

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

RSA No. 2569 of 2014 (O&M)

Date of decision:- September 30, 2015

Braham Dutt

.....Appellant..

Vs.

Rama Nand and others

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Sanjay Mittal, Advocate,
for the appellant.

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? (✓)

JASPAL SINGH, J.

This regular second appeal has been preferred by appellant-plaintiff feeling dissatisfied against judgment and decree dated February 19, 2014 passed by Additional District Judge, Rewari affirming judgment and decree dated October 24, 2011 passed by trial court whereby suit of plaintiff for declaration and permanent injunction was dismissed.

2. Briefly stated, case of appellant-plaintiff is that Motia son of Dalu was owner in possession of suit land. He had four sons namely Chunna, Chet Ram, Kundan and Bihari Lal. Chet Ram had died during life time of Motia whereas Kundan and Bihar Lal died unmarried and issueless. Chunna was adopted by his maternal

grand-father Ruda on March 31, 1893. After adoption, Chunna was left with no right in the property of his father Motia as he acquired rights in the property of his maternal grand-father Ruda. It has further been averred by appellant-plaintiff that Budh Ram is the son of Chet Ram, who became exclusive owner in possession of property left by Motia. He suffered a decree of his $\frac{1}{2}$ share of the property in favour of Aditya Kumar and Chander Shekhar, sons of appellant-plaintiff. Regarding remaining $\frac{1}{2}$ share of property, he executed a registered Will dated March 19, 1990 in favour of appellant-plaintiff. After the death of Budh Ram on October 30, 1997, appellant-plaintiff has become joint owner in possession to the extent of $\frac{1}{2}$ share of property left by Budh Ram. After death of Motia @ Moti Ram, Chunna and Bihari Lal sons of Motia, and Budh Ram son of Chet Ram illegally got sanctioned mutation No. 116. In fact, after the demise of Motia, Chunna was neither owner nor in possession of the suit land as he was adopted by his maternal grand-father. Thus, mutation is liable to be set aside. Mutation No. 271 in respect of the inheritance of Bihari is also illegal, null and void and is liable to be set aside. It has further been pleaded by appellant-plaintiff that predecessor-in-interest of defendants in collusions with revenue officials got sanctioned mutation No. 116 and 271 and on the basis of mutation, defendants are bent upon to interfere into his possession. Defendants were requested not to do so but they refused. Hence, the plaintiff filed the suit for declaration and permanent injunction.

3. The suit was resisted by defendants No. 1 to 4 by filing written statement raising preliminary objections *inter alia* on the

grounds of limitation, estoppels, locus standi, maintainability, cause of action and valuation. On merits, defendants No.1 to 4 denied the case of plaintiff and pleaded that mutation No. 116 of inheritance of Motia was rightly sanctioned in favour of his legal heirs and plaintiff has no right to challenge the mutation. They pleaded that Budh Ram was entitled to alienate 1/3rd share in the suit land and the decree dated September 17, 1994 is illegal, null and void and Budh Ram had no right to execute any Will and the Will dated March 19, 1990 is also wrong and illegal as Budh Ram was not owner in possession of the land. As per defendants, Chunna was never adopted by his maternal grandfather, Ruda and Chunna inherited the property of Ruda being his legal heir and thus there is no question of the extinguishing of rights of Chunna in the property of Motia. Defendants also pleaded that Budh Ram never challenged the mutation of inheritance of Motia sanctioned in the name of Chunna. Defendants No. 1 to 4 also stated that the mutation No. 271 as legal and valid and further pleaded that plaintiff has no right, title and interest in the suit property. Accordingly, they prayed for dismissal of the suit.

4. Defendants No. 5 to 9 also filed separate written statement taking similar preliminary objections and with the similar pleadings on merits as taken by defendants No. 1 to 4. They also stated that mutation No. 116 and 271 is legal and valid and prayed for dismissal of the suit.

5. From the pleadings of the parties, various issues were culled out by Id. trial court and both the parties were afforded ample

opportunities to adduce and conclude their evidence. The plaintiffs and defendants led oral as well as documentary evidence in respect of their pleadings and subsequently closed their evidence.

6. After hearing learned counsel for the parties and bestowing due consideration to the rival submissions and scrutinizing the evidence, Id. trial court decided issues No. 1 to 5 against the plaintiffs and in favour of the defendants and issues No. 6 to 9 were decided against the defendants and in favour of the plaintiffs and consequently, dismissed the suit vide judgment and decree dated October 24, 2011.

7. Aggrieved against judgment and decree dated October 24, 2011 passed by Id. trial court, the plaintiffs preferred an appeal bearing Civil Appeal No. 175 of 2011/2013 but that was also dismissed by Id. Additional District Judge, Rewari vide judgment/order February 19, 2014.

8. Dissatisfied with the judgments and decrees delivered by both the courts below, plaintiffs/appellants approached this Court by way of filing instant appeal.

9. While assailing the impugned judgments and decrees as well as the findings recorded by both the courts below, it has been argued with vehemence by learned counsel for the appellant that both the courts below have erred in law as well as in facts while holding that the plaintiff-appellant has failed to prove that Chunna has been adopted by maternal grandfather Ruda. In fact, it is duly proved by the appellant-plaintiff that Chunna has been adopted by Ruda, who is none else but maternal grandfather. Appellant-plaintiff

has placed on record pedigree table Ex.P5/T, which depicts Chunna as the adopted son of Ruda. Even, the entries to this effect were also find mentioned in the Jamabandi for the year 1893 Ex.P4/T as well as Jamabandi for the year 1894-95 Ex.P6/T, Jamabandi for the year 1893 Ex.P7/T. It is also amply proved on record that property owned by Ruda has been inherited to Chunna being his adopted son. In fact, after the adoption of Chunna by Ruda, he has no right in the property of his father and accordingly Budh Ram became the absolute owner after the demise of his father. There is no legal bar that daughter's son cannot be adopted by the maternal grandfather. If there is any bar created by the provisions of the Hindu Adoption and Maintenance Act, 1956, that cannot be attracted in the facts and circumstances of the instant case as the adoption in this case relates way-back to the year 1893. Thus, mutation No. 166 cannot be said to have been sanctioned in accordance with law. In fact, the plaintiff-appellant is the absolute owner of the property left by Budh Ram. Similarly, mutation No. 271, which is in respect of Bihari Lal also cannot be said to have been sanctioned in accordance with law as well as Hindu Succession Act. Undisputably, Bihari Lal died issueless and after the adoption of Chunna by Ruda as well as after the demise of other sons of Motia, Budh Ram was exclusive owner of the property in dispute once possessed by Motia. As per mutation Ex.P3/T, Chunna, Bihari and Budh Ram inherited the property left by Motia. In fact, Chunna has nothing to do with the inheritance of Motia after his adoption by Ruda. Both the the courts below have taken a wrong approach. It is well settled that the mutation does not

confer any title. Thus, the mutations No. 116 as well as 271 are liable to be set aside and decide a fresh incorporating the plaintiff-appellant to be the exclusive owner of the property in dispute left by Budh Ram, which was succeeded by him.

10. This Court has given an anxious thought to the submissions made by learned counsel for the appellant but find the same to be without any legal substance.

11. The basic question, which requires for determination in the case in hand is whether the alleged adoption of Chunna by Ruda is established on record. No doubt, the reference of adoption of Chunna is there in the revenue record i.e. various jamabandies, which have been referred to by the learned counsel for the appellant during the course of arguments but one thing is evident that neither any custom has been pleaded nor proved on record. It is well established that in order to succeed on the ground of custom, it must be pleaded or proved and it can be said in the instant case that what to talk of any pleading or proof. There is not even a slightest reference of any such custom in the pleadings. Moreover, Budh Ram did not raise any objection when the mutation either No. 216 or 271 with regard to the inheritance of Motia was sanctioned. Even, he was present at the time when the mutation was sanctioned but he did not raise any objection. To the similar fact is the presence of Budh Ram, at the time of sanction of Mutation No. 271. Moreover, Budh Ram did not opt to challenge either of the mutations during his life time and it was only after the demise of Budh Ram, appellant-plaintiff has raised a dispute with regard to the above referred mutations. It is further

pertinent to mention that though the plaintiff-appellant has alleged himself to be in possession of the property in suit but to the utter surprise the revenue entries do not support his version. As per the revenue record, the successor-in-interest of Chunna and sons of plaintiff are in possession of the suit land that too as per their respective shares. Since, appellant-plaintiff failed to plead and prove the custom with regard to the adoption and further Budh Ram did not challenge either of mutations during his life time, and further plaintiff-appellant is not in exclusive possession of property in suit, the suit for declaration challenging the mutations after the lapse of many years is not maintainable.

12. This Court does not find any illegality, infirmity or impropriety in the impugned judgments and decrees passed by both the courts below. Rather, the same are inconsonance with the evidence available on file and settled canons of law.

13. In the light of what has been discussed above, this Court does not find any merit. As such, the same is dismissed.

September 30, 2015
sonika

(JASPAL SINGH)
JUDGE