

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.3902 of 2013 (O&M)
Date of Decision.24.08.2015

Smt. Chambi Devi and othersAppellants
Versus

Fakir Chand and othersRespondents

Present: Mr. Ranjit Saini, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The plaintiffs' suit for declaration of 4/5th share on the ground that the plaintiffs together as members of the joint family had a larger share as sons than the daughters. The mutation which was sanctioned in the year 1971 treating all the sons of Chhitru as inheriting the estate was erroneous and as per the Hindu Law prevailing and as per the Hindu Succession Act under Section 6, coparceners shall take a share equal to that of the deceased father as coparcener as if a notional partition had taken place and share of the daughter will be decided only on the share which the deceased coparcener left behind for daughters in the manner of succession as per Section 8. The predominant consideration in such a situation of what is appropriate share which is allotable to the plaintiffs would be to prove that the property was an ancestral property held in the hands of father and the sons. There has been no finding and the plaintiffs are unable to produce before me

anything substantial to point out to any evidence that had established of the character of properties as belonging to joint family. The mutation which did not provide for equal shares to the sons and daughters cannot, therefore, be valid.

2. The second point which was taken up for consideration was an attack on sale made by a person claiming to be widow of one of the sons Om Parkash who had died on 16.10.1971. The objection taken to the sale which was made in favour of yet another brother Balak Ram by the widow under sale deed dated 05.12.2000 was the sale which had been brought about by impersonation. In the sale deed, the vendor had named herself as Promila when the mutation entry brought about in the year 1971 showed that share of Om Parkash had been mutated to his widow Nirmala. At the trial, the attempt by the vendor of Balak Ram was to show that after the death of her husband, she had changed her name as Promila. The counsel would state that there was no document to prove that Nirmala had an alias and that Nirmala was even the widow of Om Parkash. The trial Court was dismissing the plaintiffs' claim only on the basis that the mutation had been effected in the year 1971 itself in the name of Nirmala wife of Om Parkash and the suit had been filed nearly three decades later and therefore, the claim itself will be barred by limitation. I will not find that a right to the property could be lost by merely mutation but the fact that a mutation had taken place referring to Nirmala as the widow of Om Parkash will be proof enough for a person to contend that she was widow of Om Parkash. A person who claims herself to be widow and states that she had an alias name and she had transferred the property must be taken in its logical and natural series of

events and it cannot secure any better proof that the assertion so made.

If the lower Appellate Court felt that the sale had been made by Om Parkash' widow Nirmala and she had alias by name Promila, I may not be able to make interference with regard to such a finding on what the actual name was and whether the proof had been appropriately rendered. This ought to be taken as pure question of fact which would not require re-adjudication at the stage of second appeal.

3. I find no substantial question of law for consideration in the second appeal. The second appeal is dismissed.

(K. KANNAN)
JUDGE

August 24, 2015
Pankaj*