

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

RSA No.4608 of 2014 (O&M)
Date of Decision: 15.07.2015

Prem Chand and others

.....Appellants

Versus

Lila Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporters or not? | |
| 3. Whether the judgment should be reported in the Digest? | Yes |

Present:- Mr. B.S.Bedi, Advocate,
for appellants.

SHEKHER DHAWAN, J

Present regular second appeal is against concurrent findings of both the Courts below whereby suit of plaintiff for declaration and permanent injunction was dismissed.

2. For the sake of convenience the parties are being referred to as per their status before the Court of first instance.

3. Relevant facts for the purpose of decision of the present appeal that appellants-plaintiffs filed suit for declaration that plaintiff No.1 Ram Kumar is the owner to the extent of 1/3rd share and plaintiffs No.2 to 4 are owners to the extent of 1/3rd share and plaintiff No.5 Subhash is owner to the extent of 1/3rd share in the property left by Sita Ram and defendants have no right and interest in the property. Appellants also challenged that

mutation No.794 dated 13.03.1970 and mutation No.1533 dated 28.12.2001 are illegal, null and void and not binding on the rights of the plaintiffs and sale deed executed by defendants no.1 to 3 in favour of defendants No.4 and 5 are also null and void.

4. Defendants No.4 and 5 contested the suit taking the legal objection and also took the plea that mutations were sanctioned in the presence of plaintiffs and they had not challenged the said mutation for the last 39 years and now they are estopped from challenging the said mutation. More so Raj Kumar was never adopted by Babu Lal nor there is any person with the name of Lila Devi widow of Raj Kumar son of Babu Ram. Plaintiff just took the plea to grab the land sold by Leela Devi in favour of defendants No.4 and 5. More so, defendants No.4 and 5 are bona fide purchaser for consideration on the basis of registered sale deed dated 25.01.2004 after verifying the title of the vender. The suit is barred by limitation.

5. Learned counsel for appellant also took the plea that first appellate Court had not considered admissible evidence regarding entries in books of Priests of Hardwar and as such the said findings be set aside by way of present Regular Second Appeal. In support of his argument he placed reliance upon judgment from this Court in case Gurnek Singh alias Nek Singh Vs. Balbir Singh etc., 1977 CLJ (Civil) 256, on the point of limitation placed reliance in case Jagjit Singh Vs. Pritam Singh & Ors. 1994(1) 60 (P&H). As regard to entries in books of Hardwar priests, reliance was placed upon case Ram Singh Vs. Daulat Singh and others 1914, 182. Learned counsel for appellant also placed reliance upon case Gangadhar alias Dewaji & Ors. Vs. Vasant 2008(4) Bombay High

Court wherein it was observed that ceremonies of giving and taking '*Need not be specifically uttered while giving oral evidence on factum of adoption. It is enough for the parties to prove that there was in fact, a giving of the child in adoption by the natural parents and the adoptive parents had taken the child in adoption*'. Regarding appreciation of evidence, reliance was placed upon judgement from Hon'ble Supreme Court in case **Bant Singh and another Vs. Niranjana Singh (D) by Lrs. and Anr. 2008(1), 653 SC** wherein it was observed that '*Opinion expressed by conduct as to the existence of such relationship of any person who has special means of knowledge on the subject of that relationship is a relevant fact*'. Relationship is a fact and the opinion expressed by conduct is relevant when it is by a person who is having special means of knowledge. On this point reliance was placed upon view taken by Co-ordinate Bench of this Court in case **Shiv Ram and another Vs. Smt. Durga Devi and others 1992(2) 174 (P&H) S.B.**

6. The Court of first instance rightly came to the conclusion that the suit property was purchased after duly considering and checking the revenue record and for that purpose testimony of DW-2 was relied upon. The revenue entries were in favour of defendants no.1 and 2 and the Court of first instance accepted the plea that defendants No.4 and 5 were the bona fide purchaser and there are no grounds to return the findings that mutation No.5133 sanctioned on 28.12.2009 is illegal, null and void.

7. Court of first appeal appreciated the evidence and affirmed the said findings.

8. Learned counsel for appellants took the plea that the Courts below fell in error while not placing any reliance upon *bahi* entries of

Purohit. The Courts below have not given any reasoning for not placing on reliance upon such entry although same were recorded long back. However, this aspect has also been dealt with by Court of first appeal while placing reliance upon judgment of Hon'ble Himachal Pradesh High Court in case **Paras Ram Vs. Dayal Das and others AIR 1965 Himachal Pradesh 32** wherein it was observed that '*Panda's Bahis and horoscopes are not public documents. The entries in those books cannot be regarded to be so conclusive or decisive, as to turn the scales, in favour of one party or the other*'.

9. I have considered the submissions made by learned counsels and gone through the above authorities upon which reliance has been placed. However, these aspects have already been discussed by both the Courts below while returning the findings. The findings were returned after considering the entire oral as well as documentary evidence as regard to opinion expressed by family members having special means of knowledge of relationship was also discussed by the Courts below with special reference to testimony of DW-3 and the Courts below rightly discarded the same. The plea of limitation has also been considered by both the Courts below. There is absolutely no substantial question of law calling for interference by this Court by way of present Regular Second Appeal. Facts of the case have already been appreciated by the Courts below.

10. There is absolutely no substantial question of law involved in this case. As per law laid down by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwai (Dead) by LRs., JT 2001(2) SC 407** Regular Second Appeal is not maintainable if there is no substantial question of law involved.

11. In view of the above, Regular Second Appeal stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 15, 2015
msd