

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

DATE OF DECISION: AUGUST 24, 2015

Jagdish and others

.....Appellants

VERSUS

Surender and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

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

**Present: Mr. R. A. Sheoran, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

A suit for declaration was filed by Dariya Singh, predecessor-in-interest of the appellants, for declaration to the effect that he was owner in joint possession of 1/3rd share of agricultural land detailed in the head note of the suit, which was inherited from the estate of his unmarried and issueless brother, Ram Sarup, who died on 13.11.2008, leaving behind the plaintiff as his only legal representative besides his 1/3rd share already standing in his name pertaining to the property situated in the revenue estate of Village Tiwala, Tehsil Charkhi Dadri, District Bhiwani and that the respondent-defendants had no right, title or interest whatsoever and mutation No.1516 dated 20.12.2008, showing inheritance of 1/6th share of the land out of the estate of Ram Sarup, deceased, is illegal, null and void.

Further prayer for permanent injunction as a consequential relief, restraining the defendants from alienating the property in any manner was also sought.

In the said suit, a counter claim was made by the respondent-defendants to the effect that the plaintiff, in collusion with the revenue officials, had got cancelled mutation No.1516 dated 20.12.2008 but the same was correct as per law as there was a family partition on the basis of which said mutation was entered. No reply to the counter claim was filed by the plaintiff, rather, he failed to appear before the Court and was proceeded against exparte vide order dated 01.04.2011. Exparte evidence was led by the respondent-counter claimant defendants in proof of their claim. On consideration of the evidence led by the counter claimants, learned Civil Judge (Junior Division), Charkhi Dadri, vide order dated 26.11.2011, decreed the counter claim exparte to the effect that mutation No.1516 dated 20.12.2008 is correctly sanctioned and the order dated 17.06.2009 of Settlement Officer is wrong and against law and the same is set-aside.

Against the said order and decree, an appeal was filed by the appellant-plaintiffs (legal heirs of Dariya Singh), which has been dismissed by the Additional District Judge, Bhiwani, on 16.07.2014 by granting the respondent-counter claimant defendants one month's time from 16.07.2014, the date of judgement to affix ad-valorem court fee on the counter claim before the trial Court, failing which the counter claim shall be deemed to be dismissed. These judgements and decree passed by the Courts below have been challenged in the present appeal.

It is the contention of learned counsel for the appellant-plaintiffs that the Courts below have not appreciated the correct position as has been depicted in the pleadings and the evidence brought on record. He

contends that plaintiff Dariya Singh alongwith his two brothers, Ram Sarup and Deep Chand were the owners in joint possession in equal share i.e. 1/3rd each of the agricultural land measuring 5 bighas and 5 biswas situated in the revenue estate of Village Tiwala. Deep Chand died on 14.11.2002, leaving behind defendants as his legal representatives, who inherited 1/3rd share of the land in dispute vide mutation No.1407 dated 25.01.2003. Ram Sarup, brother of plaintiff Dariya Singh and Deep Chand, who was unmarried and issueless, also died on 13.11.2008, leaving behind the plaintiff as his only alive brother and he being his Ist class legal representative, inherited 1/3rd share of the total property of Ram Sarup in the land in question. The defendants had no legal right, title or interest whatsoever qua this 1/3rd share left by Ram Sarup after his death since they are not the Ist class legal heirs of deceased Ram Sarup. The defendants, in collusion with the revenue officials, succeeded in getting mutation No.1516 dated 20.12.2008 sanctioned showing 1/6th share of the land in dispute, which is illegal, null and void and does not confer any right or title upon the defendants. He, thus, contends that Dariya Singh has rightly filed the suit, which should have been decreed by the courts below. As regards the counter claim, he contends that the mutation dated 20.12.2008 has been wrongly entered into and, therefore, cannot sustain and deserves to be set-aside, which does not confer any right and there has not been any partition between the parties or family settlement, as has been asserted by the defendants. He, thus, contends that the judgements and decree passed by the courts below deserve to be set-aside.

I have considered the submissions made by learned counsel for the appellants and gone through the judgements passed by the Courts below.

At the outset, it must be pointed out that the suit, which was preferred by Dariya Singh, was dismissed in default by the trial Court and the counter claim of the respondent-defendants has been decided in their favour and that too exparte. Dariya Singh has not filed reply to the counter claim and was proceeded against exparte in the said counter claim as well. Even the legal heirs of Dariya Singh had also not filed any application for setting-aside the exparte order dated 26.11.2011. The counter claim of the respondent-defendants was allowed and mutation sanctioned on 17.06.1989 reviewing earlier mutation dated 13.11.2008 by the Assistant Collector IInd Grade, was set-aside and the legal heirs of Deep Chand were declared owners of half share of the land of Ram Sarup. The Courts below have held Dariya Singh to be entitled to inherit 1/3rd share of the property of deceased Ram Sarup. However, in the counter-claim, the defendants examined PW1 Amit Pasatwal, PW2 Ombir and PW3 Anil, who had supported the counter-claim and also admitted about the family settlement, which had taken place in June 2000. Since there is no reply to the counter claim of the defendants, the Courts below have allowed the counter claim of the defendants on appreciation of the pleadings and the evidence on record.

It has been proved from the copy of mutation No.1516 dated 20.12.2008 that Dariya Singh had himself appeared before the revenue authorities and had raised no objection, when it was prepared, rather, the mutation was sanctioned at his instance and he had been identified by Gugan Ram, Lumberdar. He could not, therefore, claim that the revenue authorities have wrongly sanctioned the mutation. However, on an application moved by plaintiff Dariya Singh, mutation No.1516 dated 20.12.2008 was reviewed by Assistant Collector IInd Grade on 17.06.2009

without notice to the defendants, which is contrary to Section 15 of the Punjab Land Revenue Act, 1887. There being no evidence on record, which would show that the revenue authorities have given any notice before reviewing the mutation No.1516 dated 20.12.2008, the said reviewing order and the mutation dated 17.06.2009 cannot sustain. The evidence, thus, placed on record clearly shows that in the family settlement it was decided that the property of deceased Ram Sarup, who was unmarried and issueless, shall be inherited in equal share by plaintiff Dariya Singh and sons of deceased Deep Chand (respondent-counter claimants).

In view of the above, it cannot be said that the Courts below have in any manner misread or misunderstood the evidence, which has been led by the parties.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed. As a consequence thereof, C.M. No.14036 C of 2014 for restraining the respondent-plaintiffs from alienating the property is also dismissed.

**August 24, 2015
khurmi**

**(AUGUSTINE GEORGE MASIH)
JUDGE**