

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3180 of 2012(O&M)
Date of decision: 15.09.2015

Satbir and another

... Appellants

Versus

Hukam Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Ashish Gupta, Advocate, for the appellants.

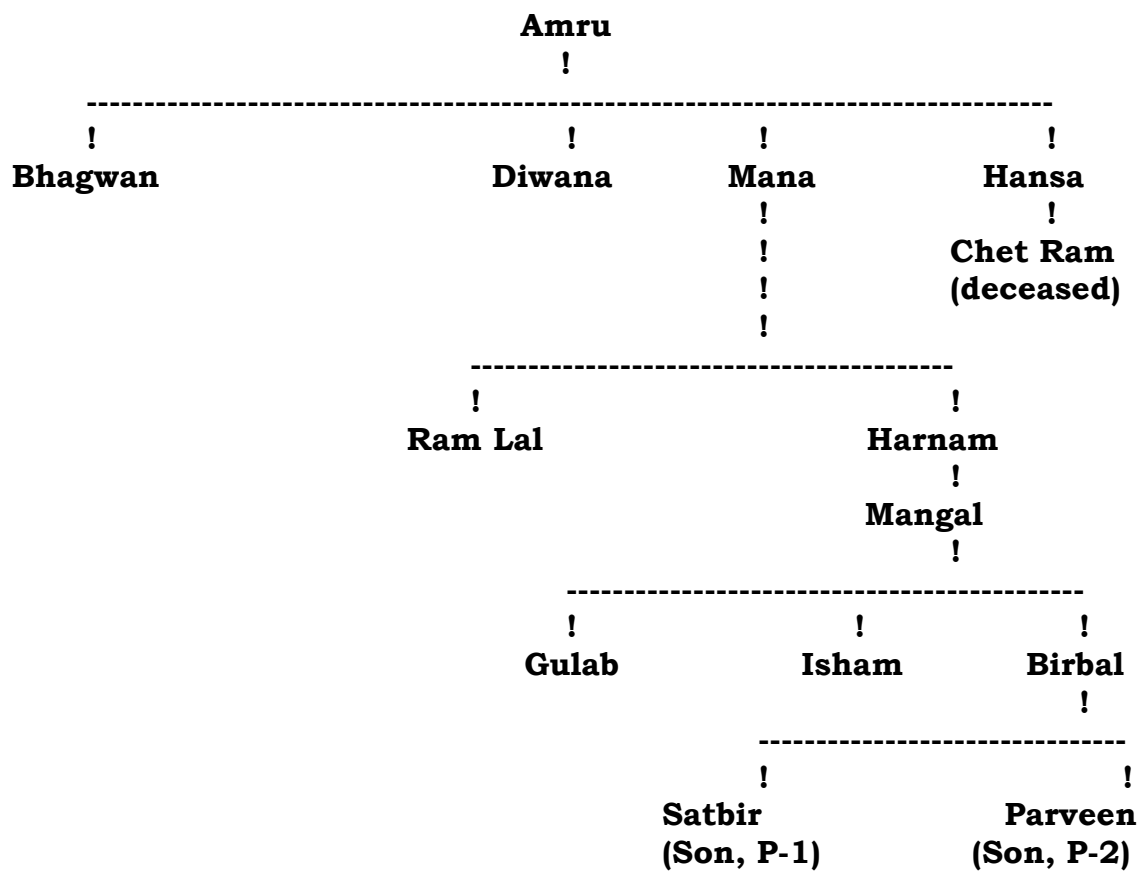
1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court vide judgment and decree dated 13.03.2010. Appeal preferred against the said decree failed and was dismissed vide judgment dated 30.04.2012. This is how, plaintiffs are before this court in this regular second appeal. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, in a suit filed by the plaintiffs, they prayed for a declaration that the gift deed dated 08.07.1952, mutation of inheritance No.240, in favour of Lachmi Devi widow of Nagina, and the subsequent sale deeds by Lachmi Devi, were

wholly illegal and null and void. By way of consequential relief, a decree for possession was also prayed for. It was maintained that Chet Ram son of Hansa happened to be the owner of an agricultural land measuring 51 bighas 2 biswas, situated at village Jhanjhari, Tehsil Nilokheri, District Karnal. Plaintiffs claimed themselves to be the reversioners of Chet Ram, as depicted in the pedigree table being drawn below:



Vide gift deed dated 08.07.1952, Chet Ram bequeathed half of the suit property in favour of Lachmi Devi (now deceased) widow of Nagina. As the said gift deed was executed without concurrence of the father and grandfather of the plaintiffs, who happened to be the collateral and reversioners of Chet Ram, the same was of no consequence. Further, the suit property was ancestral in nature and as per

the custom prevalent in the area no male proprietor could alienate or gift the ancestral property to the detriment of the collateral and reversioners. Chet Ram died issueless about 42 years ago and post his death even the rest half of the suit property was mutated in favour of Lachmi Devi by the revenue agency as she was accepted to be his widow. It was on the basis of the gift deed dated 08.07.1952 and the mutation No.240, Lachmi Devi sold the suit land in favour of defendants No.1 to 10. And thereafter, the said respondents further alienated the said property. That is how, plaintiffs had assailed the gift deed dated 08.07.1952, mutation No.240 and the subsequent alienations.

In defence, it was pleaded, inter alia, by defendants No.1 to 10 & 11 to 14, vide separate written statements, that the suit instituted by the plaintiffs was barred by the principle of res judicata. Mangal, grandfather of the plaintiffs, had earlier filed a suit against Lachmi wife of Chet Ram qua gift deed dated 08.07.1952 and the same was dismissed by the Senior Sub Judge, Karnal, vide decree dated 27.11.1968. Since, Mangal died during the pendency of the suit, his sons Ishma and Birbal prosecuted the said suit on his behalf. And yet another suit bearing No.23/79 was filed by Sunheri Devi widow of Mangal, Gulab Singh, Isham Singh and Birbal against Lachmi. Even the said suit was dismissed by the Sub Judge, First Class, Karnal, on 30.01.1980. The appeal

preferred against the said decree was also dismissed on 30.11.1981 and so was the fate of the regular second appeal preferred by the predecessors-in-interest of the plaintiffs before this court, on 03.03.2004. Lachmi Devi was wife of Chet Ram, as he performed Kareva marriage with her. This is how, half of the suit property was bequeathed by Chet Ram in her favour, pursuant to a gift deed and the remaining half devolved upon her by succession after the death of Chet Ram.

On a due and thoughtful consideration of the matter in issue, and the evidence on the record, the courts below comprehensively concluded that the suit instituted by the plaintiffs was barred by principle of res judicata and pursuant to the finding recorded as regards issue No.3, the suit filed by the plaintiffs was dismissed. The conclusion arrived at in this regard by the trial court and affirmed by the appellate court reads as thus:

“9. The onus to prove this issue was upon the defendants. They have placed on file. Certified copies of judgment dated 27.11.1968. Judgment dated 30.01.1980 and judgment dated 30.11.1981 passed by the court of learned ADJ, Karnal in appeal against judgment dated 30.01.1980. Learned counsel for the defendants has also referred to judgment dated 03.03.2004 passed by the Hon’ble High Court in Regular Second Appeal No.660 of 1982 against the judgment dated 30.11.1981. Incidentally, this case has also become a reported

case referred as Sunehari Devi v. Lachmi, 2004(3), CCC-45 (P&H).

10. A perusal of the judgment dated 27.11.1968 and 30.01.1980 reveal that the suit land which was a subject matter in those cases is also the suit land in the present case. Secondly, the present plaintiffs are also the successors of Mangal, Gulab, Isham and Birbal as per the pedigree table appended by the plaintiff himself. The present defendants no.1 to 10 are the persons in whose favour Smt. Lachmi had transferred the suit land vide registered sale deeds bearing Vasika no.2701/1 and 2721/1 dated 15.07.1974 and 16.07.1974 respectively. Defendants no.11 and 12 earned their title regarding 18K – 19M by sale deed bearing Vasika No.1432/1 dated 24.10.2005 executed by defendants no.9 and 10 in their favour. Similarly, defendants no.13 and 14 had purchased their share from defendant no.11 vide sale deeds dated 08.08.2007 and 11.04.2008 respectively. Thus the present suit was between the same parties or between the parties under whom they or any of them claimed litigating under the same title. In the judgment and decree dated 30.01.1980 Ld. Trial Court framed issues no.2, 8, 9 and 10 as follows:-

“2 Whether the suit property is ancestral property qua the plaintiff? OPP.

8. Whether the gift in favour of the defendant is valid (Onus objected to)? OPP.

9. Whether Smt. Lachmi is widow of Chet Ram deceased? OPD.

10. If issue no.9 is proved, whether the mutation is illegal and without jurisdiction? OPP.

These issues correspond completely with the issue no.1 framed in the present case.”

11. The picture is crystal clear that these issues were adjudicated upon by the trial court then by the Court of first appeal and finally by Hon’ble Punjab & Haryana High Court in Regular Second Appeal.

12. In Sunehari Devi Vs. Lachmi (Supra), the Hon’ble High Court observed.

- i. The suit land in the hands of Chet Ram was non-ancestral.**
- ii. Smt. Lachmi Devi was the widow of Shri Chet Ram.**
- iii. The Gift Deed dated 08.07.1952 and Mutation no.240 (succession of Chet Ram) were legal and valid.**

13. The plaintiff in the present case has again raised the aforementioned three points despite the fact that Hon’ble High Court has already given a findings on these points. There is also no averment on behalf of the plaintiffs as to whether they had filed any SLP against the judgment of the Hon’ble High Court.

14. Thus, the judgment dated 03.03.2004 passed by Hon’ble High Court has attained finality and created a bar of res judicata preventing the plaintiffs from raking up the same issue over and over again. The ingredients of the principles of res judicata are completely made out in accordance with Section 11 of CPC. Accordingly, this issue is decided in favour of the defendants and against the plaintiffs.”

I have heard learned counsel for the appellants and perused the paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

Concededly, prior to the institution of the present suit, a similar suit was filed by the grandfather of the plaintiffs seeking the same relief of possession and declaration, that the gift deed dated 08.07.1952 was wholly illegal and the suit property in the hands of Chet Ram was ancestral in nature and post his death it would have come to the plaintiffs being collateral of Chet Ram. Concededly, plaintiffs are not claiming any independent right in the suit property but claim an interest in the suit property through their grandfather. The previous suit filed by the predecessors-in-interest of the plaintiffs was qua the same property and against Lachmi. Ex facie, the question that was directly and substantially in issue in the previous suit is also directly and substantially involved for determination in the present lis. Thus, apparently the suit filed by the plaintiffs was barred by principle of res judicata.

Learned counsel for the appellants could not point out as to how the conclusions that have concurrently been arrived at by the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as sketched out above, there hardly exists any ground, least plausible in law, to

interfere with the decree being assailed. No question of law, much less any substantial questions of law, arises for consideration. Appeal being devoid of merit is accordingly dismissed.

September 15, 2015
Rajan

(Arun Palli)
Judge