

RSA No.1735 of 2015 (O&M)

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

RSA No.1735 of 2015 (O&M)

Date of Decision: February 12, 2016

Sita Ram & others

...Appellants

Versus

Rehtu Through LR Ram Kishan through LRs
Shamo Devi & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

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

AUGUSTINE GEORGE MASI, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Karnal, dated 17.12.2011, whereby, the suit for declaration to the effect that the compromise filed in Court of Shri Satish Ahlawat, the then Additional District Judge, Karnal, on 28.05.2005 (counsel states that the date is wrongly mentioned rather it is 08.08.2005) and the decree passed thereupon in Civil Appeal No.185 of 2004, titled as 'Rehtu etc. Vs. Bahadur' is illegal, null and void and non-operating on the rights of the appellant-plaintiffs as also respondent-defendant No.6 Chhotu son of Bhulla are the owners to the extent of 1/4th share with joint possession over the suit property alongwith the property of Bhulla

with a further prayer of injunction restraining the respondent-defendants from alienating the suit property has been dismissed and the appeal preferred against the same by the appellant-plaintiffs dismissed by the Additional District Judge, Karnal, on 20.11.2014.

2. It is the contention of the learned counsel for the appellants that the compromise which was produced before the Additional District Judge, Karnal, which became the basis of passing of the decree, is not based upon the proper appreciation of the claim of the appellant-plaintiffs who are successors-in-interest to the property of Bhulla who admittedly died intestate. He contends that the appellants are the successors of sons of Phoola, predeceased brother of Rehtu and Lachhmi as on the date of death of Bhulla; Rehtu and Lachhmi were alive and were similarly placed as the appellants in the degree of succession. Keso another brother of Rehtu and Lachhmi had died prior to the death of Bhulla. In support of this contention, he has placed reliance upon the pedigree table as has been detailed in para 2 of the judgment of the trial Court. He contends that the said compromise which is the basis for passing of the decree, which has been impugned, is not sustainable as the appellants have not been impleaded as a party to the suit which was preferred by Bahadur who is grand-son of Keso, where he had claimed ownership of the suit property on the basis of a Will dated 08.11.974 executed by Bhulla in his favour. He, thus, contends that

the judgments and decree passed by the Courts below cannot sustain specially in the light of the compromises dated 01.12.1995 (Ex.P-1) and dated 12.12.1995 (Ex.P-2) which give all the successors to property of Bhulla, including the appellants, the shares as per their entitlement.

3. I have considered the submissions made by the learned counsel for the appellants and have gone through the impugned judgments but find myself not in agreement with the assertions of the counsel.

4. It is not in dispute that originally the land belonged to Tulsi, who had two sons Masudi and Chandan. Bhulla was son of Chandan. Bhulla inherited the land from his father Chandan and became the owner in possession of the suit property. He died issueless on 29.11.1995 leaving behind 26 Kanals and 16 Marlas of land. On the date of his death, out of four sons of Masudi, only two sons Rehtu and Lachhmi were alive as Keso and Bhulla had already died. Bahadur is the grand-son of Keso and on the basis of a Will executed by the Bhulla dated 08.11.1974 in his favour, Bahadur filed the objections when on the death of Bhulla, mutation was sought to be got sanctioned by Rehti and Lachhmi, the two alive successors in a degree above, which were not accepted and the mutation was confirmed in favour of Rehtu and Lachhmi. It is, at this stage, Bahadur filed civil suit No.103 of 2004, on the basis of the Will dated

08.11.1974. In the said suit, he challenged the mutation in favour of the Rehtu and Lachhmi and claimed ownership of the property on the basis of the said Will. The suit was decreed in his favour on 14.09.2004. The legal representatives of Lachhmi and Rehtu preferred an appeal against the said decree and in the appeal, a compromise was entered into between the parties on the basis of which the decree was passed by the Additional District Judge, which has been challenged by the appellant-plaintiffs on the plea that they are also entitled to a share in the property and the compromise which has been produced in the Court is not sustainable in the light of the earlier compromises Ex.P-1 dated 01.12.1995 and Ex.P-2 dated 12.12.1995.

5. The learned Lower Appellate Court has rightly proceeded to enumerate the legal position with regard to the succession of the property of Bhulla in the absence of a Will. It has been detailed in paras 12 and 13 of the judgment which reads as follows:-

“12. At the very outset, it is observed that the property of a Hindu devolves on his heirs either as per Hindu Succession Act, if he dies intestate, or as per his testamentary disposition. In the present case, deceased Bhulla had executed a Will in favour of respondent-defendant no.5-A Bahadur during his life time. On the basis of the said Will, Bahadur had filed the suit against the L.R.s of Rehtu and Lachhmi and the said suit was decreed

and the Will executed by Bhulla in his favour was affirmed. However, in appeal, the matter was compromised and appeal was disposed of as per compromise. The plaintiffs of the present suit had although challenged the compromise effected between Bahadur and L.R.s of Rehtu and Lachhmi in the present suit, but they had not challenged the decree passed in favour of Bahadur whereby Will in his favour was found genuine. Unless the said decree is set aside, the findings arrived at by the civil court in the said suit regarding genuineness of the Will, cannot be disputed. It may further be observed that here that in the present suit also, the appellant-plaintiffs had not challenged the said Will dated 8.11.1974 nor they had produced any evidence to dispute the Will. Thus, no finding on the validity or illegality of the Will can be arrived at in the present case. It has been contended by counsel for the appellant-plaintiffs that as the appellant-plaintiffs were not party to the said suit filed by Bahadur, the judgment passed in the said suit was not binding on them. However, a perusal of the file shows that after death of Bhulla, mutation was entered and sanctioned in favour of L.R.s of Rehtu and Lachhmi but the said mutation was not challenged in the present by the present plaintiffs and it was challenged by Bahadur only but his objections were also rejected and mutation was affirmed. Thus the L.R.s of Rehtu and Lachhmi were the contesting parties who were disputing the Will in

favour of the Bahadur and so Bahadur had filed the suit against them only and not joined the plaintiffs in the said suit. Moreover, as discussed above, in the present suit also, the plaintiffs had not challenged the decree passed in the said suit filed by Bahadur on the ground that they were not impleaded as party in the said suit.

13. Even if it is presumed that the Will in favour of respondent Bahadur Singh did not exist, what should be the position regarding succession in respect of the suit property held by Bhulla. Admittedly, the parties are agnates of Bhulla and were not his Class I or Class II heirs. As per section 8 of Hindu Succession Act, the property of a male Hindu dying intestate is to devolve according to the provisions that (a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule; (b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule and (c) thirdly if there is no heir of any of the two Classes, then upon the agnates of the deceased and (d) lastly, if there is no agnate, then upon the cognates of the deceased. As per section 12 of the Hindu Succession Act, the order of Succession among agnates to be determined in accordance with the rules of preference such as Rule (1)- of two heirs, the one who was fewer or no degrees of ascent is preferred. Rule (2).... Rule (3)”

6. The Court in para 14 has further gone ahead to determine

the right of the appellant-plaintiffs vis-a-vis respondent-defendants by holding as follows:-

“14. In the present case, deceased Rehtu had died issueless and the defendants being the agnates are of lesser degree than the plaintiffs who are also agnates but of the subsequent degree. Thus, the defendants are of lesser degree of agnates than the plaintiffs and as per rule (1) of Section 12, the defendants are to be preferred in case of intestate succession and plaintiffs who are distant agnates than the defendants are to be ignored. Thus, even if the Will in favour of Bahadur is presumed to be not in existence and even if it is presumed that Bhulla had died intestate, the plaintiffs would not have inherited the property left by Bhulla who had died on 29.11.1995 and whose succession had opened on the day of his death. XXXXX....”

7. That apart the claim of the petitioner is based upon the agreements dated 01.12.1995 and 12.12.1995, Ex.P-1 and P-2. The said agreements do not hold the field in the light of the fact that the appellant-plaintiffs have only challenged the decree passed by the Appellate Court and have not challenged the Will dated 08.11.1974 executed in favour of Bahadur despite they being aware of the fact that such a Will was in existence in favour of Bahadur. Even if the decree which is under challenge is to be ignored, still the decree which has been passed in favour of respondent Bahadur would hold

the field where the due execution of the Will has been proved and the said Will has been found to be genuine. It would not be out of way to mention here that at the time of sanction of mutation in favour of Rehtu and Lachhmi in the year 1995, no objections were raised by the appellant-plaintiffs. Had the agreement dated 01.12.1995 and 12.12.1995 been in existence, the same would have been projected by them at the time of sanction of the mutation. It is not the case of the appellant-plaintiffs that they were not aware of the sanction of mutation in favour of Rehtu and Lachhmi and no challenge thereto has been posed either by filing an appeal before the revenue authorities or by filing a civil suit challenging the same. The suit should have been immediately filed by the appellant-plaintiffs had this compromise been in existence. Therefore, the very basis and existence of the compromise cannot be said to be above-board rather it is couched in suspicion.

8. The findings recorded by the Courts below with regard to the suit being barred by limitation and that mere declaration suit cannot be maintained specially when the appellant-plaintiffs are admittedly not in possession of the property, cannot be faulted with.

9. A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is

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no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

10. No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

CM No.4738-C of 2015

In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

February 12, 2016
Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**