh in respect of her entire estate in equal shares. Plaintiff claiming the inheritance of Jagat Singh, Karam Singh and Karam Kaur filed a suit, which was decreed in his favour and defendant No.13 and as such, they are owners in possession of the entire land measuring 8 kanals 14 marlas held by Bhagwana. Since defendant No.8 was threatening to dispossess the plaintiff forcibly from the suit land on the ground that the revenue authorities sanctioned the inheritance of Jagat Singh and Karam Singh to the extent of 2/9 share in favour of defendant Nos.1 to 7 being L.Rs of Karam Singh and Jagat Singh, the suit, on aforementioned grounds, was filed.

It has been submitted that defendant Nos.1 to 7 were impleaded as party, who allegedly claimed to be the children and wife of Karam Singh

and Jagat Singh, whereas, according to the plaintiff, Karam Singh and Jagat Singh were bachelors and they did not have any issue. He further submits that the trial Court, on the basis of the oral and documentary evidence, decreed the suit, while declaring them owners in possession of the property in equal shares to the extent of share of Jagat Singh, Karam Singh and Karam Kaur and also restrained the defendants not to interfere in joint possession. However, the Lower Appellate Court, while interpreting the provisions of Section 50 of the Indian Evidence Act, erroneously and perversely reversed the well reasoned judgment and decree of the trial Court. He further submits that the Lower Appellate Court has misdirected itself in misreading the documentary evidence, whereas the appellant-plaintiff has proved on record that Karam Singh and Jagat Singh were bachelors and they did not have any wife or children and their property was liable to be inherited in favour of the appellant on the basis of the Will as Karam Kaur was the owner of the suit land having succeeded to the estate of her brothers. He further submits that the legal heirs did not step into the witness-box in support of the defence set up by defendant No.8, much less, no documentary evidence had been produced on record to prove the alleged marriages of Jagat Singh and Karam Singh. In essence, neither marriage certificate, passport, birth certificates or even the school certificates had been placed, much less, proved on record.

PW-1 Ram Dass, PW-2 Swaran Singh and PW-3 Hardev Singh in their evidence stated that both Jagat Singh and Karam Singh died as bachelors as both of them were his maternal uncles.

The Lower Appellate Court has failed to appreciate that the onus

to prove the alleged marriages of Jagat Singh and Karam Singh as well as having children was on defendant No.8 and defendant Nos.1 to 7, but they have miserably failed to discharge the said burden and, therefore, it cannot be shifted upon the appellant-plaintiff to rebut. He further submits that the Lower Appellate Court has ignored the very vital fact that defendant No.8, who contested the suit, had no interest or concern with the estate of Jagat Singh and Karam Singh or Karam Kaur as he was neither or is a legal heir nor has been appointed an attorney by the alleged legal heirs, i.e., defendant Nos.1 to 7 and, therefore, the Lower Appellate Court ought to have drawn adverse inference against the defendants for keeping away Dhan Kaur, alleged widow of Jagat Singh, from witness box, who would have proved that Jagat Singh and Karam Singh were married and, thus, the pleadings culled out in the plaint and as well as in the examination-in-chief, vis-à-vis the fact that both Jagat Singh and Karam Singh have died bachelors, have irresistibly, been proved and, thus, submits that the following substantial questions of law arise for determination by this Court:-

- a) Whether the impugned judgment and decree passed by Ld. Lower appellate Court is against law, perverse and contrary to the evidence on record?
- b) Whether the Ld.Lower appellate Court has legally erred in not drawing an adverse inference against the defendants for withholding the best evidence?
- c) Whether the oral evidence of defendants meets the requirement of Section 50 of the Evidence Act?

Mr.Sarwan Singh, learned Senior Advocate assisted by

Mr.N.S.Rapri Advocate, appearing on behalf of respondent Nos.1 and 6 to 9 submits that a mutation bearing No.5973 in respect of land of Karam Singh in favour of his four sons, namely, Mohan Singh, Manohar Singh, Subhash Singh and Gulab Singh and his daughter Avinash Kaur and widow Kamal Kaur had been effected, whereas vide mutation bearing No.5974, the estate of Jagat Singh was mutated in the name of his widow Dhan Kaur. Even copy of Shijra Nasab (Ex.DX/1) proved that the entries have been made regarding the said mutation. It is a matter of record that the mutation was effected after making the enquiry in the village by the Tehsildar at the instance of SDM-cum-Assistant Collector Ist Grade, Nawanshahr and PW-3 Hardev Singh has unequivocally admitted in the cross-examination that the SDM had visited the village for the aforementioned purpose. He further submits that as far as the judgment (Ex.P4) is concerned, the said suit was filed at the instance of Baldev Singh against his three sisters and one brother in respect of the suit property seeking a declaration that he and defendant No.4 Resham Singh were owners in possession of the same and the suit was decreed on the basis of compromise and, thus, it apparently appears to have been filed with collusion. Even otherwise, by virtue of the said decree, the defendants could not have passed on a better title than what vested in them as neither Jagat Singh or Karam Singh or the legal heirs were party to the said suit and, therefore, it would not have any binding effect on their rights. He further submits that no documentary evidence has been produced to show/establish that Karam Singh and Jagat Singh died bachelors. Ex.P6, copy of jamabandi for the year 1980-81 has not been proved on record as, the same was tendered into evidence through the statement of the counsel

for the appellant-plaintiff made on 13.11.2003.

Except jamabandi (Ex.P6), which has not been proved, there is no other documentary evidence brought on record to establish that both Jagat Singh and Karam Singh were not married or had any children. He further submits that mere execution of the Will at the instance of Karam Kaur, sister of Karam Singh and Jagat Singh, would be inconsequential inasmuch as that once it has been proved on record that both Karam Singh and Jagat Singh were married and the mutation was effected in favour of their legal heirs, she could not have passed on a better title, which was not vested in her. He further submits that non-appearance of defendant Nos.1 to 7 in the witness box is immaterial inasmuch as that the onus was upon the appellant-plaintiff to prove that Jagat Singh and Karam Singh died bachelors. In order to lend support to the aforementioned submission, he further submits that the plaintiff has to stand on his own legs and should not find weaknesses in the defence of the defendants and, therefore, the impugned judgment and decree is in accordance with the oral and documentary evidence brought on record. He further submits that no substantial question of law arises for determination by this Court and prays that the present appeal may be dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

No doubt, it is now settled proposition of law that as per **Punjab Urban Planning and Dev. Authority Versus M/s Shiv Saraswati Iron & Steel Re-Rolling Mills, AIR 1998 (SC) 2352**, the plaintiff has to stand on his own legs and should not rely upon the weak defence of the defendants. It

is immaterial whether the defendant leads any evidence or even had been proceeded *ex-parte*. The onus to prove that Jagat Singh and Karam Singh were bachelors was upon the appellant-plaintiff and miserably failed to prove that Jagat Singh and Karam Singh died bachelors. The jamabandi (Ex.P6) has not been proved in accordance with law. It has only been tendered. The position with regard to the exhibition of the documents would not dispense with its proof is no longer *res integra*. I rely upon the dictum of ratio decidendi culled out in **Sait Tarajee Khimchand and others Versus Yelamarti Satyam and others**, AIR 1971 SC 1865. Except Ex.P6, there is no other documentary evidence to show that Jagat Singh and Karam Singh died bachelors. The judgment (Ex.P4) would not come to the rescue and aid of the appellant-plaintiff as the legal heirs of Jagat Singh and Karam Singh were not impleaded as party. The mutations and the Shijra Nasab (Ex.DX/1) were entered way back, but the same have not been challenged neither in the revenue court nor any competent court of law. On juxtaposition of the documentary evidence brought on record by the defendant-respondents, the balance is liable to be tilted in favour of the defendants and against the plaintiff for the reason that Ex.P6, as already noticed above, has not been proved in accordance with law. There is a candid admission of PW-3 Hardev Singh in the cross-examination that the SDM has visited the village to make enquiry. No doubt, copy of the enquiry has not been brought on record, much less, proved, but once there is an admission on behalf of the plaintiff, the admitted defence, much less, admission is not required to be proved. Section 50 of the Indian Evidence Act prescribes to form an opinion on relationship. For the sake of brevity,

Section 50 of the Act reads thus:-

“Opinion on relationship, when relevant:

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under Section 494, 495, 497 or 498 of the Indian Penal Code, 1860.”

The expression/term “opinion” has been interpreted by the Hon’ble Supreme Court and this Court in many judgments. It has been held that a person having special means of knowledge can speak in the witness box of what he has been told and what he has learned about his own ancestors, provided what he says is an expression of his own independent opinion and not based on any hearsay. In this regard, I draw support from the judgments rendered in **Sitaji and others Versus Bijendra Narain Choudhary and others**, AIR 1954 S.C. 601, **Dolgobindra Paricha Versus Nirmal Charan Misra and others**, AIR 1959 Supreme Court 914 and **Bant Singh & Anr. Versus Niranjana Singh (D) by Lrs. & Anr., 2008(2) R.C.R. (Civil) 123 (SC)**.

PW-1 and PW-2 have not stated in conformity with the provisions of Section 50 of the Indian Evidence Act inasmuch that their evidence is falling short to meet the requirement of special knowledge. Ram Dass, though stated about the bachelor status of Karam Singh and Jagat Singh, but that was based on hearsay as said deposition was on the basis of acquisition

of knowledge by Karam Kaur. He has not seen Jagat Singh and Karam Singh and their family members. The plaintiff has not chosen to examine any of his relative from village Jhikka. The plaintiff's witnesses have not uttered a word with regard to the special knowledge, whereas Mohan Singh established in detail regarding the relationship and the manner in which he used to address the wife of Jagat Singh as "Bhabhi". It is a matter of record that Jagat Singh and Karam Singh had been staying abroad, therefore, it cannot be believed that the family would also be in abroad and it is also a matter of record that many people who have migrated to foreign country do not visit to their motherland.

In view of what has been observed above, the substantial questions of law, as noticed above, are answered against the appellant-plaintiff and in favour of the respondent-defendants. There is no illegality and perversity in the judgment and decree rendered by the Lower Appellate Court, which is based on appreciation of oral and documentary evidence.

The appeal is devoid of any merit. The same is accordingly dismissed.

September 2nd, 2015
ramesh

(AMIT RAWAL)
JUDGE