

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

**R.S.A No. 431 of 2016 (O&M)
Date of decision :03.02.2016**

Jai Kaur through her LRs and another

..... Appellants

Versus

Shri Ram Chander and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Kshitij Sharma, Advocate
for the appellants.

DARSHAN SINGH,J

The present appeal has been preferred against the judgment and decree dated 20.11.2015 passed by the learned Additional District Judge, Sonipat, vide which the appeal preferred against the judgment and decree dated 08.08.2013, passed by the learned Addl. Civil Judge (Sr. Division), Sonipat, has been dismissed.

2. Plaintiffs-respondents no.1 and 2 have filed the suit for declaration challenging the mutations no. 5291 and 5292 attested and sanctioned in favour of the appellant and respondent no.3 (defendants no. 1 to 3) on 10.03.2007. In the consequential relief, permanent injunction has been sought restraining the defendants from alienating or otherwise creating any encumbrance upon the suit property.

3. Sh. Rajje Ram son of Jeet Ram was the owner in possession of the land in dispute, who was the father of the plaintiffs. After the death

of Rajje Ram, the mutations of inheritance was to be attested and sanctioned in favour of the plaintiffs and defendant no.4. But, the same was wrongly attested and sanctioned in favour of defendants no.1 to 3, as well. Their brother Paras Ram had also died on 04.06.2007 and mutation of his inheritance was also sanctioned in favour of defendants no. 1 to 3 as well. Defendants no. 1 to 3 are not the daughters of Rajje Ram, but are the daughters of Amar Singh, the brother of Rajje Ram. Therefore, the impugned mutations are null and void and are liable to be set aside. Hence this suit.

4. Appellant-defendant no. 1 and defendant 2 contested the suit on the grounds *inter alia* that they are the daughters of Rajje Ram and not that of Amar Singh. Amar Singh had died on 08.04.1938, whereas Jai Kaur was born on 07.05.1939. It was further pleaded that Ram Chander has got a release deed executed in his favour by defendant no. 3 wherein she has been mentioned as daughter of Rajje Ram and not that of Amar Singh. All other pleas raised in the plaint were controverted. Appellant also raised certain legal and preliminary objections.

5. Defendant no. 3, the sister of appellants however filed the written statement admitting the claim of the plaintiffs.

6. The plaintiffs-respondents filed the rejoinder. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiffs and defendant number 4 are the owners in possession in equal share of the suit property detailed and para number 2 of the plaint?OPP
2. Whether the mutation numbers 5291 and 5292 sanctioned on

10.09.2007 are wrong, illegal, null & void and liable to be set aside qua the defendant numbers 1 to 3?OPP

3. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiffs have no locus standi to file the present suit?OPD
6. Whether the plaintiffs have suppressed the material facts from knowledge of the Court and are not entitled to the relief as prayed for?OPD
7. Relief.

7. On appreciating the evidence and material on record, the learned trial Court decreed the suit. The impugned mutations no. 5291 and 5292 were ordered to be set aside with a direction to pass the fresh mutations of inheritance of Rajje Ram and Paras Ram after following the due procedure of law.

8. Aggrieved with the aforesaid judgment and decree dated 08.08.2013, the appellants preferred the appeal, which was also dismissed by the learned Additional District Judge, Sonipat, vide judgment and decree dated 20.11.2015. Hence this Regular Second Appeal.

9. I have heard Mr. Kshitij Sharma, Advocate, learned counsel for the appellant and have meticulously gone through the paper book.

10. Initiating the arguments, learned counsel for the appellant contented that it was not biologically possible that Amar Singh was the father of the appellant. He contended that appellant Jai Kaur was born on 07.05.1939, whereas Amar Singh had died on 08.04.1938. So, it was not possible that he could be the father of appellant-Jai Kaur. He further contended that plaintiff-respondent no.1 Ram Chander had got executed

the release deed from defendant no. 3 Nanno, the real sister of the appellant. Wherein, she was shown as the daughter of Rajje Ram and not that of Amar Singh. He further contended that the entire findings have been based by the learned Courts below on the judgment and decree dated 30.11.1976 passed in Civil Suit No. 177 of 1975. He contended that in fact that suit was filed by Nanno. The appellant-defendant has no knowledge of that suit. So, she is not bound by the judgment dated 30.11.1976. He contended that it is established from the evidence adduced by the appellant that she is the daughter of Rajey Ram and the mutations were rightly sanctioned in her favour.

11. I have duly considered the aforesaid contentions.

12. This fact is not disputed that Giano, appellant-Jai Kaur and Nanno, all three sisters have filed the suit against Ram Mehar, Rajje Ram and others. The certified copy of the judgment of that Civil Suit No. 177 of 1975 dt. 30.11.1976 is Ex.DW5/B. I do not find any substance in the plea raised by learned counsel for the appellant that that suit was filed by Nanno alone and the appellant had no knowledge about that suit. This fact is not disputed that appellant was one of the plaintiff of that suit, which was decided against appellant-Jai Kaur, Giano and Nanno and the litigation has gone up to the Hon'ble Supreme Court. It is not believable that Nanno contested the litigation for the benefit of the appellant and Giano right up to the Hon'ble Apex Court single handedly without any knowledge on the part of the appellant. It appears that this plea has only been raised by learned counsel for the appellant to wriggle out of the judgment dated 30.11.1876 Ex.DW5/B. Section 114 *Illustration* (e) of the

Indian Evidence Act, 1872 (for short 'Act') provides that the Court may presume that 'the judicial and official acts have been regularly performed'. It is not disputed that the said suit was filed in the name of the present appellant-Jai Kaur, Giano and Nanno. All the three sisters were plaintiffs in that suit. There is no material on record to show that at any stage of the proceedings right from the trial Court to the Hon'ble Apex Court, appellant-Jai Kaur has raised the objection that she had no knowledge of the suit and did not want to contest the suit. Appellant-Jai Kaur and her sisters Giano and Nanno had lost in that suit right up to the Hon'ble Apex Court. However, in that suit, they were held to be the daughters of Amar Singh. So, in that suit they could not get the property of Amar Singh and now due to greed of property, appellant-Jai Kaur is alleging herself to be the daughter of Rajje Ram. In view of the statutory presumption provided under Section 114 *Illustration* (e) of the Act, it does not lie in the mouth of the appellant to contend, after lapse of 39 years that she had no knowledge of that suit. In this way, she is challenging the judicial proceedings with an ulterior motive to wriggle out of the judgment dated 30.11.1976. So, this plea raised by learned counsel for the appellant deserves to be rejected outrightly.

13. Mere this fact that Nanno, the sister of appellant has been shown to be the daughter of Rajje Ram in the relinquishment deed executed by her in favour of plaintiff Ram Chander is also no ground to override the findings of the Competent Court of law with respect to the parentage of the appellant and her sisters.

14. This fact is not disputed that in the judgment dated

30.11.1976, it was decided that the appellant along with her sisters Giano and Nanno were the daughters of Amar Singh and not of Rajje Ram. It was further observed that defendants no. 1 to 3 claimed themselves to be the daughters of Amar Singh and his wife Ladian. Said Ladian had performed the '*kreva*' marriage with Raja @ Rajje after the death of Amar Singh. Taking the benefit of that '*kreva*' marriage the appellant is claiming herself to be the daughter of Rajje Ram. The learned Courts below have categorically mentioned that defendants no. 1 to 3 had lost the first round of litigation right up to the Hon'ble Apex Court. So, the findings in the previous suit that appellant and her sisters were daughters of Amar Singh were affirmed right up to the Hon'ble Apex Court. Appellant is bound by the findings in Civil Suit No. 177 of 1975. So, there is no escape from the conclusion that appellant-Jai Kaur was the daughter of Amar Singh and not that of his brother Rajje Ram, whose inheritance is in dispute. Similarly, she is also not proved to be the sister of Paras Ram son of Rajje Ram and consequently, the appellant alongwith her sisters had no legal right to inherit the properties of Rajje Ram and Paras Ram son of Rajje Ram. Therefore, the mutations no. 5291 and 5292 sanctioned in their favour were certainly illegal and not binding on the rights of the plaintiffs-respondents no.1 and 2. The findings recorded by the learned Courts below are well reasoned and well founded. Thus, the concurrent findings based on evidence available on record cannot be interfered in the second appeal while exercising the limited powers under Section 100 CPC.

15. Thus, no question of law, much less, the substantial question

of law as claimed by the appellant arises in the present appeal.

16. Consequently, the present appeal having no merits is hereby dismissed with no orders as to costs.

February 03, 2016

s.khan

(DARSHAN SINGH)
JUDGE