

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 26th, 2015

1. R.S.A.No.3296 of 2013 (O&M)

Raj Krishan & others

...Appellants

Versus

Randhir Singh & others

...Respondents

2. R.S.A.No.4712 of 2013 (O&M)

Smt.Bala & another

...Appellants

Versus

Jasmer 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.Ashish Aggarwal, Senior Advocate with
Mr.Neeraj Gupta, Advocate,
for the appellants (in RSA No.3296 of 2013).

Ms.Jigyasa Tanwar, Advocate,
for the appellants (in RSA No.4712 of 2013) &
for the caveator-respondents (in RSA No.3296 of 2013)

AMIT RAWAL, J.

This order of mine shall dispose of two Regular Second Appeal
Nos.3296 of 2013 (Raj Krishan & others Versus Randhir Singh & others)
and 4712 of 2013 (Smt.Bala & another Versus Jasmer Singh & others)

which have been arisen from a common judgment and decree of the trial Court dated 6.9.2010. For adjudication of the dispute between the parties to the lis, the facts are being taken from RSA No.3296 of 2013.

This Regular Second Appeal has been filed by the L.Rs of defendant No.11-Ram Singh son of Chet Ram and defendant Nos.23, 24 and 25 against the respondent-plaintiffs, who instituted a civil suit in the year 2001 claiming the estate of Sadhu son of Bhagwana to the effect that (i) plaintiff No.1-Shugni daughter of Udda son of Ramjas being the mother's sister and Mam Raj being mother's brother of Sadhu son of Bhagwana are the lawful legal representatives of Sadhu, (ii) defendant No.11 being represented by L.Rs and Sondha @ Keru are not related to Sadhu in any way, (iii) mutation No.309 relating to Village Kheri Materwa had wrongly and illegally been sanctioned in favour of defendant Nos.1 to 10 and against defendant Nos.11 to 17 on the premise that the suit property, i.e., the agriculture land, according to the jamabandi for the year 1990-91, was owned by Sadhu son of Bhagwana son of Muglu, resident of Village Kheri Materwa as his whereabouts were not known for the last more than 40 years and sought the setting-aside of mutation bearing No.309, sanctioned on 26.10.1992.

It was further stated that Sadhu was unmarried and his mother had predeceased him and, thus, plaintiff No.1 and Mam Raj, predecessor-in-interests of plaintiff No.1, namely, Smt.Bala daughter of Mam Raj son of Udda and defendant Nos.1 to 10 claimed the inheritance of Sadhu being the mother's sister and mother's brother of Sadhu. It has further been stated that defendant No.11 Ram Singh son of Chet Ram (since deceased) never claimed inheritance of Sadhu. It was also stated that the Assistant Collector

Ist Grade, vide order dated 3.10.1994 illegally and arbitrarily sanctioned the mutation in favour of defendant No.11 and one Sondha son of Chhajju and the said order was assailed by plaintiff No.1 and Mam Raj (father of plaintiff No.2, namely, Bala by filing an appeal before the Collector. The said appeal was also dismissed vide order dated 1.12.2000 and the said orders were not final and, therefore, were subject to the decision of the Civil Court. It was further stated that defendant No.11 and Sondha were not related to Sadhu, who had died unmarried and issueless and the land in dispute is not in possession of defendant Nos.11 to 17 and the same was in possession of third person and, thus, claimed the aforementioned relief.

The said suit was contested by defendant Nos.11, 18 and 20 by filing separate written statements. Predecessors of the present appellants averred in the written statement that the suit was not only maintainable, much less, the Civil Court did not have any jurisdiction to entertain the suit; the plaintiffs have no locus-standi to file the suit; the suit was hopelessly time barred and the simpliciter suit for declaration was not maintainable as the possession had not been sought in the case and much less it was collusive suit.

On merits, it was denied that plaintiff No.1 and Mam Raj, the alleged predecessors of plaintiff No.2 and defendant Nos.2 to 10, were not related to Sadhu son of Bhagwana in any manner and the plaintiffs have concealed the true and material facts inasmuch that an application dated 8.10.1992 for sanctioning of mutation in respect of estate of Sadhu was moved by Mangat Ram son of Nand Ram through Shri Y.K.Mangal, Advocate and thereafter another application dated 17.12.1992 for the same very purpose was moved by Ram Kishan son of Mangal and the third

application dated 7.6.1993 was moved by Mam Raj son of Udda and Smt.Shugni (plaintiff No.1) for sanctioning the mutation in their favour through Shri R.P.Aggarwal, Advocate, but thereafter applicants Shugni and Mam Raj were represented by Shri Y.K.Mangal, Advocate and the Assistant Collector Ist Grade, Kaithal, after recording the detailed evidence led by the respective parties, vide order dated 3.10.1994, sanctioned the mutation in favour of defendant No.1 and the appeal filed by plaintiff No.1 and Mam Raj was also dismissed by the Collector vide order dated 1.12.2000 and as per the order, the mutation of Sondha was sanctioned in favour of defendant No.11 and Sondha son of Chhajju Ram. Thereafter, no appeal or revision was filed against the order of the Collector. The pedigree table given in the order was also specifically denied and the correct pedigree table of Sadhu son of Bhagwana was attached with the written statement and as per the averments, the pedigree table showed that Sondha and defendant No.11 were related to Sadhu, whereas plaintiff No.1 or Mam Raj were not even remotely related to Sadhu.

Defendant Nos.8, 9 and 10 also filed the written statement on similar lines.

The averments made in the written statement filed by defendant No.11 and Sondha were refuted by the plaintiffs by filing a rejoinder/replication, wherein it was stated that defendants were/are in possession of the suit property. However, rest of the averments were vehemently denied and the averments made in the corresponding paragraphs of the plaint were reiterated.

Since the parties are at variance, the trial Court framed the following issues:-

- “1. Whether mutation No.309 is liable to be set aside on the grounds as alleged in the plaint? OPP
2. Whether the plaintiffs are entitled to a decree for declaration as prayed for? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
4. Whether the plaintiffs have no locus standi to file the present suit? OPD
5. Whether the suit of the plaintiffs is time barred? OPD
6. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD
7. Whether the suit of the plaintiff is collusive in nature? OPD
8. Relief.”

The respondent-plaintiffs, in support of their case, examined the following witnesses:-

- PW-1 Bala;
- PW-2 Lakhi Ram;
- PW-3 Jai Singh son of Mangat Ram; and
- PW-4 Udey Singh.

The respondent-plaintiffs have also brought on record the following documentary evidence:-

- Ex.P1: Statement of Des Raj son of Mam Raj;
- Ex.P2: Statement of Prem son of Kapoora;
- Ex.P3: Statement of Smt.Shungani wife of Amar Singh;
- Ex.P4: Mutation No.309, vide which the estate of Sadhu was mutated in the name of Sondha and Ram Singh son of Chet Ram;
- Ex.P5: Order dated 3.10.1994 passed by the ACIG, Kaithal;
- Ex.P6: Order dated 1.12.2000 passed by Collector, Kaithal;
- Ex.P7: Patwari Form No.36;
- Ex.P8: Statement of Des Raj son of Bhim Raj; and
- Ex.P9: Copy of jamabandi for the year 1990-91.

On the other hand, the appellant-defendants examined the following witnesses:-

- DW-1 Krishan Lal, who tendered his affidavit Ex.DW1/A;
- DW-2 Suraj Bhan, who tendered his affidavit Ex.DW2/A;

- DW-3 Mohinder Kumar, who tendered his affidavit Ex.DW3/A;
DW-4 Mohan Lal, who tendered his affidavit Ex.DW4/A;
DW-5 Prem Singh son of Kapoora, who tendered his affidavit Ex.DW5/A;
DW-6 Jagdish Chand, who tendered his affidavit Ex.DW6/A.

The appellant-defendants have also brought on record the following documentary evidence:-

- Ex.D1: Pedigree table;
Ex.D2: Pedigree table;
Ex.D3: Decree-sheet dated 30.4.1996 passed in Civil Suit No. 384 of 1995, titled as “Dharam Singh son of Hirda, Chamel Singh son of Mam Raj, Prem Chand son of Kapoora and Ram Singh son of Lalu Versus Sondha son of Chhajju”;
Ex.D4: Written statement in the aforementioned suit;
Ex.D5: Statement of Sondha son of Chhajju;
Ex.D6: Copy of the suit;
Ex.D7: Statement of A.K.Goyal, Advocate;
Ex.D8: Mutation bearing No.1308;
Ex.D9: Patwari Form No.36; and
Ex.P10: Patwari Form No.36.

The trial Court, after examining the aforementioned evidence both oral and documentary, found that since both the parties admitted that whereabouts of Sadhu were not known for the last 40 years and in the absence of a declaration under Sections 107 and 108 of the Indian Evidence Act, 1872, there cannot be any presumption that Sadhu is/was dead and accordingly dismissed the suit, but however, while giving the aforementioned finding in paragraph 10 of the judgment held that mutation bearing No.309 (Ex.P4) was wrongly sanctioned, owing to the fact that there was no proof of death of Sadhu. The operative part of the judgment rendered by the trial Court with regard to the declaration and as well as holding the mutation to be wrongly sanctioned is reproduced herein below:-

“9. *The parties have led considerable evidence to prove their relationship with Sadhu on the incorrect presumption that*

he is dead. There is absolutely nothing on record to show that Sadhu is in fact dead. From the perusal of the mutation, Ex.P4, it is apparent that the property of Sadhu was transferred in favour of Ram Singh-defendant No.11 and Sondha. The cause of death and proof of death of Sadhu has not been produced by either party. Both the parties admit that Shri Sadhu has not been heard of since prior to independence i.e. before the year 1947. Even during the course of the present proceedings, neither party was able to prove the death of Sadhu. None of the parties to the present suit had ever met him. It is the admitted case of the parties that no civil suit seeking a declaration of the civil death of Sadhu has been filed. As such, there can be no presumption that Sadhu is dead.

10. Once the death of Sadhu has not been proved, there can be no presumption that he has died. Therefore, the question of transfer of his inheritance does not arise. In these circumstances, the mutation No.309, Ex.P4 was wrongly sanctioned, as there was no proof of death of Sadhu. Merely because he has not been heard of for first more than four decades is no reason to presume that he has died. In the absence of any direction proof of his death or declaration of his civil death by a court of competent jurisdiction, the question of transferring the title of his properties to anybody else does not arise. Therefore, the entire claim of the plaintiffs seeking a declaration of title to the said properties is frivolous and infructuous. However, the mutation no.309, Ex.P4 has been wrongly sanctioned and, therefore, the same is liable to be set-aside. The plaintiffs are entitled to this declaration only.”

The aforementioned judgment and decree of the trial Court were assailed by the appellants in (RSA No.3296 of 2013) since both the parties were aggrieved with the aforementioned judgment and decree, i.e., the appellants qua setting-aside the mutation in the absence of any declaration rendered in favour of the respondent-plaintiffs and the appellant-plaintiffs in

RSA No.4712 of 2013 challenged the decree on the ground that since there

were umpteen number of documents on record to show that Sadhu's whereabouts were not known, the Courts were enjoined upon an obligation to decide the issue with regard to the death of Sadhu by invoking the provisions of Sections 107 and 108 of the Indian Evidence Act (for short "the Act"). Both the appeals were dismissed by the District Judge, Kaithal vide judgment and decree dated 31.1.2013 and against the aforementioned judgment and decree, the present two Regular Second Appeals, one by the L.Rs of defendant No.11-Ram Singh son of Chet Ram and defendant Nos.23, 24 and 25 and another by the respondent-plaintiffs.

Mr.Ashish Aggarwal, learned Senior Counsel appearing on behalf of the appellant-defendants in RSA No.3296 of 2013, in support of his grounds of appeal, submitted that the judgments and decrees of both the Courts below suffer from illegality and perversity, particularly the finding whereby the mutation bearing No.309 had erroneously been set-aside as the mutation proceedings were contested by the respondent-plaintiffs and owing to the contest, the matter was referred to the Assistant Collector Ist Grade, before whom the parties to the lis herein and therein were identical and examined numerous witnesses and brought on record the documentary evidence to prove whether Sadhu was alive or not and after noticing the aforementioned evidence, the Assistant Collector Ist Grade sanctioned the mutation in favour of the appellants and the appeal filed against the said order was also dismissed by the Collector. The true translated copies of the orders, which were exhibited before the trial Court as Ex.P5 and Ex.P6 have been annexed with the appeal as Annexures A-1 and A-2. He further submitted that the Civil Court did not have jurisdiction, whereby it could sit over the orders of the revenue authorities and the remedy for the

respondent-plaintiffs was to file an appeal or revision against the order of the Collector. He further submitted that once the mutation proceedings have attained finality and no appeal had been filed, the respondent-plaintiffs having lost before the revenue Courts instituted the suit two months after the order of the Collector. Therefore, such act is nothing but an aberrative on the part of the respondents-plaintiffs to circumvent/bypass the orders passed by the revenue authorities, whose orders are *quasi-judicial* in nature. He also submitted that since both the Courts below found that the suit filed by the plaintiffs was defective in the absence of declaration under Sections 107 and 108 of the Act and, thus, held that the suit being not maintainable, much less, no declaration had been sought with regard to the civil death of Sadhu, the Courts below have erred in partly decreeing the suit by exceeding the civil jurisdiction, vide which mutation No.309 sanctioned by the revenue authorities in favour of the defendants, after contest, has been set-aside, despite the fact that there is no challenge to the orders, Exs.P5 and P6 (Annexures A-1 and A-2) in civil suit. He also submitted that the Civil Court, as per the provisions of Section 58 of the Punjab Revenue Act, did not have jurisdiction to set-aside the mutation, particularly when the plaintiffs had a legal remedy against the order of the Collector as per Section 158 of the Punjab Land Revenue Act.

Ms.Jigyasa Tanwar, learned counsel appearing on behalf of the appellant-plaintiffs in RSA No.4712 of 2013 also assailed the findings of the Courts below by contending that there was enough evidence before the Courts below, i.e., the statements of the witnesses (Ex.P1, Ex.P2, Ex.P3 and Ex.P8), who deposed before the revenue authorities. She further submitted that in support of the case, four witnesses, i.e., Bala, Lakhi Ram, Jai Singh

and Udey Singh had also appeared and tendered the documents (Ex.P1 to P8), the details of which have already been given above. She further submitted that both the Courts below have erroneously dismissed the suit being not maintainable when both the parties to the lis had admitted the factum of death of Sadhu and in support of her contention, relied upon the provisions of Section 58 of the Act. She further submitted that in order to lend support as to whether the Civil Court had jurisdiction for cancellation of mutation, she referred to the provisions of sub-section (3) of Section 36 of the Punjab Land Revenue Act, wherein it has been mentioned that any direction given by the revenue Courts shall be subject to the decree or order which may be subsequently passed by the Court of competent jurisdiction and, therefore, both the Courts below have miserably failed to hold that the jurisdiction vested in them by the law to decide the question of title, which, according to her was the main controversy in the matter. She further submitted that the Lower Appellate Court has also committed an illegality in not noticing the particular ground of appeal, whereby it was specifically pleaded that the plaintiffs were not given sufficient opportunity to lead and complete their evidence which has seriously prejudiced their rights and, thus, urged that the appeal involves the following substantial questions of law:-

- i) Whether the judgment and decree dated 31.1.2013 passed by the court of Id.District Judge, Kaithal and the judgment and decree dated 06.9.2010 passed by the court of Id.Civil Judge are liable to be partially set aside by way of declaring the appellants to be legal heirs of Sh.Sadhu?
- ii) Whether the Id.courts below have failed to consider the admitted fact by both the parties that Sh.Sadhu has not been heard of since prior to 1947, in the light of sec.107 and sec.108 of the

Indian Evidence Act and have wrongly and unjustly failed to resolve the controversy regarding the title of the disputed property belonging to Sh.Sadhu?

iii) Whether the ld.courts below have gravely erred in failing to exercise the jurisdiction vested in them to resolve the controversy between the parties to the suit?

iv) Whether the ld.Appellate Court has vide its judgment dated 31.1.2013 wrongly upheld the judgment and decree dated 06.9.2010 passed by ld.Trial court without consideration that necessary and proper issues arising out of the pleadings of the parties have not been framed by the ld.Trial court?

v) Whether the ground on which the mutation no.309 has been set aside is against the facts, pleadings and evidence on the file and the law of presumption as laid down under sec.107 and sec.108 read with section 58 of the Indian Evidence Act?

vi) Whether the appellants are entitled to the estate of Sh. Sadhu being the legal heirs of Sh.Sadhu as per the Hindu Succession Act, 1956?

vii) Whether Ram Singh s/o Chet Ram and Sonda s/o Chhajju (predecessors in interest of the contesting respondent) have no concern whatsoever with Sadhu s/o Bhana?

viii) Whether the mutation no.309 should have been set aside on the ground of non-compliance of sec.36 of the Punjab Land Revenue Act, by the revenue authorities?

Mr.Ashish Aggarwal, learned counsel appearing for the appellant-defendants, while rebutting the aforementioned submissions made on behalf of the counsel for the plaintiffs, refers the provisions of Section 33 of the Act to contend that the evidence given by the witnesses in any judicial proceedings or in mutation proceedings would be admissible in evidence by virtue of proviso of Section 33 of the Act and in support of the aforementioned contention, relied upon the following judgments:-

- a) **Satya Prakash v. Sheela Devi and Ors., 2011(6) R.C.R. (Civil) 619;**
- b) **Mehanga Singh v. Chhinda, 1993(2) R.R.R.423; and**
- c) **Phool Chand vs. Amrit Lal, AIR 1980 (Punjab) 122**

He further referred to the provisions of Sections 107 and 108 of the Act to contend that the presumption of death as per provisions of Section 108 of the Act would only arise on the lapse of seven years and such an occasion would arise only when a question is raised in a Court, Tribunal or before an authority who was called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any forum and in any legal proceedings the occasion for raising the presumption does not arise. In support of the aforementioned contention, relied upon the judgment of the Hon'ble Supreme Court in **L.I.C. of India v. Anuradha, 2004(10) SCC 131.**

He further submitted that the succession cannot remain in abeyance and, therefore, the mutation proceedings, which are only for the purpose of referring/recording a succession on account of death of person having title and, therefore, both the Courts below could not have set-aside the mutation in the absence of any declaration obtained by either of the parties to the lis as to whether Sadhu is dead or alive and, thus, urged this Court that the following substantial questions of law arise for adjudication by this Court:-

- “1. Whether the jurisdiction of the Civil Court to set-aside the orders passed by Assistant Collector and the Collector in appeal (Exs.P-5 and P-6) is barred and the remedy lies to file appeal/revision before the Commissioner/Financial Commissioner under Sections 15 and 16 of the Punjab Land Revenue Act, 1887?
- 2. Whether the Mutation No.309 (Ex.P-4) could not be set-aside without there being a prayer to set-aside the orders of the

Assistant Collector and Collector (Ex.P-5 and P-6)?

3. Whether the courts below have exceeded their jurisdiction in setting aside the Mutation by ignoring the fact that there is no challenge to the orders of the Assistant Collector and Collector passed in appeal (Ex.P-5 and P-6)?

4. Whether the suit ought to have been dismissed in toto as the suit framed is defective as has been found by both the courts below?

5. Whether on account of the fault of the plaintiffs-respondents is not making proper pleadings, the orders of revenue authorities can be indirectly set-aside and which orders are in favour of the appellants?

6. Whether the courts below have erred in not even considering and dealing with the reasoning given in the orders of the authorities and the evidence led while setting aside the Mutation in question?”

I have heard the learned counsel for the parties and appraised the impugned judgments and decrees of both the Courts below as well as the case law cited by the parties, much less the provisions of law in support of their respective contentions and am of the view that the appeal bearing No.3296 of 2013 is liable to be allowed as the Courts below have committed an illegality and perversity because while dismissing the suit of the respondent-plaintiffs being not maintainable, could not have set-aside the mutation bearing No.309 sanctioned in favour of the appellant-defendants, after contest vide Exs.P5 and P6 (Annexures A-1 and A-2) and the appeal filed by the respondent-plaintiffs, i.e., appeal No.4712 of 2013 is liable to be dismissed for the following reasons:-

The interpretation of the provisions of Sections 107 and 108 of the Evidence Act is no longer Res Integra. For the sake of brevity, the provisions of Section 107 are reproduced herein below:-

“107. Burden of proving death of person known to have been alive within thirty years.- When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years.-[Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is [shifted to] the person who affirms it.”

Section 107 of the Act deals with a question whether the man is alive or dead, and if it is proved that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it, whereas Section 108 of the Act deals with a situation where a person who had been alive but had not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms at.

The argument of Ms.Jigyasa Tanwar, learned counsel appearing for the appellant-plaintiffs in RSA No.4712 of 2013 is that there was enough material before the trial Court to give a declaration under Section 107 or 108 of the Act qua the factum that Sadhu was not heard of seven years or presumed to be dead and after examining the evidence ought to have either decreed the suit or otherwise and would not have been relegated the appellants to institute a fresh suit to seek the declaration in this regard is repelled for the reason that the aforementioned evidence of the appellant-plaintiffs has not been proved in accordance with law as all the exhibits have been tendered through the testimony of the witnesses mentioned above. Assuming for an argument sake, the aforementioned documents had

been proved on record in accordance with law, the aforementioned argument of the learned counsel would have boomeranged for the reason that Assistant Collector Ist Grade and as well as the Collector, after examining the evidence brought on record by the parties to the lis, the mutation proceedings, came to a categorical conclusion that it was the appellant-defendants, who are successors of Sadhu in view of the pedigree table (Ex.D1). For the sake of brevity, the relevant extract of the order dated 3.10.1994 passed by the Assistant Collector Ist Grade, Kaithal is extracted herein below:-

“After hearing all the parties, it is clear that Munshi Ram Mansa Ram had always behaved to take possession of the land from the beginning. They got prepared from Des Raj Bhatt only the pedigree table of their own family and deliberately did not got prepared the pedigree table of Ram Kishan etc. they gave wrong oral statements that no one is a successor of Sadhu except them. When it became clear from the statement of Des Raj Bhatt that they cannot get the succession, then they presented Mam Raj and Sugni and the same advocate has appeared for both of them which proved that they have connived with each other. The Gram Panchayat Pabwana has given in writing and also Ex-Sarpanch Om Parkash in his statement said that Mam Raj has no sister and that Sugni which has been presented in the Court, she is a resident of village Chochra and is daughter of Ram Diya son of Bhola Ram and is a relative of Lal Singh, who is uncle of Hari Singh and Udha son of Sugni is married to Lal Singh's daughter Raji. It has come out from the statements of Sugni after Sugni's statement that today the work has been completed. Mangat Ram has stated that the age of Mam Raj to be 60-70 years. Lakhi witness has also stated that Mam Raj has brought him to give evidence and despite coming to the court, Mam Raj has not recorded his statement. In this way, who could have been the best proof, was not presented to the Court. And no Bahi has been presented for putting Nayonda

in the marriage. According to the abovesaid discussion and the statement of Des Raj, the pedigree table comes out which indicates that no right is made out of Mangat Ram and Munshi in the succession of Sadhu. Because their ancestor Daula had two sons Bhanu and Lakha. Munshi and Mansha are successors of Lakha whereas in Bhanu's lineage, Jogi Ram was there, who had three sons Kura, Punnu and Budh Ram. In Kura's lineage was Sadhu, who went missing and no one is alive of his age. The successors in the lineage of Punnu and Budh Ram are alive. In this way, no right of Munshi and Mansha in the property is made out. Some way, Mam Raj and Sugni have no right because it has been said above Sugni that she is not sister of Mam Raj and is a resident of Chochra and Mam Raj himself despite coming to the court, did not appear in the court and could not prove that his sister was Sadhu Ram's mother. According to Des Raj witness, and on the basis of inquiry from Prem Chand, Bal Kishan and Om Parkash, in the fifth lineage of Punnu and budh Ram, only two persons Saundha and Ram Singh are alive. So, the admitted succession of Sadhu deceased is accepted in favour of Sondha son of Chhajju son of Tuhia son of Biru son of Punnu as ½ share and Ram Singh son of Chet Ram son of Pat Ram son of Jai Mal son of Budh Ram as ½ share. It should be registered in Parat Patwar according to this.”

The aforementioned findings were assailed before the Collector, Kaithal as the plaintiffs challenged the said finding by availing the statutory remedy of first appeal. For the sake of brevity, the operative part of the findings of the Collector in his order dated 1.12.2000 is extracted herein below:-

“I have gone through the arguments of both the parties and perused case file very well in detail. The proofs present on the file and according to the pedigree table made by the statements of Sri Desraj shows that Sri Mangat Ram etc. First party and present respondents' elder Daula had two sons Bhanu and Lakha whereas

Jogiram was born in the family of Bhanu. Three sons Pura, Punu, budhram were born to Jogi Ram. Sadhu was in lineage of Pura who is missing and no person is alive in his lineage whereas the present respondents are alive in the lineage whereas the present respondents are alive in the lineage of Punu and Budhram. In this way Mangat and Munshi Ram etc. have no right in the succession. In addition to this the present appellants Mamraj and Sugni have also no right in the succession of Sadhu (deceased) because appellant Mamraj is the only son to his father and mother and he has no sister which is clear from the written statements of Sri Om Parkash Ex Sarpanch Pabnawa and village Ram Panchayat Pabnawa. Smt.Sugni is daughter of village Chochra whose father's name is Ram Diya. The appellants have not presented any such proof which could prove that Mamraj had two sisters Bohti and Sugni. In addition to this the appellant Mamraj should have presented any ration card or pedigree table which could prove that Mamraj had two sisters Bohti and Sugni. Sri Mamraj did not come as a witness in the court to prove that he had two sisters Bohti and Sugni whereas he was present in the court. In the lower court when by the witnesses of the objectors Sri Mangat Ram etc. when realized that the property of Sadhu Ram (deceased) cannot come in their name then they presented the present appellants. With the intention of possession of land, Sri Mangat Ram etc. got prepared only their lineage pedigree table from Sri Desraj Purohit and deliberately did not get prepared the pedigree table of the objectors Ram Kishan etc. For the above mentioned reasons the respondents are proven to be the successors of Sri Sadhu Ram (deceased). So far the reasons I dismiss the appeal of the appellants without interfering in the appealed order.”

The plaintiffs should not have assailed the findings in respect of the fact that there was no declaration sought as per provisions of Sections 107 and 108 of the Act, i.e., qua the factum of death of Sadhu or that he had not been heard of for seven years as it would have been fatal for them, if any

of the Court pondered on the fact that whether Sadhu was dead or alive. The finding rendered by the trial Court by dismissing the suit being not maintainable is a most innocuous for the reason that the plaintiffs did not claim the relief as envisaged under Sections 107 and 108 of the Act by properly framing the suit.

Though Ms.Jigyasa Tanwar argued with vehemence that when there was umpteen number of oral and documentary evidence on record for the Courts below to give a declaration, then there would not have any room left for the plaintiffs to obtain the findings against them as the revenue authorities had already given a finding qua the inheritance of Sadhu and the said orders have not been challenged and have attained finality.

Even from the perusal of the contents of the plaint, the question of title of Sadhu has also not been raised. By accepting the argument of the respondent-plaintiffs, in case the Courts had examined the statements of the witnesses, i.e., Ex.P1, Ex.P2, Ex.P3 and Ex.P8, since their statements are relevant as per the proviso to Section 33 of the Act, the plaintiffs would have again invited a risk of a finding either way but they should thank their stars that they did not claim declaration as enshrined under Sections 107 and 108 of the Act.

The ratio decidendi culled out in the judgments cited by the learned counsel for the appellant-defendants while interpreting the provisions of Section 33 of the Act is not in dispute, but the fact remains that the plaintiffs did not seek the declaration as per Sections 107 and 108 of the Act and the statements of the witnesses referred before the revenue authorities have not been taken into consideration by both the Courts below while dismissing the suit. Since *ex-facie* suit of the plaintiffs was not

maintainable, there was no occasion for the Courts below to set-aside the mutation as they abdicated in rendering said finding without referring to the orders dated 3.10.1994 and 1.12.2000, Ex.P5 and Ex.P6 (Annexures A-1 and A-2).

However, I am in agreement with the argument submitted by the learned counsel for the respondent-plaintiffs that the mutation though does not confer a title but is a source of title and any mutation done shall always be subject to the final decision of the civil suit invoking question of title, thus, Civil Court can always decide the question of title on the basis of the evidence in accordance with law without being prejudiced by finding of revenue authorities in summary proceedings of mutation.

In view of what has been observed above, the findings of both the Courts below in respect of setting-aside mutation No.309 are hereby set-aside. The findings with regard to the suit being not maintainable are affirmed and, therefore, the question of law referred above on behalf of the appellant-defendants are answered in favour of the defendant s and against the plaintiffs, whereas the question of law urged by the plaintiffs are answered against the plaintiffs and in favour of the defendants and accordingly Regular Second Appeal No.3296 of 2013 is allowed, whereas RSA No.4712 of 2013 is dismissed. Decree-sheet be prepared accordingly.

February 26th, 2015
ramesh

(AMIT RAWAL)
JUDGE