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

**RSA-1965-2012 (O&M)
Date of Decision: 06.01.2016**

JASWINDER KAUR AND ORS.

.....Appellants

Vs.

BOLI AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajan Bansal, Advocate
for the appellants.

Mr. M.J.S. Bedi, Advocate
for the respondents.

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

RAJ MOHAN SINGH, J. (Oral)

1) Plaintiffs have directed this regular second appeal against the judgment and decree dated 6.12.2011 passed by Additional District Judge (Fast Track Court), Bathinda whereby judgment and decree dated 10.9.2009 passed by Additional Civil Judge (Senior Division), Phul has been upheld.

2) Plaintiffs filed a suit for declaration on the ground that they are in possession of the suit land to the extent of $1/3^{\text{rd}}$ share in the capacity of owners. Defendants have no right in the suit land on the basis of Will dated 27.2.2001 allegedly executed by Kundha Singh in favour of the defendants. The Will in question is claimed to be forged and fabricated document and does not create any right, title or interest in favour of the defendants. Plaintiffs claimed the will to be nullified. Plaintiffs alleged that they are entitled to $1/3^{\text{rd}}$ share and also to get it separated from the defendants. Kundha Singh was owner in possession to the extent of $1/3^{\text{rd}}$ share of the property measuring 286 kanals 4 marlas as per jamabandi for the year 2000-2001. Kundha Singh was real uncle of the plaintiffs i.e. Karnail Kaur (since deceased) and Mukhtiar Kaur and real brother of Dhan Kaur i.e. mother of the plaintiffs. Kundha Singh did not solemnize marriage during his lifetime and was having two brothers and two sisters namely Hardita and Dulha (brothers) and Dhan Kaur and Harnam Kaur as sisters. Kishan Kaur, Harnam Singh, Dhan Kaur, Harnam Kaur, Hardita and Dulha, mother, father, sisters and brothers of Kundha Singh pre-deceased him. Karnail Kaur and Mukhtiar Kaur were two daughters of Dhan Kaur who was real sister of Kundha Singh. Ghaila Singh, Mukhtiar Singh, Nauta Singh and Jal Kaur were sons and daughters of Harnam Kaur i.e. other sister of Kundha Singh. Jal Kaur and Nauta Singh pre-deceased Kundha Singh. Dhan Kaur and Harnam Kaur were married. Kundha Singh died on 3.3.2002 at the age of 95 years.

Plaintiff claimed that he used to reside with the plaintiffs during his

lifetime and plaintiff served him. Kundha Singh did not execute any will in favour of any person. Plaintiffs claimed themselves to be natural heirs of deceased Kundha Singh who inherited his estate after his death. Plaintiffs further claimed that deceased Kundha Singh never solemnized any marriage during his lifetime. Defendant-Boli was having no concern with Kundha Singh nor defendants-Jaswant Singh, Pritam Singh and Mohinder Singh were having any concern with the suit land or with Kundha Singh. Kundha Singh purchased several women during his lifetime who used to run away from his house after residing with him for short interval. Kundha Singh also performed one karewa marriage with one Surjit Kaur D/o Mehar Singh on 9.1.1964 regarding which karewanama was scribed by one Devi Dayal, deed writer on the instructions of Surjit Kaur in the presence of marginal witnesses. Karewanama was also got registered with Sub-Registrar, Rampura Phul. However, said Surjit Kaur left the society of Kundha Singh after sometime. Kundha Singh did not perform any marriage with defendant-Boli nor Boli ever resided with Kundha Singh during his life time. Will dated 27.2.2001 has been claimed to be forged and fabricated and is null and void. Mutation sanctioned on the basis of said Will is also claimed to be null and void and not binding upon the rights of the plaintiff. Will dated 27.2.2001 does not bear thumb impression of Kundha Singh. Plaintiff also alleged that the defendants got sanctioned mutation No.4155 and also got prepared a decree in connivance with revenue official and Nambardar Maghar Singh, Darshan Singh and Naib Singh,

Sarpanch. Plaintiff claimed that if the plaintiffs are not proved to be in exclusive possession of one third share in the land in question and then a decree for joint possession be passed.

3) Defendant No.1 contested the claim of the plaintiff on all counts. It is admitted that the disputed property was owned and possessed by Kundha Singh during his life time. The defendants inherited the disputed property after the demise of Kundha Singh. Defendant No.1 claimed herself to be widow of deceased Kundha Singh. Marriage of Kundha Singh was solemnized with Boli in accordance with Anandkaraj. Boli cohabited with Kundha Singh during his life time and served him. Plaintiffs have no concern with Kundha Singh deceased. Plaintiffs are not the nieces and nephews of deceased Kundha Singh. Plaintiffs want to encroach upon the estate of Kundha Singh by introducing falsehood and alleging themselves to be close relatives of Kundha Singh. Kundha Singh remained in the company of defendant and plaintiffs were not having any relation with Kundha Singh. Kundha Singh executed Will dated 27.2.2001 in the presence of marginal witnesses and on the basis of that Will, the defendants inherited the estate of Kundha Singh in equal share. Kundha Singh was an old man at the time of his death and the defendants performed his last rites. Defendants also alleged that Kundha Singh never performed any karewa marriage with Surjit Kaur during his life time and the said karewanama is a forged and fabricated document prepared by the plaintiffs in connivance with attesting witnesses. The question of

karewa with Surjit Kaur did not arise once Boli was married to him. The estate of Kundha Singh has been mutated in favour of defendants on the basis of Will. Defendants also alleged that in case, validity of Will is not proved, then the defendant No.1 is the only legal heir of Kundha Singh who has inherited his estate. Similarly, defendant numbers 2 to 4 also contested the claim of the plaintiffs. They have also admitted the factum of marriage of Boli with Kundha Singh and she cohabited with Kundha Singh during his life time as his wife and performed all matrimonial duties. Factum of Will dated 27.2.2001 has been pressed into service having been executed in the presence of marginal witnesses and the said Will is claimed to be the last Will of Kundha Singh. The defendants inherited the estate of Kundha Singh in equal shares i.e. 1/4th each on the basis of Will. Mutation has been rightly sanctioned in their favour.

After filing the replication, following issues were framed:-

- "1. Whether plaintiffs are owners in possession of suit land? OPP.*
- 2. Whether defendant Boli is legally wedded wife of Kundha Singh deceased? OPD.*
- 3. Whether Kundha Singh deceased had executed a Will in favour of defendants on 27.2.2001, if so its effect? OPD*
- 4. Whether Kundha Singh had died unmarried and issueless? OPP.*
- 5. Whether mutation No.4155 sanctioned on 23.3.2003 is null and void against the rights of the plaintiffs? OPP.*

6. Whether plaintiff is entitled to declaration as prayed for? OPP.

7. If plaintiffs are not proved in possession of suit land, whether they are entitled to joint possession? OPP.

8. Whether plaintiffs are related to Kundha Singh deceased, if so its effect? OPP.

9. Whether plaintiffs have no cause of action to file the present suit? OPD.

10. Whether suit is not maintainable in the present form? OPD.

11. Whether defendants are entitled to special costs? OPD.

12. Relief."

4) Both the parties led evidence. Trial Court took issues No.1 and 2 together and held that Boli is legally wedded wife of Kundha Singh and plaintiffs are not owner in possession of the suit land. Issues Numbers 3 and 5 were also jointly taken up by the trial Court. Trial Court held that defendants No.2 to 4 have failed to prove execution of Will by dispelling suspicious circumstances and as such Will is shrouded with suspicious circumstances and it has been held that defendant Numbers 2 to 4 have failed to prove legality and validity of Will and Will does not carry any right, title or interest in favour of defendant numbers 2 to 4. Therefore, mutation number 4155 dated 23.3.2003 sanctioned on the basis of said Will was declared to be null and void and not binding upon the rights of the plaintiffs as well as defendant No.1- Boli. Therefore, issue number 3 was decided in the aforesaid manner and mutation sanctioned on that basis was also held to be illegal.

Under issue No.4, trial Court held that Kundha Singh resided with Boli for more than 15 years and Boli is entitled to inherit the property of Kundha Singh being the only legal heir of Kundha Singh and was not having any issue from him. After returning findings under issues numbers 6, 7 and 8, trial Court held that plaintiffs have failed to prove their relationship with Kundha Singh and held the same against the plaintiffs and in favour of defendants. Resultantly, suit was dismissed vide judgment and decree dated 10.9.2009.

5) Plaintiffs remained unsuccessful before the First Appellate Court who dismissed the appeal vide judgment and decree dated 6.12.2011. That is why the present appeal came to be filed in this Court.

6) I have heard learned counsel for both the parties and have also perused the record.

7) Living of Boli with Kundha Singh has been proved with reference to Voter List Ex.P18 which depicts and proves the version of Boli that she resided with Kundha Singh for more than 15 years prior to his death. Voter List Ex.D1 to D3 also proved the factum of living of Boli with Kundha Singh for more than 15 years and presumption arises that Boli cohabited with Kundha Singh as his wife. Long living under the same roof has been construed to be a relationship of husband and wife. A strong presumption has to be taken in favour of wedlock where partners have lived together for so long as husband and wife. Even though the said presumption is

rebuttable in nature. The burden strongly lies upon such person who seeks to prove otherwise than such relationship. Plaintiff has failed to prove that living of Kundha Singh with Boli for so long was not on account of relationship of husband and wife. A strong presumption of marriage has come on record.

8) The plaintiffs have failed to prove their relationship with Kundha Singh in terms of Section 50 of the Evidence Act. Except Jagjit Singh PW2, no other witness has been examined by the plaintiff from the village to prove their relationship with Kundha Singh. The statement of Jagjit Singh is not sufficient to prove the relationship of the plaintiff with Kundha Singh as he did not utter anything that plaintiffs used to call Kundha Singh as their Mama and Kundha Singh used to address them as their bhanjas/bhanjis. The statement of PW1, Mukhtiar Kaur also failed to establish any such relationship of plaintiffs with deceased Kundha Singh. Even no suggestion was given to Boli in her statement that she did not solemnize marriage with Kundha Singh by way of Anandkaraj. Relationship of Boli with Kundha Singh has been established. Even in terms of Voter List Ex.P16 to P19, it is proved that Boli is shown to be wife of Kundha Singh. Long living under the same roof coupled with documents in the form of Voter List of the relevant time made the Courts below to give concurrent findings that defendant number 1 Boli has successfully proved herself to be wife of Kundha Singh and is entitled to inherit the property of Kundha

Singh. Therefore, it has been rightly concluded by the Courts that the suit of the plaintiff has to be dismissed.

9) Having considered the arguments in detail, the substantial question of law as framed in para number 20 of the grounds of appeal, can be answered in negative inasmuch as that the judgment and decree passed by the Courts below are not to be proved as a result of perversity of any nature and are not the result of misreading or non-reading of any material on record, rather the material on record is sufficient to hold that Boli lived with Kundha Singh for more than 15 years under the same roof and Voter List of the relevant period that she was wife of Kundha Singh. The testimony of the witnesses remained unchallenged. No suggestion was put to Boli that she was not the legally wedded wife of Kundha Singh. As regard to question No.2, the bahi of Pandas of Haridwar had to be proved in consonance with the evidence on record. It has to be proved that the entries were maintained in ordinary course of business of the pandas. In order to substantiate the plea in terms of entries, the evidence must come on record in respect of prior entries and subsequent entries recorded in the bahi of pandas. Since no such evidence has come forth on record to prove that the bahi entries of pandas of Haridwar have been made in ordinary course of business for want of earlier and subsequent entries in register, therefore, it cannot be conclusively held that the entries are of conclusive nature without proving the same to be recorded in ordinary course of business. Such entries cannot be

treated to be conclusive proof. Since both the Courts have discarded the entries in question, therefore, re-appreciation of such evidence is not required to be done in second appeal. No evidence has come on record that the entries made in panda's register was on account of collecting information from going place to place and periodical assessment of genealogies of the clients i.e the plaintiffs, moreover, when the statements of defendant No.1 has gone unrebutted. Once the factum of marriage of Boli is proved with Kundha Singh and factum of Will has been discarded, Boli has all the preferential rights over and above the plaintiffs who are not directly related to Kundha Singh in any manner. Boli being the first class heir in terms of Section 8 of the Hindu Succession Act, has all the rights in the property after the death of Kundha Singh and in this way the conclusions drawn by both the Courts below cannot be faulted with. Since, the plaintiffs themselves have failed to prove the entries in pandas register in accordance with law i.e. in terms of Section 32 of the Evidence Act, the solitary statement of PW3 in said context is of no consequence.

10) In the light of findings recorded by both the Courts below, no interference is required to be called for, as the re-appreciation of evidence in second appeal is not possible.

11) Consequently, this appeal is found to be totally devoid of merits and the same is accordingly dismissed.

6.1.2016

(RAJ MOHAN SINGH)
JUDGE