

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

RSA No. 3922 of 2012 (O&M)
Decided on : 12.08.2015

Mani Ram

... Appellant

versus

Ram Kishan and others

... Respondents

CORAM : HON'BLE MR. JUSTICE K. C. PURI

Present : Mr. Ashok Arora, Advocate.

K. C. PURI, J.

C.M. No.10571-C of 2012.

For the reasons mentioned in the application, delay of five days in re-filing the appeal stands condoned. CM stands disposed of accordingly.

MAIN CASE.

Challenge in this appeal is to the judgment and decree dated 16.05.2012 passed by Shri L.N.Jindal, Additional District Judge, Fatehabad, vide which the appeal preferred by the appellant against the judgment and decree dated 19.12.2009 passed by Ms. Narinder Kaur, Additional Civil Judge (Senior Division), Fatehabad, was dismissed.

2. Brief facts as gathered from the record are that the plaintiffs now respondents filed a suit for declaration alleging that Lakhi Ram grand father of the plaintiffs has six sons namely Mangal Ram, Sammat Ram @ Sampat, Baru, Hari Singh, Chandgi @ Chandi, Satia and one daughter namely Beero. Sammat died on 04.06.1986. The mutation of his inheritance

was sanctioned on 31.03.2003 vide mutation No. 2941 by wrongly showing Baru and Hari Singh to be the only legal heirs, whereas the plaintiffs, being legal heirs of Satia, were also entitled to their share in the suit land. The plaintiffs have challenged mutation Nos.2941, 2942 and 2943 dated 31.03.2003 and the sale deeds No. 1892 dated 29.11.2007, No. 1999 dated 13.02.2007 and No. 2328 dated 17.01.2008. They have also challenged subsequent mutation nos. 3281 and 3282 dated 09.01.2008. They have further pleaded that they are owners in possession of $\frac{2}{5}$ th share and $\frac{1}{7}$ th share out of the land measuring 96 kanals 15 marlas bearing Khewat No. 368 as per Jamabandi for the year 1999-2000. Hence, the suit.

3. On put to notice, defendant No.12 appeared and filed written statement pleading therein that Sammat expired on 18.05.1993. It was further pleaded that at the time of death of Sammat, Baru and Hari Ram were the only legal heirs of Sammat. Mutation No. 2941 dated 31.03.2003 was rightly sanctioned in favour of Baru and Hari Singh. The other allegations were denied.

4. Defendant No.16 filed separate written statement taking plea of bona fide purchaser of the property for consideration without notice.

5. Defendant Nos.17 to 21 filed separate written statement admitting the case of plaintiffs.

6. Replication was not filed. From the pleadings of parties, following issues were framed :-

- 1) Whether the plaintiffs are entitled to a decree for declaration as prayed for ? OPP

- 2) Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for ? OPP
- 3) Whether the plaintiffs have no locus standi and cause of action to file the present suit ? OPD
- 4) Whether the suit of the plaintiffs is not maintainable in the present form ? OPD
- 5) Whether the suit is time barred ? OPD
- 6) Whether defendant No.16 is bona fide purchaser of the suit land for consideration without notice ? OPD
- 7) Relief.

7. In order to prove their case, both the parties led their respective evidence. The learned trial court, after appraisal of the evidence, decreed the suit of plaintiffs.

8. Feeling dissatisfied with the above said judgment and decree dated 19.12.2009 passed by Additional Civil Judge (Senior Division), Fatehabad, one of the defendants filed appeal which was dismissed vide judgment and decree dated 16.05.2012 passed by Additional District Judge, Fatehabad.

9. Still feeling aggrieved, the defendant/appellant has preferred the instant regular second appeal.

10. Learned counsel for the appellant, in para no. 14 of the grounds of appeal has mentioned that following substantial questions of law have arisen in the instant appeal :-

- 1) Whether the findings of both the learned courts below which are totally against the proved facts on record are legally sustainable in the eyes of law ?
- 2) Whether the suit is time barred ?
- 3) Whether the plaintiffs are legally bound to prove the alleged Wills vide No.213 and 216 allegedly executed by

Chandgi and Mangal Ram in favour of plaintiffs No.1 and 2 respectively ?

11. I have heard learned counsel for the appellant and have gone through the records of the case.

12. Learned counsel for the appellant has submitted that the facts of the case are not in dispute. Lakha Ram grandfather of the plaintiff had six sons namely Mangal Ram, Sammat alias Sampat, Baru, Hari Singh, Chandgi @ Chandi, Satia and one daughter namely Beero. It is submitted that according to the case of the plaintiff Sampat died on 04.06.1986 and his property has to be inherited by remaining five brothers whereas the case of the defendants is that Sammat expired on 18.05.1993 and at that time Baru and Hari Singh were the only brothers, who have inherited the property of Sammat. It is submitted that in the mutation itself, the date of death of Sammat has been recorded as 18.05.1993 and as such suit of the plaintiff has been wrongly decreed by both the courts below. It is contended that suit is time barred.

13. I have carefully considered the said submission but do not find any force in that submission.

14. The dispute in the present case resolves around the date of death of Sammat. In case Sammat died on 4.6.1986, the suit of the plaintiff has been rightly decreed but in case Sammat died on 18.5.1993, in that case his property has to be inherited by only Hari Singh and Baru, being living prior to that date. There is concurrent finding of fact recorded by both the Courts below that Sammat died on 4.6.1986. That fact has been corroborated by death certificate placed on the file whereas reliance of the

defendants is only on the date of death mentioned as 18.05.1993. The date mentioned as May 1993 cannot be taken as correct as there is no corroborative evidence. Although, Will has been alleged of Sammat but during the course of arguments, no reliance has been placed on the Will. Regarding limitation, there is no period of limitation for claiming inheritance. Otherwise also, the mutations have been attested in the year 2003 and suit has been filed in the year 2008 and as such the same is within limitation. It is not the case of the defendant-appellant that mutation was attested in the presence of plaintiff. So, I have no hesitation in holding that no substantial question of law has arisen in the present appeal. It was purely question of fact regarding date of death and the finding of which has been returned in favour of plaintiff on the basis of documentary evidence. So, there is nothing on the record that judgments and decrees of both the Courts below are the result of misreading and misinterpreting the evidence. So, I have no hesitation in holding that no substantial question of law has arisen in the present case.

15. Consequently, the appeal is without any merit and the same stands dismissed.

16. A copy of this judgment be sent to the trial Court for strict compliance.

(K.C.PURI)
JUDGE

August 12 , 2015
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