

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3528 of 1987 (O&M)
Date of Decision : 13.01.2016

Pirthi and othersAppellants

Versus

Smt. Sunder and othersRespondents

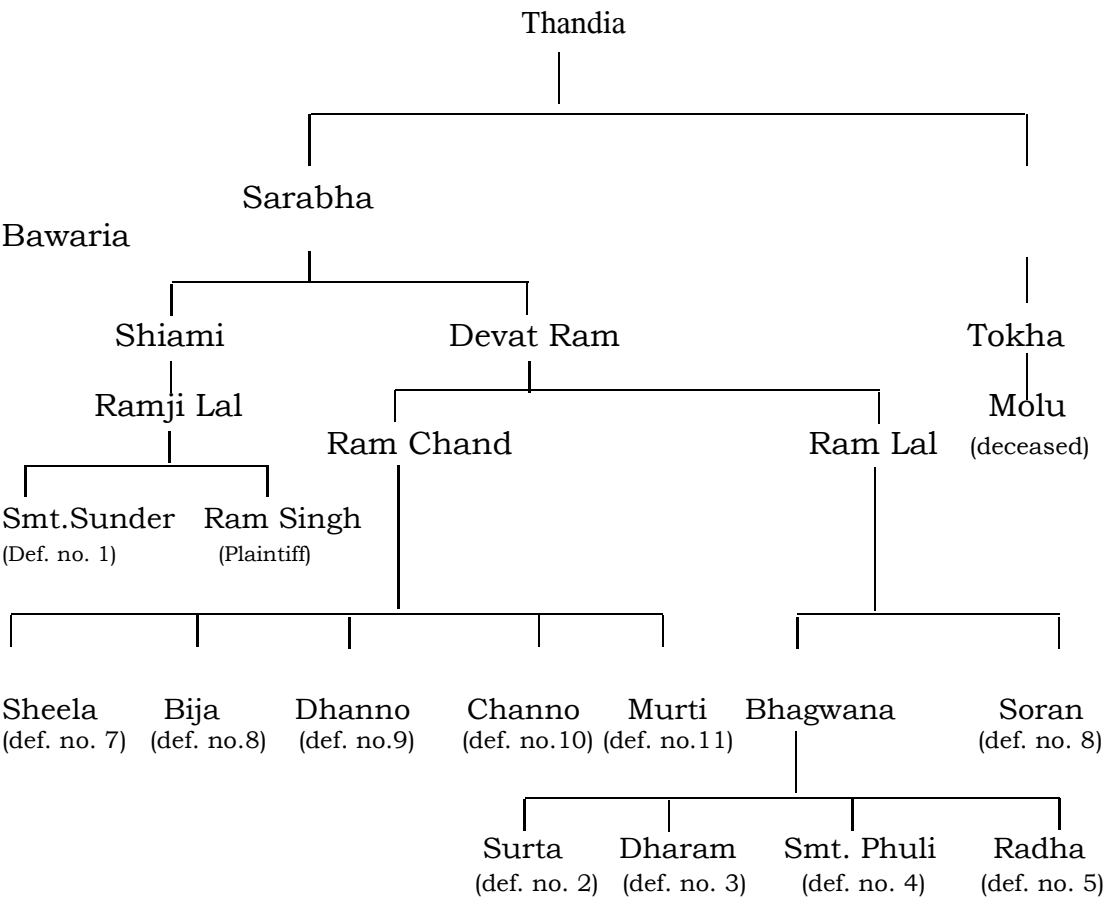
CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amarjit Markan, Advocate
for the appellants.

None for respondents.

Surinder Gupta, J.

Following pedigree table will assist in understanding
the matter in dispute in this appeal.



2. The dispute pertains to inheritance of Molu son of

Tokha son of Bawaria who died unmarried and issueless. He was owner of 81 *kanals* and 18 *marlas* of land in village Thua, *Tehsil* and District Jind. As he had not left any class I or class II heir mutation of his inheritance bearing No. 2278 dated 04.11.1982 was sanctioned in favour of Smt. Sunder daughter (defendant no. 1), Ram Singh (plaintiff) son of Ramji Lal for 1/12th share, Surta, Dharam sons, Smt. Phuli and Radha daughters of Bhagwana for 1/48th share, Soran son of Ram Lal for 1/48th share, Sheela, Bija sons, Dhanno, Channo and Murti daughters of Ram Chand for 1/24th share out of 1/6th share owned by Molu in land measuring 491 *kanals* 7 *marlas*.

3. Plaintiff-Ram Singh alleged that he is only son of Ramji Lal who had no daughter. Sanctioning of mutation in favour of defendant no. 1 being sister of plaintiff is illegal and void. She is an imposter and has never been in possession of suit land.

4. In the written statement filed by defendant no. 1, she claimed herself to be daughter of Ramji Lal and alleged that plaintiff is denying her status as daughter of Ramji Lal and his sister out of greed and dishonesty. The mutation of inheritance of Molu was rightly sanctioned by the revenue authorities and all the other heirs and defendants have admitted the same as correct in the presence of respectable and *lamberdar* of the village.

5. The suit was decreed by then Sub Judge, Ist Class, Jind with the observation that defendant no. 1 had failed to produce any documentary evidence to prove herself to be the daughter of Ramji Lal and sister of plaintiff. The testimony of witnesses examined by defendant no. 1 was discarded on the

ground that two of the witnesses are not belonging to the village of plaintiff while the third witness, who is one of collateral and was inimical towards plaintiff, as such, his testimony did not inspire confidence.

6. In appeal, defendant no. 1 was permitted to produce additional evidence to place on record birth certificate (Ex. D-1) to the effect that Ramji Lal father of plaintiff was also having a daughter. Ist Appellate Court relied on the testimony of witnesses examined by defendant no. 1 and the mutation which was sanctioned in due course and discarded the plea of plaintiff Ram Singh that he being only son of Ramji Lal, was entitled to inherit the share in property of Molu to the exclusion of Smt. Sunder.

7. Learned counsel for the appellant has argued that Ist Appellate Court committed grave error while giving undue importance to the mutation which plaintiff has challenged. Onus was on defendant no. 1 to produce some documentary evidence to prove that she is the daughter of Ramji Lal and sister of plaintiff but she has failed to prove this fact. Ist Appellate Court has given undue importance to the testimony of witnesses of defendant despite the fact that two witnesses did not belong to the family of plaintiff and defendant no. 1 and have no special means of knowledge regarding the relationship of parties. So far as testimony of Surta-defendant no. 2/collateral is concerned, plaintiff has given specific reason for discarding his statement submitting that he was inimical towards him.

8. I have given a careful thought to the submission of learned counsel for the appellants. Plaintiff-appellant has

challenged the status of Smt. Sunder-defendant no. 1 as his sister and daughter of Ramji Lal. In order to prove her relationship she has placed on record birth certificate showing that a daughter was born to Ramji Lal but Ist Appellate Court has not given much weightage to this document. The mutation of inheritance of Molu was sanctioned on 04.11.1982. It is nowhere the case of plaintiff-appellant that Smt. Sunder was present at the time of mutation or the pedigree table at the time of mutation was got prepared at her instance or under her influence. The mutation was sanctioned in due course. All the legal heirs of Molu were described in the pedigree table while sanctioning the mutation and no reason has been attributed against the *patwari* or *lamberdar* or the revenue officer who sanctioned the mutation for making any false report/order at the time of sanctioning the mutation.

9. Smt. Sunder at the time of her statement in Court, which was recorded on 28.05.1984 was 70 years of age meaning thereby that she was born somewhere in the year 1914/1915. It is nowhere the case of plaintiff that she was literate or could produce the school record or any other documentary evidence. The Courts always take note of the fact that in those days most the girls were not having the opportunity to go to the school and entries in the birth record were made as were incorporated in Ex. D-1 which the Ist Appellate Court was reluctant in taking as exclusive proof of defendant no. 1 being the daughter of Ramji Lal. In these circumstances, Ist Appellate Court has not committed any error of law or fact while relying on the statement of witnesses. Surta-defendant no. 2, who is one of the collateral and beneficiary under

the mutation of inheritance of Molu, has categorically stated that defendant no. 1-Smt. Sunder is sister of plaintiff. Whenever she comes to village, she stays with plaintiff, who had been addressing her as *bebe* and she had been addressing plaintiff as brother. He is also on visiting terms with plaintiffs, who are from his brotherhood. The statement of this witness despite his age being 36 years at the time of his statement is very relevant because he is from family of plaintiff and is one of his collateral. Though he was not born at the time of birth of plaintiff or Smt. Sunder still being a family member has got special means of knowledge about the relationship of plaintiff and his sister.

10. Smt. Sunder appeared as DW-1 and has stated that plaintiff is her brother. She has described her relationship with plaintiff and defendants. She has stated that her father Ramji Lal got her married and has also given the ceremonial *bhat* (gifts given at the time of marriage of children of daughter/sister). She has further stated that plaintiff had been addressing her as sister and she had been addressing plaintiff as brother. The statement of Smt. Sunder and DW-4 Surta is un-shattered and Appellate Court has rightly relied on the same.

11. DW-2 Bhagwana has also deposed about the relationship of plaintiff and Smt. Sunder and has stated that she is the sister of plaintiff. He had seen plaintiff coming to the house of Smt. Sunder several times and has stated that children of Smt. Sunder address plaintiff as *Mama* (maternal uncle). DW-3-Gian has also stated that plaintiff and Smt. Sunder are brother and sister. Plaintiff had been coming to the village of Smt. Sunder and

was staying with her for months together.

12. DW-2 Bhagwana and DW-3 Gian, though, belonging to village Kharak Bura where Smt. Sunder was married and residing but it is a matter of common knowledge that in villages residents particularly the elders have entire information/ knowledge about the relationship of residents of the village. Smt. Sunder had been living in that village for decades, as such, these witnesses have special means of knowledge regarding the relationship of plaintiff and defendant no. 1 and Ist Appellate Court has rightly placed reliance on their statements while arriving at conclusion about relation of plaintiff and Smt. Sunder. On the other hand two witnesses examined by plaintiff, namely; PW-2 Sheela and PW-3 Sardara were 45 years of age and their statements that they have not seen any sister of plaintiff-Ram Singh, carries no weight because they lack any special means of knowledge about the relationship of plaintiff and defendant no. 1.

13. Ist Appellate Court has rightly appreciated the evidence on record while concluding that Smt. Sunder is the daughter of Ramji Lal and sister of plaintiff.

14. On perusal of judgment of Ist Appellate Court, I find no legal or factual infirmity therein calling for any interference. No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 13, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No