

In the High Court of Punjab and Haryana at Chandigarh

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(1) R.S.A. No.1171 of 2015 (O&M)

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Date of decision:9.4.2015

Hukam Chand (since deceased) through LRs

.....Appellants

v.

Risalo and another

.....Respondents

....

(2) R.S.A. No.1180 of 2015 (O&M)

.....

Hukam Chand (since deceased) through LRs

.....Appellants

v.

Risalo and another

.....Respondents

....

Coram : Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Suvineet Sharma, Advocate for the appellants.

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Inderjit Singh, J.

This order will dispose of the above mentioned two regular second appeals filed by Hukam Chand (since deceased) through his LRs Smt. Jailo, Sunil, Niraj and Jitender appellants-defendants against Risalo respondent No.1-plaintiff and others as the same have arisen out of the same judgment and decree dated 17.3.2011 passed by Civil Judge (Junior

Division), Rohtak, vide which suits filed by Risalo have been dismissed. The appeals filed by Smt. Risalo against the judgment and decree have been allowed by learned Additional District Judge, Rohtak. Aggrieved against the judgment and decree dated 29.11.2014 passed learned Additional District Judge, Rohtak these appeals have been filed by Hukam Chand appellant-defendant No.1.

The brief facts of the case are that one suit filed by Smt. Risalo against Hukam Chand and Manphool Singh-defendants for decree for declaration to the effect that the plaintiff was the owner and in joint possession of half share of land situated at Pakasma, Rohtak, as described in the plaint and defendant No.1 Hukam Chand has no concern with the suit property along with the relief that if it was proved that the plaintiff was not in joint possession of half share of the suit land, then a decree for joint possession of half share be passed in favour of the plaintiff. Another suit filed by defendant No.1 Hukam Chand as plaintiff against Risalo as defendant along with 14 defendants including Manphool and Smt. Anita as defendant No.15 seeking the relief that plaintiff Hukam Chand was the owner in possession of half share of 1/6th share of late Smt. Bharto widow of Dhanpal qua the suit property situated at Village Kasrenti, District Rohtak along with the decree of cancellation of sale deed dated 8.11.2005 and further relief of permanent injunction in favour of the plaintiff and against defendant No.15, their heirs, attorneys, assignees, servants etc., thereby restraining them from alienating, mortgaging or creating any third party interest. Both these suits were consolidated by the Court of Civil Judge

(Junior Division), Rohtak and the suit filed by Risalo against Hukam Chand was considered to be the main suit.

As per the facts of the suit filed by Risalo against Hukam Chand and Manphool Singh, the plaintiff's father Dhanpal and defendant No.2 Manphool were owners in possession of the land situated at Village Pakasma. After the death of Dhanpal on 17.11.1952, the said land was inherited by the mother of the plaintiff, namely, Smt. Bharto vide mutation No.2086 on 29.5.1954, who remained in possession of the suit land. It was stated that the plaintiff was the only legal heir of her mother Smt. Bharto, as such, she had inherited the said land and took possession of half share of the land mentioned in para No.1 of the plaint. It was also stated that defendant No.1 had no concern with either Dhanpal or Smt. Bharto Devi, but defendant No.1 in the absence of plaintiff and in collusion with revenue officials had got mutation No.2972 of inheritance of Smt. Bharto sanctioned in his and plaintiff's favour in equal share on 16.4.1979. Plaintiff Risalo also challenged this mutation. The plaintiff came to know regarding said mutation only in the month of July 2002 when the plaintiff approached Patwari to obtain the revenue record for alienating the said share. She had stated that she requested defendant No.1 to admit the claim of the plaintiff qua her exclusive ownership and possession of half share of Smt. Bharto being the only legal heir, but the defendant refused.

On the other hand, the case of defendant No.1 Hukam Chand is that he was the son of Dhanpal and he was adopted by Smt. Bharto widow of Dhanpal in the month of June 1960. It was stated that after the adoption,

the said Hukam Chand left the family of Manphool Singh and started living with his adoptive mother Smt. Bharto. After the death of Smt. Bharto in the month January 1979, the said land situated at Village Pakasma was inherited by Smt. Risalo and Hukam Chand in equal shares vide mutation No.2972, which was executed and sanctioned on 16.4.1979. It was also stated that it was defendant No.1, who had been in possession of the suit land, while the plaintiff had never remained in possession of the share of Smt. Bharto as she was living in Village Madina with her in-laws and it was defendant No.1, who had been paying 'Batai Tihai' of the share of the land of the plaintiff. It was also stated that plaintiff Risalo was not the owner of the half share of the land, but she was owner of half share left by Smt. Bharto. Defendant No.2 Manphool also filed written statement stating the same facts as stated by defendant No.1.

In order to prove her case the plaintiff examined herself as PW-1 and placed reliance upon documents Ex.P.2 Death certificate of Dhanpal, Ex.P.3 Mutation No.2080, Ex.P.4 Mutation No.2972, Ex.P.5 Jamabandi for the year 1999-2000, Ex.P.6 Jamabandi for the year 1974-75, Ex.P.7 mutation No.2055 and closed plaintiff's evidence. In rebuttal again the plaintiff got examined herself and also Mahabir as PW-2.

On the other hand, defendant No.1 Hukam Chand got examined DW-1 Ram Mehar, DW-2 Jagbir Singh, DW-3 P.P. Arora, DW-4 Manphool Singh, DW-5 Ram Chander and DW-6 Chander Bhan. Defendant No.1 also examined himself and tendered into evidence and relied upon documents Ex.D.1 Election Card, Ex.D.2 Ration Card, Ex.D.3 Pass Book, Ex.D.5 to

Ex.D.19 documents pertaining to bank wherein the name of Hukam Chand was shown to be son of Dhanpal along with other marked documents.

The learned Civil Judge (Junior Division), Rohtak, vide judgment and decree dated 17.3.2011 decided both the suits by one consolidated judgment holding that suit of plaintiff Risalo for declaration to the effect that the plaintiff was owner in possession of half share of the land and defendant No.1 had no concerned with the suit property was dismissed and the suit of plaintiff Hukam Chand against defendant Nos.1 to 15 qua the suit property situated at Village Kasrenti was decreed to the effect that the plaintiff was owner in possession of half share of 1/6th share of late Smt. Bharto widow of Dhanpal situated in Village Kasrenti, District Rohtak, as such, the sale deed No.1473 dated 8.11.2005 was illegal, null and void and cancelled and defendant No.15 Anita was restrained from selling, alienating mortgaging or creating any third party interest in the said land situated within the revenue estate of Village Kasrenti.

Smt. Risalo filed two appeals against the judgment and decree passed by the learned Civil Judge (Junior Division), Rohtak and the learned Additional District Judge, Rohtak, vide judgment and decree dated 29.11.2014 decided both the appeals together along with two appeals filed by Anita defendant No.15. The learned Additional District Judge, Rohtak allowed two appeals filed by Risalo as well as two appeals filed by Anita and the judgments and decrees of the learned lower Court were reversed. The suit of the plaintiff Risalo was decreed for declaration that she is owner in joint possession of half share of the land as mentioned in para No.5 of the

plaint and defendant No.1 has no concern with the suit property. The suit of the plaintiff Hukam Chand filed against defendants No.1 to 15 was dismissed.

Aggrieved against the judgments and decrees passed by the learned Additional District Judge, Rohtak, Hukam Chand-appellant has filed these two regular second appeals.

I have heard learned counsel for the appellant in both the appeals and have gone through the record.

Learned counsel for the appellant at the time of arguments argued that Hukam Chand's adoption by Smt. Bharto has been duly proved by bringing Hukam Chand-appellant into the witness box as well as by Manphool Singh father of Hukam Chand. Two villagers from the village had also deposed regarding the adoption of Hukam Chand by Smt. Bharto Devi wife of Dhanpal. Learned counsel for the appellant further argued that the oral statements of the witnesses are also duly supported and corroborated by documents Ration Card, Election Card and the record of the Gramin Bank in which Hukam Chand is shown as son of Dhanpal. He further argued that the oral as well as above stated documentary evidence is further supported and corroborated by the mutation sanctioned regarding the inheritance of Bharto in the year 1979 regarding the property of Village Pakasma.

On the other hand, there is only one denial statement by Risalo daughter of Bharto. Learned counsel for the appellant argued that the judgment and decree passed by the learned Civil Judge (Junior Division),

Rohtak are correct and as per law and have been wrongly set aside by the learned Additional District Judge in appeals.

After hearing the arguments of the learned counsel for the appellant, I find that the judgments and decrees dated 29.11.2014 passed by the learned Additional District Judge, Rohtak, are correct and as per law and have been given with reasoning by correctly appreciating the evidence on record.

As per the facts of the case, it is admitted fact that Dhanpal and Manphool were the owners of the property. Dhanpal died in the year 1952 leaving behind his wife Bharto and daughter Risalo. Bharto also died in the year 1979. Hukam Chand is natural son of Manphool brother of Dhanpal. It is the case of the appellant Hukam Chand that he was given in adoption to Bharto in the year 1960, but the perusal of the record shows that there is no document on record from the year 1960 to 1979 before the death of Bharto to show him as the son of Dhanpal. There is no document on record to show that Hukam Chand was the adopted son of Bharto. All the documents produced by Hukam Chand appellant-defendant No.1 are after the year 1990 whereas Bharto had died in the year 1979. The case of Risalo is that Hukam Chand in connivance with the revenue officials got mutation sanctioned in the year 1979 regarding the inheritance of Bharto in equal share with Risalo. It is also admitted at the time of arguments that when the mutation was sanctioned, Risalo was not present. Hukam Chand-appellant and his father Manphool Singh are the interested parties. Other two persons are from the village. As per the version of appellant Hukam Chand, Smt. Risalo was

residing in her in-law's village. Therefore, two persons can be procured for oral statement.

Otherwise also, it looks unnatural that Hukam Chand, who was given in adoption in the year 1960 and he also studied in the school thereafter could not produce even a single document showing him to be the adopted son of Bharto and Dhanpal upto 1990.

Therefore, in view of the evidence produced by the parties in the present cases, appellant Hukam Chand failed to lead cogent evidence that he was given in adoption to Smt. Bharto in the year 1960 as per the ceremonies. Further more, the oral statement of Risalo denying the adoption is sufficient to rebut the statement of oral witnesses produced by Hukam Chand-present appellant, as Risalo was only to lead the negative evidence denying the adoption. It was for Hukam Chand to prove the adoption by leading cogent evidence.

Therefore, from the above discussion, I find that the judgments and decrees dated 29.11.2014 passed by the learned Additional District Judge, Rohtak, are correct and as per law which do not require any interference from this Court and the same are upheld. No question of law, much less any substantial question of law arises in the present regular second appeals.

Finding no merit in the regular second appeals, the same are dismissed.

April 9, 2015.

(Inderjit Singh)
Judge

hsp