

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

RSA No.2696 of 2015

Date of decision: 04.02.2016

Nathi Ram and others

... Appellants

Versus

Dev Rattan and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Present: Mr.Adarsh Jain, Advocate,
for the appellants.

AMOL RATTAN SINGH, J.

This is the second appeal filed by the appellants after their suit for declaration, that they were owners in possession of a ½ share of the suit property and for correction of the revenue record in that regard, was dismissed by the learned Additional Civil Judge (Senior Division), Palwal, vide his judgment and decree dated 16.10.2012 and the appeal filed by them was also dismissed by the learned Additional District Judge, Palwal, vide his judgment and decree dated 18.03.2015.

2. As per the plaintiffs-appellants, they are the co-owners in possession of a ½ share of the suit land, measuring 44 kanals and 2 marlas in village Allika, District Palwal, alongwith the respondents-defendants, who are co-sharers to the extent of the other ½ share. The appellants based their claim on the 'jamabandi' (Record of Rights) for the year 2003-04.

It was further contended in the plaint that the appellants are

illiterate persons and though they had been cultivating the suit land to the extent of $\frac{1}{2}$ share, they had never seen the revenue record till 27.06.2006, when they got a copy of the 'jamabandi' and were surprised to know that the respondents are shown to be owners in possession of the entire suit property. Thereafter, on checking the earlier revenue record, it was found, as per the appellants, that the respondents had fraudulently got omitted the name of the appellants from the record.

The revenue record further revealed that from the time of the forefathers of the parties, one of the ancestors of the respondents, Daya Ram by name, had been adopted by one Har Sahai son of Jeeta. The plaintiffs-appellants contended that actually Daya Ram had never been adopted by Har Sahai and in fact, he is shown to be son of one Abhay, one Nanhe and of Har Sahai, in different revenue records, which showed that a fraud had been committed for obtaining the suit land at different places, in connivance with Revenue officials.

The appellants thus contend that the cause of action accrued to them when they checked the revenue record and thereafter requested the respondents to get it corrected in their name, which was refused by the respondents.

In the written statement filed by the respondents, they took preliminary objections qua the maintainability of the suit, the locus standi of the appellants, limitation having run out and estoppel etc.

It was further contended that the suit had been filed only to harass them and to grab their property by suppression of true facts.

On merits, it was contended that they (the respondents-defendants) were correctly recorded as owners in possession of the entire suit

property of which they were in possession from the time of their forefathers. The story put forward by the appellant,s with regard to Daya Ram not having been the adopted son of Har Sahai, was stated to be a concocted story, in the written statement filed.

It was further submitted by the respondents that the appellants had full knowledge about the entries in the revenue record for more than 30 years and as such, the suit in any case was time barred. The factum of wrong revenue entries having been made in connivance with Revenue officials was obviously also denied.

In fact, it was stated that (though the knowledge of the respondents with regard to revenue entries was 30 years old), the revenue entries reflecting the names of respondents and their forefathers were more than 100 years old, showing the respondents, Dev Rattan and Balbir Singh, to be the successors-in-interest of their father Jai Lal, who was the successor-in-interest of his father, Daya Ram, who in turn was the successor-in-interest of Har Sahai @ Har Parsad.

3. The following issues were framed by the learned trial Court from the above pleadings:-

- “1. Whether plaintiffs are owners in possession to the extent of $\frac{1}{2}$ share of the suit land and the defendants are also owners in possession to the extent of $\frac{1}{2}$ share of the suit land fully detailed and described in para no.1 of the plaint? OPP
2. Whether the plaintiff is entitled to the decree for mandatory injunction as prayed for on the grounds mentioned in the plaint? OPP
3. Whether the present suit of the plaintiff is not maintainable in the present form? OPD
4. Whether the suit is not within limitation? OPD
5. Whether plaintiffs have got no locus standi and cause of

action to file the present suit? OPD

6. Whether plaintiff has not come with the clean hands and concealed and suppressed the material facts from the court?
OPD
7. Whether the plaintiffs are estopped by their own act and conduct from filing the present suit? OPD
8. Relief.”

4. The appellants examined one Prem Dutt as PW1 who also tendered his affidavit Ex.PW1/A. Appellant No.5, Mahesh, stepped into the witness box as PW2 and also tendered his affidavit Ex.PW2/A, both supporting the case of the appellants.

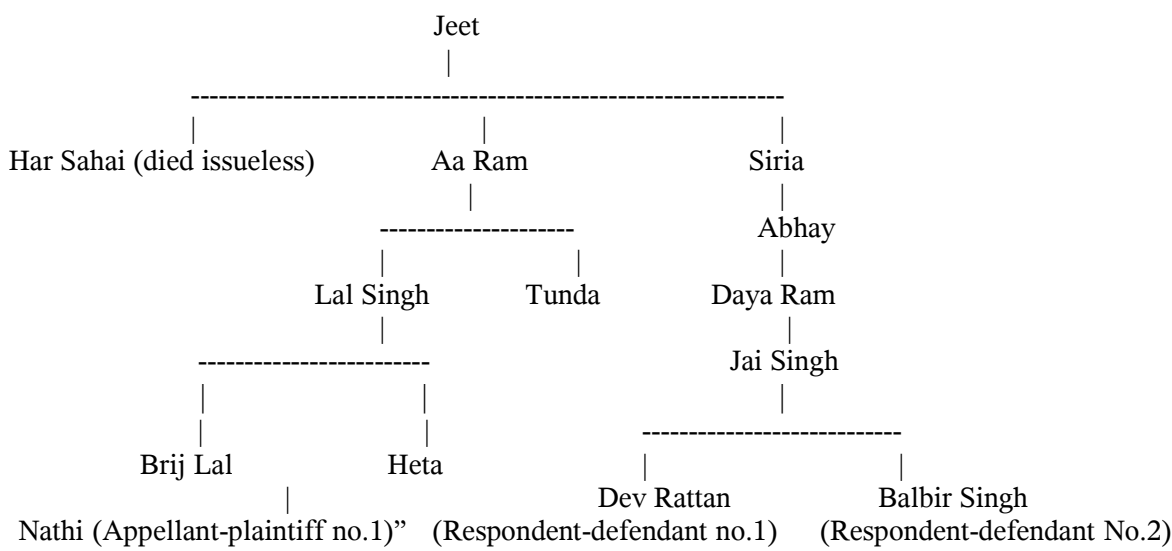
The appellants-plaintiffs also tendered, by way of documentary evidence, various mutations and 'jamabandis' for the years 1862-63, 1877, 1907-08, as also from the years 1951-52 till 2003-04.

The respondents-defendants, on the other hand, examined one Kishan Singh as DW1, who tendered his affidavit Ex.DW1/A in evidence. Respondent No.1, Dev Rattan, appeared as DW2 and also tendered his affidavit in evidence, Ex.DW2/A.

The respondents also relied upon a large number of 'jamabandis' and mutations, most of which are of the same years as those relied upon by the appellants.

5. It was submitted before the learned Civil Judge that the common ancestor of the appellants was one Jeet Ram, who had three children, namely Har Sahai, Aa Ram and Siria. Har Sahai had died issueless, consequent upon which the suit property devolved equally upon the 'natural' ancestors of the appellants and respondents, and then in the same manner upon the appellants and defendants, in view of the fact that the appellants are the descendants of

Aa Ram, whereas the respondents are the descendants of Daya Ram, who was the grandson of Siria. The following genealogical table would make the line of heritage clear, as presented by the appellants:-



It was contended, in the courts below, that the respondents had wrongly got Daya Ram shown as the adopted son of Har Sahai, with nothing to prove the aforesaid adoption.

Various pronouncements were also relied upon by the appellants, to submit that the adoption not having been proved to be a valid one, the appellants could not be denied the claim to be owners in possession of the property in dispute, to the extent of at least ½ the share.

6. On the other hand, the contention of the respondents before the learned Civil Judge was that, firstly, the revenue record itself having shown Daya Ram to be the adopted son of Har Sahai for more than a century, the appellants were estopped from raising a dispute with regard to the same, at such a belated stage.

Secondly, it was contended that in a suit filed by the predecessor of the appellants, in the year 1935, Daya Ram was shown to be the adopted son of Har Sahai and this position was accepted by the Court in judgments

exhibited by the appellants themselves. Those judgments having attained finality since 1935, it did not lie in the mouth of the plaintiffs (appellants), to state something to the contrary, long after the death of Har Sahai and Daya Ram both.

7. Upon consideration of the evidence led and aforesaid submissions made before him, the learned Civil Judge found, as a matter of fact, that the lineage shown by the appellants-plaintiffs was not otherwise in doubt, but that Daya Ram had been adopted by Har Sahai, i.e. by his grand-uncle. Hence, the share of Har Sahai in the property, would devolve upon Daya Ram and not upon the descendants of his brother, Aa Ram, who is the ancestor of the appellants, in their direct lineage.

The learned Civil Judge also found as a matter of fact, that even the revenue record from the year 1889-1890 to the year 2003-04, clearly showed Daya Ram to be the adopted son of Har Sahai. Further, it was found that a perusal of the judgments and decrees Ex.P9 to Ex.P12 (wrongly noted as Ex.D9 to Ex.D12 in the later part of the judgment of the Civil Judge), revealed that the predecessors of the appellants were litigating with the predecessors of the respondents, wherein the adoption of Daya Ram by Har Sahai was accepted to be correct by the Civil Court. This fact, despite being to the knowledge of the predecessors of the appellants, was not challenged by them further, nor even by Har Sahai.

Yet further, it was found that not even a single document proved that the appellants were ever recorded as owners in possession of $\frac{1}{2}$ of the suit property as reversioners of Har Sahai, or even that Har Sahai died issueless.

Thus, as regards the title of the respondents to the property, the

learned Civil Judge found that not a single piece of documentary evidence could be produced by the appellants to rebut the recordings in the revenue records, which therefore had to be presumed to be correct, especially in view of the judgments holding Daya Ram to be the adopted son of Har Sahai.

8. Even with regard to the alleged possession of the appellants' in a ½ share of the property, it was found by the learned Civil Court, on a perusal of 'khasra girdawaris', that it was the respondents who were in possession, with the name of the appellants not reflected anywhere, in either the records of rights, or the 'khasra girdawaris'. Even the witnesses examined by the appellants, Mahesh Kumar and Prem Dutt admitted in their cross-examination that the 'khasra girdawaris' had been correctly recorded by the Revenue Officers, as per the existing position on the spot.

9. Having reached the above findings of fact, the learned Additional Civil Judge (Senior Division), Palwal, dismissed the suit filed by the appellants, on merits as well as on grounds of limitation, holding that the appellants and their predecessors had knowledge about the revenue entries in favour of the respondents and in their predecessors-in-interest, at least since 1920.

10. The learned first Appellate Court, in addition to the above, also stated in its judgment, that in the judgment dated 10.12.1935, of the Civil Court (Ex.P11), the pedigree table also showed Daya Ram to be the adopted son of Har Sahai. In that litigation, Lal Singh, i.e. the grandfather of the first appellant, was also a party to the suit, who never disputed the status of Daya Ram thereafter, in his life time. Still further, the learned 1st Appellate Court found that even in the 'Shijra Nasab' (genealogical tree of proprietors), for the year 1889-90 (Ex.P14/H), Daya Ram was shown to be the adopted son of Har

Sahai. Thereafter again, in the pedigree table, Ex.P16/H, he had been shown to be the adopted son of Har Sahai, after which his status was recorded as such in the subsequent revenue record. The 1st Appellate Court also found, as a matter of fact, that no document on file proved that the appellants were ever recorded as owners in possession of a ½ share of the suit property. Daya Ram, i.e. the grandfather of the respondents, having been shown in the said record to be the adopted son of Har Sahai since 1870, obviously the appellants could not challenge the adoption at this stage.

Having held thus, the learned Additional District Judge, Palwal, also dismissed the appeal filed by the appellants.

11. Before this Court, Mr.Adarsh Jain, learned counsel for the appellants, submitted that the adoption of Daya Ram by Har Sahai never having been proved, after the death of Har Sahai in the late 19th or earlier 20th century, the property would have devolved equally upon his surviving predecessors and their progeny. Upon query by this Court, as to whether the judgment and decree dated 10.12.1935 (Ex.P11 and Ex.P12), was at any stage upset by a higher court, or was held to be null and void/not binding in any subsequent proceedings, learned counsel admitted that no evidence whatsoever, was led by the appellants to disprove or negate the said judgment and decree.

It may be stated here, that though it does seem strange that the grandfather of the respondents (not their great grandfather) would be shown to have been adopted in the year 1870, with only two generations having come into existence thereafter, at least upto the filing of the suit out of which the present proceedings arise, in the year 2006, however, nothing has been shown to this Court either by way of any additional evidence or even

otherwise, so as to hold the aforesaid finding of the courts below to be perverse.

It also needs to be noticed that no claim to the suit property, on the basis of any coparcenary interest of a greater degree than that of the respondents, is shown to have been even pleaded at any stage by the appellants, though that is also unlikely to have had any adverse impact on the respondents, in view of the adoption of their grandfather by Har Sahai.

Hence, in view of the above discussion of the judgments of the courts below, and the factual finding on there having been an accepted adoption of Daya Ram, I find no error in those judgments, so as to interfere in the same, with no point of law arising for consideration, in view of the accepted factual position.

Consequently, finding no merit in this appeal, it is dismissed *in limine*, with no order as to costs.

04.02.2016

dinesh

(AMOL RATTAN SINGH)
JUDGE