

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

RSA No.2699 of 2007 (O&M)

Date of decision : 01.08.2016

Surjit Kaur and another

...Appellants

Versus

Lakha Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Munish Jolly, Advocate with
Mr. B.D. Sharma, Advocate for the appellants.

Mr. Amit Arora, Advocate for respondent Nos.1 to 4.

AMIT RAWAL, J. (Oral)

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby claim of the suit for declaration and alternative relief of possession with regard to the suit property being the LR's of deceased, Hari Singh alleged to have mortgaged the property by registered mortgage deed dated 02.03.1961, has been dismissed by both the Courts below.

Mr. Munish Jolly, learned counsel appearing on behalf of appellants-plaintiffs submits that prior to the filing of the suit, proceedings for redemption of the property were initiated before the Revenue Court and Revenue Court vide order dated 04.11.1994 Ex.P16 kept the matter pending

and observed that order cannot be passed as dispute qua mutation No.2479 was pending adjudication. The defendants in the written statement had denied the following two things:-

1. Hari Singh, Mortgagor was still alive.
2. The appellants i.e. the plaintiffs No.1 and 2 and defendant Nos.1 and 2 are/were not the daughters of Hari Singh.

He further submits that in order to prove the relationship of the children, PW1 Charan Singh son of elder brother of Hari Singh, PW12 Buta Singh, Nephew of Hari Singh and PW9 Chanchal Singh have been examined. All the witnesses have deposed in terms of provision of Section 50 of the Indian Evidence Act. Over and above the oral evidence, the documentary evidence i.e. the School Certificates Ex.P2 and Ex.P3 have been proved through the testimony of PW2 and PW3 which shows that Amarjit Kaur was reflected as daughter of Hari Singh. Both the Courts below have abdicated in discharging the obligation in not referring to the order dated 28.10.1999 passed by the Financial Commissioner, Appeal-I, Punjab, whereby mutation had been sanctioned in favour of the appellant. He further submits that had documents have been referred, the factum of the death being vehemently denied by the defendants, is falsified as the death certificate Ex.P4 dated 23.03.1990 of Municipal Committee, Tarn Taran was got issued by Lakha Singh Successors-in-Interest of Mortgagee and on the basis of that, the Commissioner had passed the order of mutation.

He further submits that Courts below tread on the path of surmises and conjectures instead of focusing its concentration on the aforementioned document and declined the relief as sought in the plaint and

thus urges this Court for formulation of the following substantial questions of law as culled out in the memorandum of appeal:-

“a) Whether the judgments and decree passed by the Courts below are perverse and erroneous being against the facts, evidence, other material and law involved in the present case?

b) Whether the learned courts below are justified in ignoring and misreading the evidence on record in the shape of oral statements of PW1, PW7, PW9 and PW12 and also documentary evidence in the shape of death certificate of Hari Singh, copy of the order passed by the learned Financial Commissioner, Punjab and the mutation of inheritance sanctioned in the favour of the appellants-plaintiffs which clearly prove that Hari Singh mortgagor has died on 23.3.1990 in the house of PW9 Chanchal Singh at Tarn Taran leaving behind his four daughters including the two plaintiff-appellants?

c) Whether the Courts below are justified in relying upon the report of ADC, Amritsar which was sought by the revenue authorities during the mutation proceedings, especially when the same was rejected by the revenue authorities themselves in the said mutation proceedings which were ultimately decided in favour of the appellants-plaintiffs holding that Hari Singh mortgagor has died on 23.3.1990 in the house of PW9 Chanchal Singh and the entry in the register of Municipal Committee Tarn Taran was validly and legally made?

d) Whether the courts below have misread the evidence on the record to show that the application for redemption was validly and legally filed by the appellants-plaintiffs who were competent to file the same being daughters of Hari Singh mortgagor who was died on 23.3.1990?”

He further submits that during the interregnum, one Kirpal Singh brother of Hari Singh had also initiated the proceedings against the defendants branding them mortgagee for redemption of the house treating Hari Singh to be of unsound mind and the said suit was dismissed on holding that Hari Singh was not of unsound mind. Another round of litigation at the instance of Kirpal Singh was initiated against Hari Singh, as Hari Singh had never given any attorney to the Kirpal Singh. Thus, factum of the mortgagee has been proved.

Mr. Amit Arora, learned counsel appearing on behalf of respondent-defendant-contesting defendants i.e. defendants No.3 to 6 submits that evidence with regard to the relationship of the appellant and defendant Nos.1 and 2 with Hari Singh was lacking as all the witnesses have not been deposed in terms of provision of Section 50 of the Indian Evidence Act. Mutation proceedings have been entered as per the order dated 28.10.1999. Mutation has been effected in the name of children/daughters of Hari Singh which would not confer the title. It has to be proved in the Court and rightly so, the Courts below have upheld the order dated 04.11.1994 Ex.P16 whereby relief was declined on the ground that mutation or proceedings be kept pending. Birth certificate Ex.P13 of one Mohindo Kaur, had not been proved on record in accordance with law. It being only tendered. Concurrent findings of facts cannot be interfered into until and unless substantial question of law or illegality and perversity is pointed out. However, both the Courts below have after examining the oral and documentary evidence found that the plaintiff has failed to prove the relationship, much less, death of Hari Singh, rightly so, suit has been

dismissed and thus urges this Court for affirmation of the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of Mr. Jolly assisted by Mr. Brigu Dutt Sharma, for, operative part of the order dated 28.10.1999 Ex.P8, which reads thus:-

“9. The counsel for the respondent, on the other hand, reiterated the same arguments which have been given in the written arguments submitted before the Additional Commissioner (A) Jalandhar Division, Jalandhar. He has also reiterated that the Collector Amritsar had sent the case to the Additional Deputy Commissioner to enquire into the factum of the death of Hari Singh, that an enquiry was conducted and finally the Additional Deputy Commissioner, Amritsar reported that the present petitioners 1-4 could not prove the death of Hari Singh.

10. Viewed from the detailed facts of the case and various orders of the lower courts and the arguments of counsel for both the parties, it may be concluded that the crucial issue or the crux of the matter is whether Hari Singh who is the father of the petitioners 1 to 4 is alive or dead. In the order of A.C. Ist Gr. Tarn Taran dated 3.12.1991 it has been stated that it is evident from the statements of both the parties that Hari Singh has died and all the four daughters are legal heirs and equally entitled to get sanction mutation to the estate of Hari Singh deceased. It has been mentioned that if Hari Singh is alive, the objector Lakha Singh should have produced him in the court, but he did not do so. Further objector has no knowledge to the death of Hari Singh. Similarly, the Collector in his order on 25.1.1994 categorically stated

that the death has been proved to have occurred on 23.3.1990. The Will produced by the respondent No.2 Kulwant Singh also shows that Hari Singh has died. No doubt, two certificates of death have come on the record of lower courts one is from Chowkidar in which the date of birth is 3.2.1990 but later on the Chowkidar had denied that this certificate had not been issued by him and he had also filed FIR against this false certificate. The second death certificate has been issued by the Municipal Committee Tarn Taran which has been got by the respondent No.1-Lakha Singh himself and placed on the file. Even otherwise under the evidence law presumption can be inferred that the person who has not been seen or heard by any person for the last seven years is to be treated as died. From all of this discussion it can safely be concluded that Hari Singh had died and he is no more alive, whereas the legal heirs of deceased Hari Singh are his daughters i.e. petitioners 1 to 4 and in their being legal heirs, there is no dispute. All the lower Courts have mentioned in their orders that his legal heirs are petitioners 1 to 4. The Tehsildar Tarn Taran vide his order dated 11.4.1990 had also sanctioned the mutation in their favour and the Ld. Collector in his order dated 25.1.1994 has also ordered to sanction the mutation in favour of the natural heirs of Hari Singh. The respondent has also got mutation and inheritance in their favour in respect of property of his father Hazara Singh. In that mutation they have mentioned the petitioners 1 to 4 as mortgagors being the legal heirs of Hari Singh and they were mentioned themselves as mortgagees of the land in dispute.

In view all of this, I have no hesitation that the mutation can be sanctioned in the name of petitioners 1 to 4 being legal heirs of deceased Hari Singh, the owner of

the property in dispute. Therefore, I set aside the order of Commissioner dated 12.11.1996 and restore the order of Ld. Collector dated 25.1.1994.

Announced. Sd/- (I.S. Bindra)
Chandigarh, dated Financial Commissioner
the 28th October, 1999 Appeals-I, Punjab”

reveals that death certificate Ex.P4 dated 23.03.1990 issued by Municipal Committee, Tarn Taran has been obtained by the Successors-in-Interest of mortgagor-Lakha Singh. The factum of death is thus admitted. As regards the relationship of the appellant, school certificates of Amarjit Kaur Ex.P2 and Ex.P3 had been proved on record. Charan Singh PW1, PW12 Buta Singh and PW9 Chanchal Singh have deposed in terms of provision of Section 50 of the Indian Evidence Act. For the sake of brevity, provision of Section 50 of the Act, reads thus:-

“50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).”

All the aforementioned witnesses have deposed that Hari Singh had four daughters namely Surjit Kaur, Amarjit Kaur, Mohindo and Satnam Kaur. Hari Singh died on 23.03.1990. The death certificate produced on record by the defendant dated 03.02.1990 issued by the Chowkidar of the

Village, cannot be believed into as the Chowkidar lodged an FIR against the aforementioned certificate stating that he was not the author of the documents, in essence, the defendant made all efforts to satisfy the Court with regard to the death of Hari Singh. The essential ingredients of proving the relationship in respect of Hari Singh have not been proved. Now the question revolves whether mortgage deed and the identity of the property in the mortgage deed is in dispute or not. In the order dated 28.10.1999, both the parties admitted the existence of mortgage and mortgagee, thus, claim in suit was for possession by way of redemption.

It is conceded position on record that plaintiff had deposited the cost of redemption before filing of the suit. It is also matter of record that when the matter was pending before the Lower Appellate Court, defendants did not deny the identity of the property.

In view of the aforementioned facts, I am of the view that both the Courts below have gravely erred in dismissing the suit which as per the foregoing reasons are perverse.

Accordingly, judgment and decree of both the Courts below are set aside. Suit of the appellant-plaintiff is decreed. Decree-sheet is ordered to be prepared.

Resultantly, appeal is allowed.

01.08.2016

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes

Whether reportable:-

Yes/No