

In the High Court of Punjab and Haryana at Chandigarh

RSA No.3588 of 2015(O&M)

Date of Decision: 25.1.2016

Babita

---Appellant

versus

Bala Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. N.D.Achint, Advocate
for the appellant**

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?

Rekha Mittal, J.

The present regular second appeal has been directed against the judgment and decree dated 17.7.2014 passed by the Additional District Judge, Mewat whereby the appeal preferred by Bala Devi and Bhateri-respondents No. 1 and 2 against the judgment and decree dated 9.6.2012 passed by the trial court has been allowed and the suit filed by respondents No. 1 and 2 (plaintiffs) has been partly decreed.

The contesting respondents (Bala Devi and Smt.Bhateri) filed the suit that they alongwith respondents No. 3 to 5 are co-sharers in joint possession of land measuring 47 kanals 5 marlas to the extent of 1/8th share, detailed in para 1 of the plaint whereas mutation No. 11448, in favour

of respondent No. 3 in regard to inheritance of the entire share of Bhagwati daughter of Tek Chand and sale deed No. 2865 dated 20.12.2006 executed by respondent No. 3 in favour of the appellant (defendant No. 4 therein) are illegal, null and void. It is averred that earlier their father Tek Chand and Smt. Mankori were owners in possession of the suit land. Tek Chand performed marriage with Satwati and out of this wedlock, the plaintiffs, Kavita-respondent No. 4 and one Bhagwati were born. After death of Satwati, Tek Chand performed second marriage with Smt. Rajni Devi-respondent No. 3. After death of Tek Chand, respondents No. 1 and 2, Bhagwati and respondents No. 3 to 5 inherited his share in equal six shares ($1/48^{\text{th}}$ share each) vide mutation No. 8283. Thereafter, Bhagwati expired and her $1/48^{\text{th}}$ share was inherited by respondents No. 1 to 5 but respondent No. 3 by playing fraud upon them succeeded in getting the entire share of Bhagwati transferred in her favour vide mutation No. 11448. Thereafter, she sold the said share alongwith her own share in favour of the appellant vide sale deed No. 2865 dated 20.12.2006. The sale by respondent No. 3 qua the entire share of Bhagwati is illegal, null and void as respondent No. 3 was entitled to $1/5^{\text{th}}$ share out of $1/48^{\text{th}}$ share inherited by Bhagwati from Sh. Tek Chand.

The appellant, respondents No. 3 and 4 filed separate written statements raising preliminary objections inter alia challenging maintainability of the suit, locus standi of the respondents/plaintiffs and they being guilty of concealing the true and material facts. On merits, it was averred that Smt. Rajni Devi-respondent No. 3 was absolute owner of the suit land by virtue of mutation No. 11448. She voluntarily sold the entire

share in favour of the appellant vide sale deed No. 2865 dated 20.12.2006 for a valuable consideration. Before getting the sale deed executed, the appellant verified the revenue records.

Respondent No. 4 admitted claim of respondents No. 1 and 2 to the extent that all the respondents inherited the 1/48th share of Bhagwati so mutation No. 11448 showing respondent No. 3 having inherited entire share of Bhagwati is wrong and illegal.

The learned trial court, on consideration of the entire matter dismissed the suit holding that respondents No. 1 and 2 (plaintiffs) have failed to prove by producing any documentary evidence in regard to the parents to whom deceased Bhagwati was born, thus the respondents/plaintiffs have failed to substantiate their claim that they are entitled to succeed to Ms. Bhagwati on the basis of natural succession to the extent of 1/5th share each.

The Court in appeal accepted claim of the plaintiffs (appellants therein) that Bhagwati was born out of the wedlock of Sh. Tek Chand and Satwati and held that the sale deed executed by respondent No. 3 in regard to property belonging to Bhagwati to the extent of share inherited by respondents No. 1, 2, 4 and 5 being heirs of Bhagwati on the basis of being class-I heirs of deceased Tak Chand besides Smt. Rajni is bad and liable to be set aside.

The sole submission made by counsel for the appellant is that there is no cogent and convincing evidence adduced by respondents No. 1 and 2 that Smt. Bhagwati was born out of wedlock of Satwati and Tek Chand. It is further argued that certified copy of statement of Smt. Rajni

Devi (Ex. P.1) recorded in the proceedings under Section 8 of the Hindu Minority and Guardianship Act titled “Smt. Rajni Devi vs. General Public” cannot be relied upon for want of proof in accordance with law as the plaintiffs did not examine an official of the court with original record.

I have heard counsel for the appellant, perused the records and find no merit in the appeal.

The short question that arises for consideration is '*whether a certified copy of the statement made by Ranji Devi-respondent No. 3 in the earlier proceedings is admissible in evidence under Section 74 of the Indian Evidence Act, 1872 (for short “the Evidence Act”)*'?

The question in regard to admissibility of a certified copy of the statement of a witness recorded during judicial proceedings came up for consideration before this court in **Saudagar Singh alias Sagu vs. The State of Punjab** 1974 PLR 57. The Division Bench of this Court, in para 6, has held that the statements made by the witnesses in the commitment proceedings admittedly come within the scope of public document as defined in Section 74 of the Evidence Act. Certified copies thereof could be granted under Section 76 and the said certified copies could be produced and used in proof to the contents of the same vide Section 77 of the Evidence Act. Presumption of genuineness would also be available in respect of said certified copies of the depositions under Section 80 of the Evidence Act. In view of the Division Bench judgment passed by this Court, I find myself unable to accept the submissions of counsel for the appellant that statement of Rajni Devi, one of the defendants in the suit and vendor of the sale deed in question recorded in the earlier proceedings is not

admissible in evidence or could not be taken into consideration without examining an official of the court alongwith record of the case “Rajni Devi vs. General Public”.

To be fair to the appellant, counsel has relied upon the judgment of Single Bench of this Court **Bawa Singh and others vs. Harnam Singh and others**, 2009(5)RCR (Civil) 183 wherein the question before the court was whether a certified copy of the written statement of an earlier suit is per se admissible in evidence or can be proved in evidence by a person other than the author or scribe. The court held that written statement or for that matter pleadings of a party does not fall in any of the public documents as specified under Section 74 of the Evidence Act and thus, comes within the purview of private document as all documents other than specified in Section 74 of the Evidence Act are private documents. Therefore, certified copy of a written statement allegedly filed by the plaintiff in an earlier suit is not per se admissible in evidence. In the case at hand, it is not the petition filed by Rajni Devi, the certified copy whereof was sought to be relied by the plaintiffs/respondents No. 1 and 2. It is the certified copy of the statement of Rajni Devi recorded in judicial proceedings, that is admissible in evidence under Section 74 of the Evidence Act, therefore, the appellant cannot derive any advantage to her contentions from the judgment in **Bawa Singh's case (supra)**.

Indisputably, there cannot be any evidence better than admission of a party on a disputed question of fact. As Rajni Devi in the earlier proceedings admitted that Bhagwati was born out of wedlock of Tek Chand with his earlier wife and further stated that only one daughter namely

Geeta was born out of her wedlock with Tek Chand, the appellant who is claiming right in the suit property through Smt. Rajni cannot escape from the admission made by Smt. Rajni Devi.

Smt. Rajni did not appear in the witness box to counter the case of the respondents/plaintiffs and to prove that Bhagwati was born out of her womb. She was the best person to depose if Bhagwati was born out of wedlock of Tek Chand and Satwati or that of Rajni and Tek Chand. It appears that as Ranji was well conscious that in case she appears in the witness box, she would be confronted with her statement made in the earlier proceedings and she may not be able to explain the said admission which is in complete contradiction to her stand taken in the present case, she intentionally opted to stay away from the witness box. An adverse inference is to be drawn against respondent No. 3/defendant No. 1 for her failure to appear in the witness box and the same would apply with equal force qua the appellant as there is no conflict of interest between the appellant and respondent No. 3 (co-defendants in the suit) and the appellant is the successor in interest of respondent No. 3 on the basis of sale deed executed in her favour.

It is pertinent to note that there is cardinal distinction between a party who is the author of a prior statement and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case, an admission by a party is substantive evidence if it fulfills the requirements of Section 21 of the Evidence Act, therefore, admission made by Smt. Rajni is admissible in the present circumstances.

Smt. Rajni Devi never attempted either to retract from her

admission made in the statement recorded on 16.12.2006 or to explain that admission. Indisputably, she has not preferred an appeal against the judgment and decree passed by the first appellate court. In this view of the matter, I do not find any merit in the contentions of the appellant that respondents failed to prove that Bhagwati was born out of wedlock of Tek Chand with Satwati.

No other point has been raised.

In view of what has been discussed hereinabove, neither any substantial question of law arises for adjudication nor there is any error much less illegality in the judgment passed by the court in appeal. As a result, the appeal fails and is ordered to be dismissed with no order as to costs.

(Rekha Mittal)
Judge

25.1.2016

PARAMJIT

