

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3527 of 1987 (O&M)
Date of Decision : 15.11.2016

Rampat

....Appellant

Versus

Sat Narain and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. H.S. Hooda, Senior Advocate
with Mr. C.S. Singh, Advocate
for the appellant.

Mr. Rajbir Sehrawat, Advocate
for the respondents.

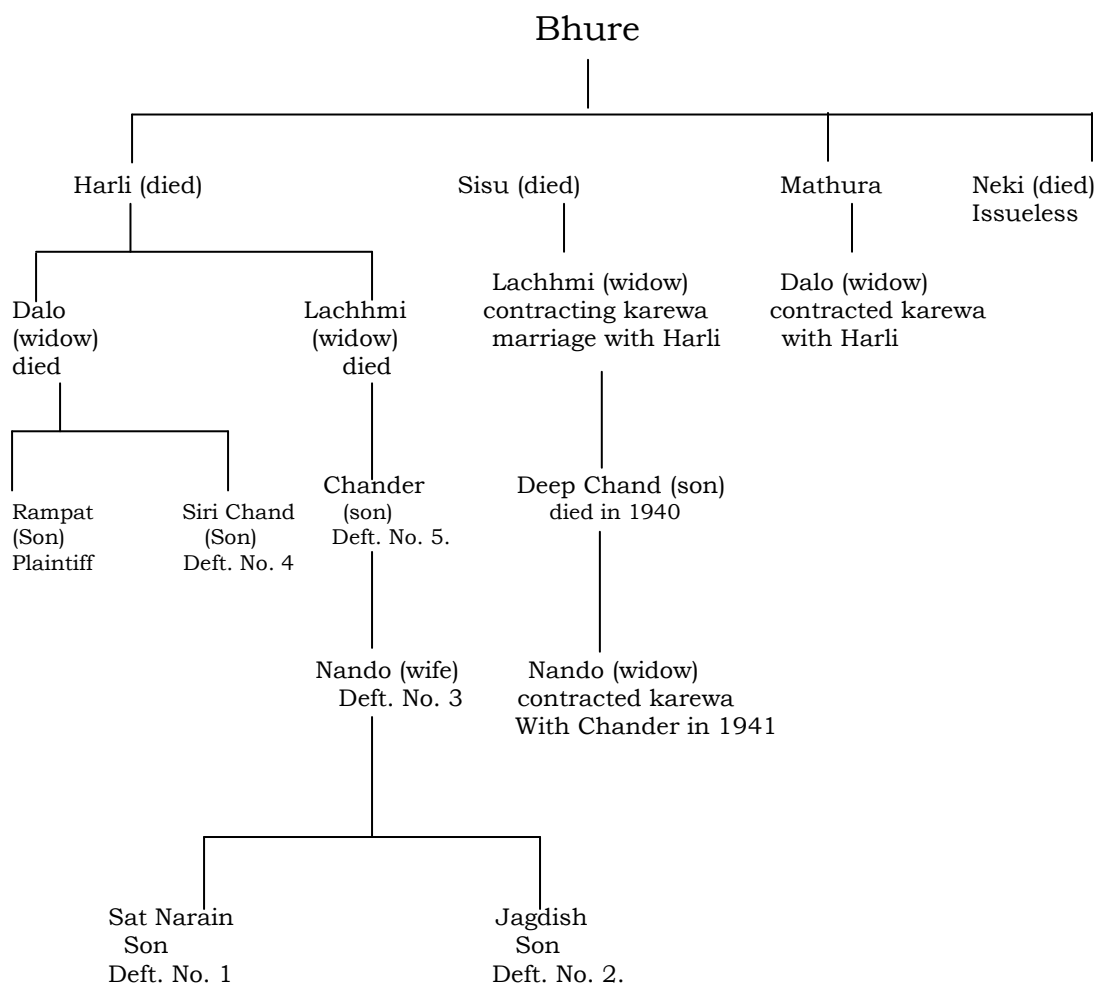
Surinder Gupta, J.

This is appeal by Rampat son of Harli against the concurrent judgments of Courts below, dismissing his suit seeking declaration that he and defendants no. 4 and 5, namely, Siri Chand and Chander his brothers, are owners in possession of:-

- (i) 1/4th share in agricultural land comprised in *khewat* no. 108, *khatauni* no. 205, *killa* no. 155/69, measuring 1 *kanal* 16 *marlas*;
- (ii) 1/8th share in agricultural land comprised in *khewat* no. 109, *khatauni* no. 206, *killa* nos. 109/9 (7-11), 26 (0-4), total 7 *kanals* 15 *marlas*; and
- (iii) 1/2nd share in agricultural land comprised in *khewat* no. 107, *khatauni* nos. 203-204, *killa* nos. 84/22 (8-0), 92/5/2 (0-2), 6 (8-0), 15 (8-0), 16 (8-0), 17 (4-0), 92/25 (8-0), 93/2 (7-11), 10 (8-0), 11 (8-0), 20 (8-0), 21 (8-0), 93/1 (7-11), 114/5 (8-0), 6 (8-0), 7 (8-0), 14 (4-18), 15 (7-18), 115/10 (8-0), 11/1 (4-4), total measuring 140 *kanals* 10 *marlas* situated at village Chuliana, *Tehsil* and District Rohtak.

- (iv) That the decree dated 10.06.1983 passed by the Court of S.S.J., Rohtak in case No. 473/1983 titled 'Sat Narain etc. vs. Smt. Nando' is null and void, ineffective and not binding on the rights of the plaintiff and that the defendants no. 1 to 3 have no right, concern or interest on the suit land.
- (v) That defendants no. 1 to 3 have no title or concern with suit land.

2. Following pedigree table will help in understanding the relationship of parties:-



3. The dispute in this case pertains to inheritance of share of Deep Chand in suit property, who admittedly died somewhere in the year 1941, leaving behind his wife Nando. In the year 1941, Nando contracted *karewa* marriage with Chander son of Harli. Plaintiff has alleged that her right in estate of Deep Chand stood forfeited after her remarriage and the suit property reverted to plaintiff-appellant Rampat and his brothers, namely, Siri

Chand and Chander being near relatives and successors of Deep Chand.

Plaintiff and defendants no. 4 and 5 remained in joint cultivation of suit land. However, entries in the revenue record continued to be recorded in the name of Nando. Taking benefit of those entries, she transferred the suit land vide decree dated 10.06.1983 passed in Civil Suit No. 473 of 1983 titled 'Sat Narain etc. vs. Nando', in favour of defendants no. 1 and 2. Plaintiff alleged that decree suffered by Nando is illegal, null and void.

4. The suit was contested by defendants no. 1 to 3 and 5, who pleaded that after death of Deep Chand in the year 1940, Nando, his wife, succeeded his estate and mutation No. 1537 was duly sanctioned in her favour on 31.12.1940. Though, original mutation was sanctioned as a life estate but after passing of Hindu Succession Act, 1956 (later referred to as 'the Act of 1956'), the property inherited by her from Deep Chand became her absolute property. She remained in possession of estate of Deep Chand from 1940 to 1983. Even plaintiff had agreed and concurred in the retention of this land in favour of Nando. The suit now filed by plaintiff is barred by time. The decree dated 10.06.1983 was rightly suffered by Nando in favour of defendants-respondents no. 1 and 2.

5. In the separate written statement filed by defendant no. 4, he concurred with the plea taken by plaintiff in the plaint.

6. Pleadings of parties led to framing of the issues as follows:-

1. Whether Nando defendant no. 3 inherited the share of Deep Chand as limited owner as per mutation no. 1537 sanctioned on 31.12.1940? OPP
2. Whether the plaintiff and defendants no. 4 and 5 are in cultivating possession of the suit land since the year 1940? OPP

- 2A. Whether with the passage of Hindu Succession Act, Smt. Nando had become full owner of the estate of Deep Chand deceased? OPD
 - 2B. Even if it is held that Smt.Nando had entered into Karewa with Chander defendant no. 5 whether she does not loose her rights of inheritance in the estate left by deceased Deep Chand? OPD
 3. Whether the decree dated 10.06.1983 passed in Civil Suit No. 473 of 1983 is wrong, illegal, without jurisdiction etc. as alleged in para 8 of plaint? OPP
 4. Whether the plaintiff is entitled to the relief claimed? OPP
 5. Whether the suit is within time? OPP
 6. Whether the plaintiff has no cause of action for the present suit? OPD
 7. Whether the plaintiff has no *locus standi* to file the suit? OPD
 8. Whether the plaintiff is estopped from filing the suit as alleged in additional plea no. 3 of w/s? OPD
 9. Whether the suit is false and frivolous and the defendants are entitled to special costs u/s 35-A CPC? OPD
 10. Relief.
7. Learned Sub Judge, Rohtak recorded the finding on issue no. 1 in favour of plaintiff while all the other issues were decided against him and suit was dismissed. It was observed that as per provisions of Section 14 of the Act of 1956, Nando has become absolute owner of the suit land and has not lost her title over the suit land after her remarriage with Chander. Decree

dated 10.06.1983 was held as legal, valid and binding on plaintiff and suit was held as barred by limitation.

8. On appeal, learned Additional District Judge, Rohtak reversed the findings of learned Sub Judge, Rohtak on issues no. 2A and 2B and held that Nando had ceased to have any right in the estate of Deep Chand after her remarriage with Chander. The appeal was, however, dismissed with the observations that suit of plaintiff was barred by limitation.

9. I have heard learned counsel for parties and perused the lower Court record with their assistance.

10. Mr. H.S. Hooda, Senior Advocate representing plaintiff-appellant has argued that Ist Appellate Court has committed grave error while recording the finding that suit of plaintiff seeking declaration that he has become owner of the suit land, which was owned by Deep Chand on the remarriage of Nando with Chander in the year 1941, is barred by limitation. He has argued that question of limitation is a mixed question of law and fact. Once it is proved that Nando is left with no right, title or interest in property of Deep Chand after her remarriage, share of Deep Chand reverted to collateral, who were plaintiff and defendants no. 4 and 5. They remained joint and no partition ever took place, as such, there was no reason or occasion for plaintiff to challenge entries in *jamabandi*, which continued in the name of Nando regarding the share of suit land inherited by her as limited owner on the demise of her first husband Deep Chand. The question of title, to the extent of share of plaintiff in suit land, will arise the moment parties will seek partition of their shares. Plaintiff has come to seek declaration of his title before getting the suit land partitioned, as such, the finding recorded by Courts below that suit is barred by limitation is not

11. Learned counsel for respondents has argued that as per case set up by plaintiff, his right in suit property stood forfeited after *karewa* marriage of Nando with Chander in the year 1941 and till 1983 he remained silent and never challenged the entries in the revenue record. The suit is barred under Article 66 of the Limitation Act. He has further argued that even otherwise plaintiff has no claim in suit land and his suit is not within limitation even if his plea that suit property reverted to reversioners as per provisions of Hindu Widows Remarriage Act, 1856 (later referred to as 'the Act of 1856'). The suit was filed on 07.07.1983 and Hindu Widows' Remarriage Act was repealed on 31.08.1983. When an act is repealed, in the absence of any saving clause, it is repealed from the day it was enacted. He has further argued that Ist Appellate Court though recorded a finding that as per provisions of the Act of 1856, Nando had no right in the suit land still it did not look into the aspect that after remarriage of Nando with Chander, the property reverted to mother of Deep Chand, namely, Lachhmi, who after death of her husband Sisu contracted *karewa* marriage with Harli and from the loins of Harli, she gave birth of Chander (respondent no. 5). Nando had contracted *karewa* marriage with Chander and from this marriage Sat Narain and Jagdish, defendants no. 1 and 2, were born. The property inherited by Lachhmi would devolve on Chander and then on his sons i.e. defendants no. 1 and 2. Ist Appellate Court while looking into the plea of defendants that suit is barred by limitation has not examined the appeal from this angle.

12. The substantial questions of law, which arise for consideration in this appeal is "as to whether plaintiff is required to prove that he has interest or title in suit property before his plea that his claim is within limitation, could be considered and the question as to whether a suit is

13. Learned Ist Appellate Court while dismissing suit of plaintiff held that it is barred by limitation under Articles 58 and 66 of the Limitation Act. Articles 58 and 66 of the Limitation Act read as follows:-

58. To obtain any other declaration	Three years	When the right to sue first occurs.
66. For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition.	Twelve years	When the forfeiture is incurred or the condition is broken

14. Plaintiff has raised dispute regarding inheritance of suit property, which allegedly took place in the year 1941. He has sought declaration of his title with regard to suit land on the ground that in 1941 Nando, who inherited property of Deep Chand, contracted *karewa* marriage with Chander, brother of plaintiff from second wife of his father, as such, property in hand of Deep Chand by reversion has come to collateral, who were plaintiff-Rampat, his brothers, Siri Chand and Chander all sons of Harli. It is a settled proposition of law that the plea ‘as to whether claim of plaintiff is within limitation’ is a mixed question of law and fact. Before coming to the aspect as to whether suit is barred by limitation under Articles 58 and 66 of the Limitation Act, facts are to be examined in view of pleadings and evidence on record.

15. Ist Appellate Court has held that Nando ceased to have any right in estate of Deep Chand the moment she contracted second marriage with Chander. Observations of Ist Appellate Court contained in para 13 of the judgment are reproduced as follows:-

“13. I have given my due deliberations to the arguments advanced on behalf of the learned counsel for the parties and have also gone through the facts of the authorities

*cited by learned counsel for appellant. So far as, the observations made in the various authorities, referred to above, with regard to the forfeiture of her rights in the estate of her deceased husband, on remarriage by a widow before the enactment of Hindu Succession Act, is concerned, I have no dispute with the law enunciated therein. Similar is the case of Smt. Nando in the instant case, who contracted second marriage with Chander in the year 1941. I am fortified in my this view with the observations made in AIR 1962 Patna 65, **Mt. Anarajia vs. Tendari Kabar and another.** Hence, I hold that she had ceased to have any right in the estate of said Deep Chand, the moment she contracted 2nd marriage with Chander. Therefore, the findings on issue no. 2A and 2B of the learned trial Court are reversed and both the issues are decided in favour of the plaintiff-appellant and against the respondents.”*

16. Ist Appellate Court has analyzed the legal position that limited rights, which Nando had in the property left by her husband, were lost, the moment she contracted second marriage with Chander. However, it has not looked into the fact as to how devolution of that property will further take place. Deep Chand left behind his mother and wife. His mother Lachhmi had remarried Harli father of plaintiff. On extinguishment of right of Nando in estate of Deep Chand, it will revert to his mother, who was alive in 1941 and was heir of her deceased son. Section 2 of the Act of 1856, clearly lays down that on remarriage of widow, property inherited by her from her previous

29.01.1971 as per her death certificate (Ex. P-20) produced by the appellant. It is nowhere the case of plaintiff that possession of suit land came to him. Lachhmi became absolute owner of this property after coming into force of Hindu Succession Act, 1956. Nando had remarried Chander, who was son of Lachhmi. After death of Lachhmi, the property fell to share of Chander son of Harli respondent no. 5 in this appeal. Sat Narain and Jagdish, respondents no. 1 and 2, in whose favour Nando suffered a decree being sons of Chander, will otherwise inherit the suit property in due course. Mulla on Hindu Law (21st Edition) defines the reversioners with the help of illustration '(b)' as given under Article 175, which reads as follows:-

“(b) A Hindu *F*, dies leaving a widow *A*, a mother *B*, a father’s mother *C*, and a father’s brother *D*. Here, there are three reversioners to whom two, namely *B* and *C* are females, and one, namely, *D*, is a male. On *F*’s death, his widow *A* will succeed to his property. On *A*’s death, *F*’s property will revert or pass to *F*’s next heir *B*, if she is then living. On *B*’s death, *F*’s property will revert to his next heir *C*, if she is then living. On *C*’s death, *F*’s property will revert or pass to *D*, if he is living. *D*, however, will take the full property as full owner and on his death, it will pass to his own heirs and not to *F*’s heirs.”

17. From the facts as disclosed above, claim of plaintiff seeking declaration that estate of Deep Chand in the year 1941 after remarriage of his wife Nando with his brother Chander had devolved on him and his other brothers being collateral of Deep Chand, has no basis and is hopelessly

he has no right, title or interest in the suit property and he lived with this notion upto the year 1983 i.e. for a period of about 42 years, when he woke up after a long slumber. Firstly, the plaintiff-appellant has no share or concern with the land of Deep Chand, as such, the question of his suit being considered within limitation does not arise. Secondly, cause of action, if any, accrued to him in the year 1941 and by 1983, when he filed this suit, he was left with no right, title or interest in the suit property, as such, his suit is barred by limitation. Thirdly, his suit seeking declaration is barred under Article 58 of the Limitation Act after expiry of three years from the date cause of action accrued to him. Fourthly, if as per case of plaintiff forfeiture of his right in suit property be considered in the year 1941, when Nando remarried Chander, suit for possession is not within limitation. Fifthly, plaintiff has not sought possession of suit land so as to seek shelter under the provisions of Article 65 of Limitation Act. Even otherwise, repeal of Act of 1856, before filing of suit has taken away right of plaintiff to claim any relief under that Act.

18. As a sequel of my above discussion, the substantial question of law, framed in this appeal, is decided against the appellant.

19. This appeal has no merit and the same is dismissed.

November 15, 2016
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No