

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**RSA No.1403 of 2015 (O&M)
Date of Decision: 21.04.2015**

Shyambir

..... Appellant

Versus

Hira (dead) through LRs
and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Kul Bhushan Sharma, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

Property inherited by a Hindu woman from her husband when she dies intestate cannot pass down to step children by survivorship when succession opens. Section 15 of the Hindu Succession Act, 1956 is the governing provision and the law has been laid down by the Supreme Court in **Lachhman Singh vs. Kirpa Singh and others**, (1987) 2 SCC 547 on the point. The plaintiff and defendant No.5 are brother and sister born to late Rumali widow of late Mohar Singh from their matrimonial union. When the suit for declaration and permanent injunction was presented claiming 9/24 share of agricultural land comprising total joint holding comprising 35 Kanals 1 Marla as per Jamabandi for the year 1998-99, Defendant No.5 was not available to be joined as co-plaintiff, their interest being common and this is why she was arrayed among the defendants as a proforma party.

Mohar Singh's first wife Ghishi pre-deceased Mohar Singh who thereafter

married Rumali. Rumali died in the year 2002. Rumali did not leave behind a testamentary disposition of her property through a Will. Dispute began when on the death of Rumali defendant Nos.1 to 4 got her property by mutation of inheritance vide No.1931 dated 31.07.2002 which was got sanctioned on 16.01.2003 without notice or knowledge of plaintiff Shyambir as alleged in the plaint. The disputed property falls in Village Siha, Tehsil Hodal, District Faridabad. The plaintiff claimed that on the basis of this mutation, defendants No. 1 to 4 started interfering in his possession over the land of late Rumali. The suit was contested by defendants No.1 to 5. They joined issue and refuted that the plaintiff and proforma defendant No.5, his sister, are the sons and daughter of late Rumali who breathed her last in the year 2002. It is pleaded that defendant No.1 and one Sh. Handoo, pre-deceased son, represented by defendants No.2 to 4, were the sons of Rumali. It was disputed by the defendants that Hira son of Mohar Singh and defendants Mam Chand and Gian Chand were grand step sons and Smt. Chapri widow of Sh. Handoo is the step daughter of Rumali as she was born from the wedlock of Mohar Singh with Ghishi. It was stated that Hira and Handoo were born from the loins of Rumali and Mohar Singh. It was stated that Ghishi died issueless in a young age about 70 years ago. After the death of Ghishi, Mohar Singh married Rumali and gave birth to Hira and Handoo. It was alleged that Jagan Devi-defendant No.5 (proforma) had executed a relinquishment deed qua her share in the suit land in favour of plaintiff Shyambir, Hira, Mam Chand and Gian Chand in three equal shares which indicates the factum of common paternity and maternity. The plaintiff's claim on a Bahi of Pandas is procured, fabricated

and forged evidence for depriving defendants of their right to suit property. The plaintiff did not file a replication which led to framing of five issues as follows:-

"1. Whether the mutation No.1931 dated 31.07.2002 is illegal, null and void? OPP.

2. Whether plaintiff is entitled to a decree for permanent injunction as prayed for? OPP.

3. Whether the suit of the plaintiff is not maintainable in the present form? OPD.

4. Whether the plaintiff has no cause of action to file the present suit?

5. Relief."

The parties led their respective supporting evidence including a pedigree table Ex.P-2 apart from stepping into the witness box. Shyambir produced two witnesses PW-1 and PW-2 on April 25, 2007 and August 13, 2008 respectively. The Jamabandi for the year 1998-99 was produced as Ex.P-5. On the other hand, defendants examined Hira as DW-1 and tendered documents Exs.D-1 to D-7 which included five mutation entries, a relinquishment deed of 2003 and the Jamabandi for the year 1998-99. No evidence in rebuttal was led and the same was closed by counsel for the plaintiff vide a separate statement recorded on August 27, 2011. The parties went to trial on the principle issue in proof of whether the parties are children born from the conjugal union of Rumali and Mohar Singh or as alleged by the opposite party, defendant No.1 and the predecessor-in-interest of defendant Nos.2 to 4 (LRs of Handoo) were the children/grand children/daughter-in-law of Mohar Singh and his first wife Ghishi.

The trial Court culled out the bone of contention between the parties which was that in case the plaintiff succeeds in establishing that he and Jagan Devi, proforma respondent No.5, were the only son and daughter

of Rumali and Hira defendant No.1 and defendant Nos.2 to 4 successors-in-interest of Handoo were the step sons/grand step sons/daughter-in-law of Rumali, then without doubt, the impugned mutation is contrary to the provisions of law. The controversy stood delineated by the trial Court as above.

The star witness produced by the plaintiff while depending on a Bahi of Pandas in Mathura was PW-1 Naval Kishore who filed his affidavit by way of examination-in-chief Ex.PW-1/A and deposed therein on the basis of some record kept by them as Jagga Pandit. He has stated that Mohar Singh has three sons from Ghishi who were Heera Lal, Handoo and Vankhandi. After the death of Ghishi, Mohar Singh married Rumali and to them were born two sons and two daughters namely, Jagan Devi (R-5) and Sham Wati (dead) two sons Shyambir (plaintiff) and Rajbir (dead). PW-1 Naval Kishore belongs to Mathura. He admitted in cross-examination that entries in Ex.P-1 are not in his handwriting and are written by his father and uncle. The trial Judge read the entries and discovered that they were scribed in a language which can be best understood only by the person who had scribed it. The script itself is not explained. Therefore, it was concluded that mere tendering of Ex.P-1 would not serve the purpose and the entire original record should have been called for, produced and proved that the entry Ex.P-1 was maintained in the usual course of business or under statutory duty or by some custom or usage. Naval Kishore could not say as to when offspring were born to Ghishi. The evidence in this respect has not been found trustworthy by the trial Judge. Hira son of Mohar Singh was 80 years old when PW-2 Devi Singh stepped into the witness box to depose in

the year 2008. He tendered his affidavit Ex.PW-2/A. The witness was aged about 45 years on the date of his examination in the year 2008 and obviously could not depose first hand of past events not within his personal knowledge. His testimony was thus discarded by the trial Judge as not creditworthy as evidence as to birth of children. He did not know when Ghishi died or which village she belonged to. He was not a local resident of the area where a party resident could have spoken from any personal knowledge. His evidence was treated as not having any bearing on the case or the issues involved.

The trial Court was left contending with the evidence of the plaintiff himself as PW-3. He did not plead the dates of years of marriage of Mohar Singh or in which years the children of Mohar Singh were born. He did not plead or depose as to which of the children was elder to whom. He however admitted in cross-examination that mutation was in favour of Mohar Singh. Mutation of the property of Mohar Singh was sanctioned in the name of six brothers and sisters and their mother Rumali by intestate inheritance. He admitted that Handoo was the son of Mohar Sngh and children of Handoo had inherited the share of their father through Mohar Singh. It is also not known when Handoo died nor when Ghishi died and that appears strange to this Court that a member of the family would not know of past events when admittedly they were all living in the same village. Plaintiff's sister Jagan Devi – defendant No.5 did not sign the plaint but yet she filed a common written statement with the defendant Nos.1 to 4 denying the averments and allegations of the plaintiff which was also rather peculiar. Jagan Devi is alleged to have executed a relinquishment deed

Ex.D-4 in respect of her interest in suit property in favour of plaintiff and defendant Nos.1 to 3 along with another brother Hira Lal and recitals therein make it quite apparent that she admitted that defendant No.1 – Hira and Handoo to be her brothers. The relinquishment deed stands incorporated in favour of plaintiff and other beneficiaries in revenue record by mutation No.1971 Ex.D-5. If Jagan Devi was the real sister of plaintiff Shyambir, she did not support his case.

From the evidence, the trial Judge gathered that when Handoo died, his mutation of inheritance was entered in favour of his two sons Mam Chand and Gian Chand – defendant Nos.2 and 3 and widow Chapri and his mother Rumali. The mutation is Ex.D-3 is not disputed by the plaintiff. Besides, plaintiff's share on claim through Rumali works out to 9/24. The mutation Ex.D-2 No.1354 of Mohar Singh stands recorded in the Jamabandi Ex.P-5 which shows that Rumali as the widow of Mohar Singh and had succeeded to only a share of 5/24 and it is only after adding the other interest which she inherited from Handoo, her share became 9/24. From these facts, it is claimed that the correctness of the mutation of Handoo in favour of Rumali as mother is not disputed. No other family member was produced as a witness in support of his case. Interestingly, DW-1 in his deposition while facing cross-examination made ambiguous statements. He consistently repeated that he was a son of Ghishi; his mother was Rumali. This statement is not sufficient to prove or to believe that the plaintiff and defendant No.5 were the only surviving children of Rumali and defendant No.1 – Hira and Handoo were step children. To the despondence of the plaintiffs, his sister defendant No.5 in her statement on oath demolished his

whole case and from these set of facts and the presumptions under Section 112 of the Evidence Act, 1872, the learned trial Judge deduced that defendant No.1 and Handoo, predecessor-in-interest of defendant Nos.2 to 4, were also sons born to Mohar Singh and Rumali and not Mohar Singh and Ghishi as alleged. In the main, the Court concluded that the mutation was valid and the challenge was repelled leading to the dismissal of the suit.

Aggrieved by the dismissal of the suit, plaintiff filed appeal which has been turned down by the learned Additional District Judge, Palwal by his judgment and decree dated December 03, 2014 affirming the findings recorded by the learned trial Court. The judgment of the First Appellate Court need not detain us as nothing has been added or subtracted from the reasons assigned by the learned trial Judge in returning proper findings on the issues against the plaintiff. I find that no error has been committed by the Courts below in discarding the admissions of one of the defendants Hira appearing as DW-1 and admitted that they were born to Ghishi, the first wife of late Mohar Singh and the plaintiff and defendant No.5 were born to Rumali from Mohar Singh. The burden was on the plaintiff to discharge on the strength of his case and not on the weaknesses of the defendants' case depending on the deposition of Hira. Inheritance cannot be best judged on self-serving testimonies of witnesses and there must be clear and cogent evidence of succession under the Hindu Succession Act, 1956.

I would, therefore, reject the argument of the learned counsel for the appellant that there is an incurable flaw in the reasoning of the Courts below of not having put paid to the testimonies of Hira. Hira in his testimony while appearing as DW-1 brought more confusion to bear than

clarity while deposing that when Ghishi died, he was 80-75 years old and in the same breath he deposed that when Ghishi died she was 80-75 years old.

In this fluid state of deposition the trial Court rightly observed that the statement does not amount to admission of such a nature which would confer benefit on the plaintiff. It is recorded in the order of the trial Court that when Hira appeared as DW-1 he was aged around 85 years. To compound matters, he consistently repeated in his deposition that though he was son of Ghishi, his mother was Rumali. If such was his love for Rumali than the less said the better. I would thus go by the way both the Courts below who have appreciated the evidence on record and returned findings of fact on the preponderance of probabilities of the case leaning against the plaintiff and consequently, I do not find this a fit case for interference on the second appeal side and I would dismiss the appeal. Although Bahi of Pandas are not inadmissible evidence per se, however, nothing much depends on a mere entry without the Court being offered the original record of the Pandas from Mathura to examine and opine on their evidentiary worth. I am inclined to think that this would not tilt back the case in favour of the plaintiff and on such a slim argument based on mere production of an entry as an exhibit on record. The exhibition of such an entry in a leaf from the books of Pandas is not proof of their contents.

From all angles, the appeal does not warrant admission as no question of law, much less substantial, arises for consideration. Mere errors of fact or errors of law are not open to correction on the second appeal side of this Court under Section 100 CPC unless such errors give rise to a substantial question of law.

Resultantly, the appeal stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

21.04.2015
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