

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

R.S.A.No.413 of 2008 (O&M)

Date of Decision: November 03, 2015

Jai Singh

...Appellant

Versus

Raj Pal 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.Adarsh Jain, Advocate,  
for the appellant.

Mr.M.L.Sarin, Senior Advocate with  
Ms.Alka Sarin, Advocate,  
for the respondents.

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**AMIT RAWAL, J. (Oral)**

The appellant-plaintiff is in Regular Second Appeal against the findings rendered by the Lower Appellate Court, whereby the judgment and decree of the trial Court decreeing the suit, have been set-aside.

Mr.Adarsh Jain, learned counsel appearing on behalf of the appellant-plaintiff submits that the Lower Appellate Court has committed illegality and perversity in reversing the well reasoned judgment and decree of the trial Court and in not appreciating the fact that the parties, being Rajput by Caste, were governed by the Customary Law, which permits the succession of the property only by male members and not by female members. Nathu Singh had three wives, namely, Ganga Kaur, Singar Kaur

and Chameli. Nihal Singh was born out from the loins of Ganga Kaur and was married to Sunehari. Out of the wedlock, one daughter, namely, Bholi Bai, who gave birth to Moola Singh. The appellant-plaintiff is the successor-in-interest of Moola Singh. Nihal Singh predeceased Nathu Singh. Nathu Singh died in the year 1918. Moola Singh, vide registered adoption deed dated 10.3.1949, was adopted by Sunehari. In essence, after the adoption, he acquired the ownership of the entire property and, therefore, neither Singar Kaur nor Chameli had any right or share in the property. It is in these circumstances, the suit seeking injunction was filed, wherein the trial Court, after noticing the rival pleadings of the parties to the lis, framed issue No.1 vis-a-vis the ownership. He further submits that the adoption deed was challenged by the collaterals of Nathu Singh and the same has been upheld upto the Hon'ble Supreme Court. As per paragraph 52 of the Rattigan Customary Law, Moola Singh was entitled to succeed to the rights and interest in the property held by Nihal Singh as there was no male child of Singar Kaur or Chameli and, thus, prays that the following substantial questions of law arise for determination by this Court:-

- 1) Whether the appointment of an heir does not relate back and the appointee would be an eligible heir entitled to succeed to the estate and the rights of the persons to whom he was so appointed?
- 2) Whether under the customary law as proved in the present case, the male holder does not exclude the widows and the widow of the pre-deceased son, of the male holder, qua his estate whose inheritance is under consideration?
- 3) Whether a male heir does not exclude the widows and other female heir while succeeding to the estate of a male

holder, in respect of parties who are governed by customary law?

Mr.M.L.Sarin, learned Senior Counsel assisted by Ms.Alka Sarin Advocate, appearing on behalf of the respondents, submits that the Lower Appellate Court has rightly dismissed the suit by applying the doctrine of akin to *res judicata* inasmuch as that Moola Singh had filed a civil suit against Chameli in respect of the same very property, for which the present suit was filed by his legal heirs. The said suit was dismissed vide judgment and decree dated 25.2.1974 (Ex.D3). The appeal preferred was also dismissed vide judgment and decree dated 21.5.1976 (Ex.D4). In case, Moola Singh had to claim the declaration, assuming himself to be the owner of the entire property at the hands of Nathu Singh, he could have sought the same relief, therefore, as per the provisions of Order 2 Rule 2 CPC, much less the provisions of Section 11 CPC, the suit was not maintainable. In the judgment and decree dated 21.5.1976, it has been held that Chameli was in possession by way of adverse possession, therefore, the suit for permanent injunction in the absence of possession is not maintainable. He further submits that there is no illegality and perversity in the findings rendered by the Lower Appellate Court, much less no substantial question of law arises for determination by this Court.

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

It is a matter of record that Moola Singh had lost the litigation upto this Court when the suit filed against Chameli in respect of the suit land had been dismissed. I have gone through the record of the trial Court

and the copy of the suit and compared the same with the present suit. The description of the property is identical. Once there is already identical finding with regard to the same property, the subsequent suit at the behest of the successor-in-interest of Moola Singh is not maintainable as it is hit by doctrine of akin to *res judicata*. The matter in issue directly and principally is the same. In case Moola Singh was aggrieved with regard to any entry of mutation in favour of Singar Kaur or Chameli, he could have claimed the declaration on the basis of custom. No such relief has been sought in the previous suit and, therefore, could not be claimed in the subsequent suit as it would be hit by the provisions of Order 2 Rule 2 CPC.

I do not intend to differ with the findings rendered by the Lower Appellate Court, whereby the suit has been dismissed on the ground that the same is hit by the principle of *res judicata*, much less no substantial question of law arises for determination.

The appeal is accordingly dismissed.

**November 03, 2015**  
**ramesh**

**( AMIT RAWAL )**  
**JUDGE**