

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

**RSA No.3435 of 2013
Date of Decision-24.10.2016**

Smt. Poonam and others ... Appellants

Versus

Sher Singh and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikram Singh, Advocate for the appellants.

RAJ MOHAN SINGH, J.

[1]. Legal representatives of plaintiff-Hira Singh have preferred this Regular Second Appeal against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and permanent injunction.

[2]. Original plaintiff alleged that Sohal Lal, maternal grand father of the plaintiff and proforma defendants namely Krishna and Geeta were owner in possession of the suit land as shown in the plaint. After the death of Sohan Lal, Imarti Devi, mother of the plaintiff and proforma defendants along with defendants No.1 to 5 became owner in possession of the suit land. Sohan Lal was recorded as owner in possession in the revenue record. Imarti Devi was the Class-I heir of Sohan Lal. After the death of Sohan Lal, Imarti Devi became owner in possession of 1/30th share in the property. After the death of Imarti Devi, plaintiff along with

proforma defendants became owner in possession to the extent of share of Imarti Devi being her Class-I heirs.

[3]. Plaintiff further alleged that defendants No.1 to 5 in connivance with one Ghisa Ram, Namberdar got sanctioned mutation of inheritance of Sohan Lal by alleging themselves to be the Class-I heirs of Sohan Lal. The property was ancestral coparcenary property in which Imarti Devi had a share. The mutation of inheritance No.2241 dated 15.06.1966 of village Kutubpur and subsequent mutation No.10290 dated 24.06.1999 of Rewari, mutation No.272 dated 15.06.1996 of village Chandawas, mutation No.628 dated 15.06.1996 of village Kan Mazra and mutation No.651 dated 24.02.1998 were claimed to be illegal, null and void.

[4]. Plaintiff also alleged that on the basis of wrong revenue entries, defendants No.1 to 5 got executed a collusive decree vide Civil Suit titled as Surajbhan Vs. Sher Singh etc. dated 24.12.1997. No alleged family settlement took place in the year 1996. Mutations as well as Civil Court decree dated 24.12.1997 were claimed to be illegal, null and void. Plaintiff and proforma defendants being Class-I heirs of Imarti Devi staked their claim qua 1/30th share belonging to Imarti Devi.

[5]. Defendants No.1 to 5 sold 1/5th share i.e. 15 kanals 5 marlas out of the property situated in the village Chandawas to defendant No.10 vide sale deed dated 15.09.1997. Defendant

No.10 further sold the land to defendants No.6 to 9 vide registered sale deed dated 16.04.1998. Similarly defendant No.4 Rampal got sanctioned mutation No.2248 on the basis Civil Court decree dated 24.12.1997 and thereafter, sold 4 kanals 5 marlas of land situated in the village Kutubpur to defendants No.12 and 13 vide registered sale deed dated 28.04.1999. Defendant No.4 further sold land measuring 3 kanals of village Kan Mazra and 1 kanal of village Chandawas to defendants No.6 to 9 vide sale deed dated 11.10.1999. Defendant No.1-Sher Singh sold 8 marlas of land situated at Rewari to defendant No.11 vide sale deed 13.08.1999. All the aforesaid transactions of sales and mutations sanctioned on the basis thereof were claimed to be illegal, null and void and not binding upon the rights of the plaintiff and proforma defendants. With this background, suit came to be filed.

[6]. Defendants contested the suit. Defendants No.10 and 11 were proceeded against ex parte. Defendant No.1 claimed that Imarti Devi was not the Class-I heir of Sohan Lal as she had already died before the death of Sohan Lal. Possession of Imarti Devi on the land to the extent of $1/30^{th}$ share was denied. Since Imarti Devi had died on 27.08.1986 and Sohan Lal had died on 01.09.1993, therefore question of inheritance of Sohan Lal did not arise and no mutation of inheritance could have been sanctioned in favour of Smt. Imarti Devi. It was claimed that Imarti Devi was married to one Ram Chander in the year 1957. No child was born out of this wedlock. Thereafter, Bimla, younger sister of Imarti Devi

was married to Ram Chander in the year 1975. Out of this wedlock, three sons namely Hira Lal, Sonu and third son who had died and four daughters namely Krishna, Dhanpati @ Geeta, Manisha and Poonam took birth. Defendants claimed that plaintiff and proforma defendants were the children from the wedlock of Bimla and Ram Chander and were not the legal heirs of Imarti Devi. Mutation of inheritance of deceased Sohan Lal was claimed to be validly sanctioned in favour of defendants No.1 to 5.

[7]. Defendants No.2 to 5 also contested the suit and asserted that the mutation of inheritance of Sohan Lal was lawfully sanctioned in favour of defendants No.1 to 5. However, they submitted that Imarti Devi being daughter of Sohan Lal had a share in the suit property. They denied the factum of family settlement between defendants No.1 to 5. They averred that plaintiff and proforma defendants were children from Imarti Devi. Defendants No.2 to 5 stated that the sale deed dated 15.09.1997 was duly executed by defendants No.1 to 5 in favour of defendant No.10.

[8]. Defendants No.6 to 9 also filed their written statement taking numerous pleas of limitation, cause of action, bona fide purchasers for consideration and without notice etc. On merits, they submitted that Imarti Devi never remained in possession of the suit property. She had died on 27.08.1986 during lifetime of her father, therefore she was not entitled to any land. Possession of

Imarti Devi to the extent of 1/30th share was denied. Plaintiff and proforma defendants were claimed to be not children of Imarti Devi. There was no occasion for Imarti Devi to inherit the estate of Sohan Lal as she had died prior to the death of Sohan Lal. They further stated that Imarti Devi used to live at her in-laws house before her death and she was not in possession of the suit property. They also claimed that the decree dated 24.12.1997 and sale deeds dated 15.09.1997, 16.04.1998 and 11.10.1999 were lawfully executed.

[9]. Defendants No.12 and 13 also filed their written statement and contested the suit on the same grounds as were taken by defendants No.6 to 9.

[10]. Both the parties went to trial on the following issues:-

*“1. Whether the plaintiff and proforma defendants No.14 and 15 are son and daughter of Smt. Imarti deceased?
OPP*

2. If issue No.1 is proved, whether the plaintiff and proforma defendants No.14 and 15 being first class heirs of Imarti deceased are owners and in possession of the suit land? OPP

3. Whether decree dated 24.12.1997, sale deeds vasika No.2378 dated 15.09.1997, vasika No.110 dated 16.04.1998, vasika No.294 dated 28.04.1999, vasika No.2393 dated 13.08.1999, vasika No.3258 dated 11.10.1999 are illegal, null and void and are not binding upon the rights of the proforma defendants? OPP

4. If issue No.3 is proved, whether the plaintiff is entitled for injunction as prayed for? OPP

5. Whether the suit of the plaintiff is not maintainable in the present form? OPD

6. Whether the suit of the plaintiff is estopped by his own act and conduct from filing the present suit? OPD

7. Whether the plaintiff has no locus standi to file the present suit? OPD

8. Whether the suit is bad by limitation? OPD

9. Relief.”

[11]. Both the parties led their respective evidence to prove their case. Trial Court dismissed the suit vide judgment and decree dated 20.07.2010. Plaintiff remained unsuccessful before the lower Appellate Court who dismissed the appeal vide judgment and decree dated 26.03.2013. That is, how, the present appeal came to be filed.

[12]. I have heard learned counsel for the appellants.

[13]. The appellants have formulated following questions of law in the grounds of appeal:-

“i. Whether the appellant is the son of late Smt. Imrati?

ii. Whether Smt. Imrati is the class one heir of late Sh. Sohan Lal, when Imrati had died on 27.08.1986 and her father Sohan Lal died on 01.09.1993?

iii. Whether the respondents No.1 to 5/defendants are hands in gloves with each other to usurp the share of Smt. Imrati and how they are bye-passing the children

of Imrati Devi i.e the plaintiff and the defendants No.14 and 15?”

[14]. Perusal of aforesaid questions would show that none of the question is question of law much less substantial question of law. Question No.(i) as framed is a question of fact and cannot be termed as substantial question of law. Question No.(ii) is also a question of fact based on evidence. Factum of Imarti Devi being Class-I heir with reference to her date of death and her father- Sohan Lal would be a question of fact. Similarly question No.(iii) has no relevancy even with question of law. Alleged collusion cannot be a basis for permitting existence of question of law on the basis of pleadings and evidence on record. In view of aforesaid, I find that no substantial question of law has been framed by the appellants in this appeal.

[15]. Issue No.1 was to the effect that whether plaintiff and proforma defendants No.14 and 15 were son and daughters of Smt. Imarti Devi or not. The onus of this issue was on the plaintiff. Plaintiff was to prove that he along with proforma defendants were children from Imarti Devi. Death certificate of Imarti Devi was placed on record as Ex.P1 which showed that Imarti Devi had expired on 27.08.1986. As per birth certificate of the plaintiff Ex.P2, names of his father and mother were shown to be Ram Chander and Imarti Devi. Date of birth was recorded as 12.02.1982. On the strength of these documents, plaintiff claimed that the entries in

birth certificate have more evidentiary value than the school leaving certificate.

[16]. I have considered the submissions made by learned counsel for the appellants. As per birth certificate Ex.DW1/2 name of father of Krishna was recorded as Ram Chander and her date of birth was 12.02.1977. Proforma defendant No.15-Geeta was also known by her name Dhanpati. As per Ex.DW1/1, she was shown to be daughter of Ram Chander and Bimla. School records of plaintiff Ex.DW2/1 and Ex.DW2/2 depicted names of his parents as Ram Chander and Bimla. After factual appreciation, the Courts below have found that in fact Imarti Devi had no issue and thereafter Ram Chander was married to Bimla. Plaintiff and proforma defendants took birth from the wedlock of Ram Chander and Bimla. Testimony of one Bhagmal who was examined by the plaintiff though admitted that Imarti Devi was his cousin sister, but he was not aware about the other material facts in respect of Imarti Devi and her family. The witness was not aware about the years of birth of children of Imarti Devi and he was also not aware when the marriage of Bimla had taken place. He pleaded ignorance about the fact that Bimla was got married with the same person i.e. Ram Chander with whom Imarti Devi was earlier married. The witness also pleaded ignorance as to whether Bimla was married to Ram Chander during lifetime of Imarti Devi or not. He did not know the other Children of Imarti Devi (if any). Defendant No.1-Sher Singh who happened to be uncle of plaintiff specifically pleaded in the

written statement that plaintiff and proforma defendants were not the children of Imarti Devi, rather they took birth from the wedlock of Ram Chander and Bimla. He was examined as DW 14. His testimony was very specific in terms of marriage of Ram Chander and Bimla. No issue took birth from Imarti Devi till that time.

[17]. Both the Courts below found as a matter of fact that the plaintiff and proforma defendants were not the children from the wedlock of Ram Chander and Imarti Devi. Bimla was examined as DW 12 and was defendant No.5 in the suit. As per her affidavit, she had deposed that plaintiff-Hira Singh was son of her sister Imrati Devi. However, in her cross examination, she had admitted that her marriage was solemnized with Ram Chander during lifetime of Imarti Devi and at that time, Imarti Devi had no issue. The entries of birth certificate were duly rebutted by the defendants and the Courts below on the basis of appreciation of evidence held that Imarti Devi had no issue upto the year 1975. In fact plaintiff and proforma defendants took birth from the wedlock of Ram Chander and Bimla. Bimla might have given plaintiff to Imarti Devi as her own child. Now due to greed, defendant No.5-Bimla has denied the plaintiff and proforma defendants to be her own children so as to claim share of Imarti Devi. Defendants No.2 to 4 were also deliberately supporting the case of the plaintiff so as to avoid the sale deeds executed in favour of other defendants. Courts below found concurrent facts on the basis of lawful appreciation of evidence and the suit was rightly dismissed.

[18]. No law point worth consideration was pleaded and argued before this Court in the Regular Second Appeal. Re-appreciation of evidence cannot be done. This appeal is found to be totally devoid of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

24.10.2016
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No