

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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C.M. Nos. 6090-91-C of 2016 and
RSA No. 2319 of 2016 (O&M)

Date of decision: May 09, 2016

Smt. Baldevi @ Premo

...APPELLANT

Versus

Rattan Lal and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jagdish Manchanda, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No. 6090-C of 2016

C.M. is allowed subject to just exceptions. Filing of certified copy of judgment and decree dated 09.04.2012 as well as certified copies of Annexures A-1 and A-2 is dispensed with.

RSA No. 2319 of 2016

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Assandh dated 09.04.2012, whereby the suit filed by the appellant-plaintiff for declaration to the effect that she is owner in possession of agricultural land measuring 84 Kanals 6 Marlas being 1/4th share of 337 Kanals 5 Marlas as per jamabandi for the year 1954-55 being Class-I heir of her deceased father Bhagtu @ Chhota son of Munshi and Mutation No. 1281 dated 31.05.1942 and the subsequent

rights of the appellant-plaintiff in any manner and she is entitled to be declared owner in possession of the suit land measuring 76 Kanals 7 Marlas being 1527/4013 share of 200 Kanals 13 Marlas comprised in Khewat No. 761/721 as per Jamabandi for the year 2003-04, as detailed in the plaint situated at Village Munak as well as cost of deficient land measuring 7 Kanals 19 Marlas at the prevailing market rate with consequential relief of permanent injunction restraining the respondents-defendants from alienating the suit land in any manner, stands dismissed, appeal against which preferred has also been dismissed by the Additional District Judge, Karnal on 07.01.2016.

2. It is the contention of the learned counsel for the appellant that the Courts below have failed to appreciate that as per the birth certificate Ex. P2, the appellant-Baldevi was born out of the wedlock of Bhagtu @ Chhota and Bharpai, who were the father and mother of the appellant-plaintiff. The mutation of inheritance No. 1281 was sanctioned on 31.05.1942 in the name of Arzanand, brother of Bhagtu @ Chhota on the death of Bhagtu, father of the appellant-plaintiff by mentioning in the revenue records as 'Laval Bilal Joga' (without wife and children) will be illegal, null and void. He contends that apart from the birth certificate, which fully establishes that the entry in the revenue records is not sustainable, the appellant-plaintiff has been able to prove that she is the daughter of Bhagtu. In support of this contention, he refers to the statement of PW6 Nanu Ram, resident of Village Munak, who has stated that Baldevi @ Premo was born out of the wedlock of Bhagtu @ Chhota and Smt. Bharpai and in his cross-examination, he had further clarified that he had seen the horoscope of the appellant-plaintiff, which was with the Chowkidar

of Village, in which the name of the plaintiff was mentioned as Baldevi @ Premo d/o Bhagtu @ Chhota. He further contends that as per the '*Bahi*' entry Ex. PW8/B, '*Bhaat*' ceremony of the son of the appellant-plaintiff was held in Village Hathlana, her matrimonial village, which was attended by the respondents-defendants Rattan Lal and others, which indicates that there was a relationship which was acknowledged by the respondents-defendants. Assertion has also been made that the respondents have been paying *Batai* to the appellant-plaintiff, which clearly depicts that she was being acknowledged as the owner of the suit land being daughter of Chhota by the respondents-defendants. He, therefore, contends that the judgments and decree, as passed by the Courts below, cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

4. It is the assertion of the appellant-plaintiff that she was born on 18.06.1937 out of the wedlock of Bhagtu @ Chhota and Bharpai. Bharpai, the mother of the appellant-plaintiff expired in the year 1940 leaving behind the appellant-plaintiff and her father Bhagtu. Bhagtu expired on 25.03.1942 leaving behind the appellant-plaintiff. Bhagtu was the owner in possession of the suit land situated in Village Munak as per Jamabandi for the year 1934-35. After the death of Bhagtu, mutation was entered about the succession in the name of his brother Arzanand on the ground that he had died without wife and children. This mutation is numbered as 1281 dated 31.05.1942, which, according to the appellant-plaintiff, is illegal, null and void as she being the sole Class-I heir of Bhagtu @ Chhota son of Munshi

was entitled to inherit his estate. If this assertion of the appellant-plaintiff is proved, the remaining revenue entries obviously would not be correct and, therefore, not binding upon the appellant-plaintiff. So, the basic question, which requires to be answered, is whether the appellant-plaintiff is the daughter of Bhagtu or not?

5. The onus to prove whether the appellant-plaintiff is the real daughter of Bhagtu @ Chhota son of Munshi being born out of wedlock of Bhagtu @ Chhota and Smt. Bharpai, was upon the appellant-plaintiff and for proving the same, the evidence was produced both oral and documentary. The oral evidence is that of the appellant-plaintiff, PW1 Rajinder Parshad Sharma, Advocate, Notary Public, District Courts, PW2 Nayam Abas, PW5 Sultan Singh, PW6 Nanu Ram and PW8 Chandgi Ram, the husband of the appellant-plaintiff but they have failed to produce any document which would indicate that the appellant-plaintiff was the daughter of Bhagtu @ Chhota.

6. Although assertions have been made by the appellant-plaintiff and her husband Chandgi Ram PW8 that in the ration card, voter list and old age pension documents, her name is mentioned as Baldevi @ Premo but the said documents have not been produced. PW6 Nanu Ram had stated that he had seen the horoscope of the appellant-plaintiff with the Chowkidar of the Village where the name of the plaintiff is mentioned as Baldevi @ Premo d/o Bhagtu @ Chhota but the said horoscope has also not been produced on record. Ex. PW8/B has been produced on record by the husband of the appellant-plaintiff which is a '*Bahi*' entry showing '*Bhaat*' ceremony of the son of the appellant-plaintiff Jai Bhagwan, which is alleged to have been attended by the respondents-defendant No. 1 Rattan Lal and others but this

document is not sufficient to prove that the appellant-plaintiff was Baldevi d/o Bhagtu @ Chhota and is known as Premo. Therefore, the oral and the documentary evidence, as have been produced by the appellant-plaintiff, do not prove that the appellant-plaintiff is Baldevi d/o Bhagtu @ Chhota and Bharpai.

7. Rather the documents, which have been produced by the respondents-defendants, prove that she is Premo not Baldevi, as has been sought to be projected by her. The respondents-defendants have produced Rakesh Kumar DW1, clerk from the office of District Social Welfare Office, who had proved on record Ex. D1, according to which, Premo w/o Chandgi Ram is getting old age pension. Ex. D3 is the voter list where the name of the appellant-plaintiff is mentioned as Premo w/o Chandgi Ram and not Baldevi. Satpal DW2, Sub-Inspector, o/o Department of Food and Supplies, had appeared and deposed on the basis of the record that Premo w/o Chandgi Ram is not having any ration card in Village Hathlana, her matrimonial village where she is, admittedly, residing, whereas in her evidence and that of her husband Chandgi Ram, they had stated that all these three documents i.e. ration card, voter I.D. card and the old age pension documents mention the name of the appellant-plaintiff as Baldevi @ Premo.

8. The Courts below have, in detail, dealt with both oral and documentary evidence which have been produced by the parties and on proper appreciation of the same, have returned well-reasoned findings on each issue which cannot be faulted with.

9. No other point has been raised or argued by the counsel for the appellant.

10. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, there is no illegality in the impugned judgments passed by the Courts below.

11. There is no substantial question of law in the present appeal, which requires consideration of this Court.

12. In view of the above, finding no merit in the present appeal, the same stands dismissed.

C.M. No. 6091-C of 2016

In view of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

May 09, 2016
pj

(AUGUSTINE GEORGE MASIH)
JUDGE