

103

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

**RSA-3476-2014 (O&M)
Date of decision: 29.04.2016**

Abhey Ram and another Appellants

VERSUS

Navratan and others Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. D.K. Tuteja, Advocate
for the appellants.

JITENDRA CHAUHAN, J.

CM-8059-C of 2014

This is an application for condonation of delay of 157 days in refiling the appeal. It is mentioned in the application that the appeal was filed within the period of limitation on 18.12.2013. The Registry raised an objection on 18.12.2013. When applicants engaged the counsel, they did not inform the telephone number or mobile number to the counsel. Therefore, the counsel could not prepare the affidavit. When the client came to Chandigarh for enquiring the status of case, the affidavit was prepared and the appeal was refiled on 03.07.2014, which resulted into delay of 157 days.

In view of the averments of the application and the fact that the objection was technical in nature, this Court feels

that the delay deserves to be condoned. Consequently, the application is allowed and the delay of 157 days in refiling the appeal is condoned.

RSA-3476-2014

The unsuccessful plaintiffs have filed the instant regular second appeal against the judgment and decree dated 25.03.2013 passed by Civil Judge (Junior Division), Rohtak vide which the suit was dismissed; and the judgment and decree dated 18.09.2013 passed by Additional District Judge, Rohtak, whereby the appeal filed by the plaintiffs was dismissed.

In brief, the plaintiffs filed suit for declaration to the effect that the mutation No.2314 dated 14.12.1960 in the name of Risalo to the extent of 1/4th share of inheritance of Phullu, son of Raj Karan is null and void, ab initio no-nest and not binding upon the plaintiffs. It was further pleaded that the plaintiffs are legal heirs of Phullu. Munshi Ram, Ajit Ram and Abhay Ram are the sons of Phullu and they were in military service prior to the partition of the country and due to their services, they were awarded Murabba land by the Union of India for their services in Second World War. The allotment was made to Munshi Ram, Ajit Ram and Abhey Ram through their father Phullu, son of Raj Karan, as allotment R3/77/28 total 10 standard acre and 5-1/2 unit in West Pakistan out of Chak No.7/NR in District Multan in Pakistan, the then India. Due to the partition of the country, the plaintiff No.1 alongwith his two

brothers were allotted land through Sanad under the Rehabilitation Act, 1954 through their father, namely, Phullu Ram on 24.03.1955 in village Khani 7-1/2, Tehsil Gohana, the then, District Rohtak as per jamabandi for the year 1956-57. After the abovesaid allotment in village Kahani, the father of plaintiff Abhey Ram, namely, Phullu died and a mutation bearing No.2314 was wrongly entered in the year 1960 and on the basis of above mentioned mutation, jamabandi for the year 1963-64 was got prepared and these entries continued in the revenue record. The land in dispute is related only to the three sons of Phullu being in Military and taking active part in the Second World War during the year 1942 and after death of Phullu, a mutation bearing No. 2314 dated 14.12.1960 was wrongly and illegally sanctioned and the above mentioned land was entered in the name of Risalo daughter of Phulu to the extent of 1/4th share and on the basis of the above mentioned mutation, wrong entries have been incorporated in the revenue record. Plaintiff Abhey Ram alongwith his two brothers, namely, Munshi Ram and Ajit Ram is entitled to the land in question measuring 118 kanals 2 marlas to the extent of 1/3rd share each. The plaintiffs and LRs of his two brothers Munshi Ram and Ajit Ram are owners and in possession over the land in dispute. The entry of 1/4th share in name of Risalo in revenue record is wrong as Risalo had got married many years before and she acquired her rights in her in laws family as per the customs and traditions.

Defendant Nos.1 to 10, i.e. LRs of Munshi Ram and defendant Nos.11 to 15, i.e. LRs of Ajit Ram @ Jeet Ram and defendant Nos.16 to 28, i.e. LRs of Risalo in collusion with each other started interfering in the peaceful cultivating possession of the plaintiffs and the above mentioned defendants also started interfering in the more prime and valuable land; and are also bent upon to encroach on the valuable portion, want to cut some portion mentioned above by digging the foundation and want to get construction done by collecting building materials over some specific portion, also want to change the nature of the land, also want to create third party interest by giving them specific possession and in this way, the value and utility of the land would be diminished if the defendants succeed in their illegal act and conduct mentioned above. Plaintiffs asked the defendants not to interfere in the joint land and to stop their illegal acts but they refused. Hence, the suit.

Upon notice, the defendants appeared and filed written statement. Defendant No.1 to 5 filed their separate written statement pleading that the present suit is counter blast of the revenue suit filed by defendant No.1 to 10 in the Court of the Assistant Collector, First Grade, Rohtak on 07.01.2005 and plaintiffs want to delay the trial of revenue suit pending in the revenue Court. Mutation No.2314 was rightly entered in the year 1960. The subsequent revenue records like Fard Jamabandi for the year 1963-64 are also correct. The plaintiffs

are dishonest persons and they are bent upon to usurp the share of LRs of late Risalo, sister of late Munshi Ram and late Ajit Ram and Sh. Abhey Ram-plaintiff No.1, all sons and daughter of late Phullu. There is no collusion between defendants. LRs of Risalo have a right and share in the land in question as she was daughter of late Phullu. Plaintiffs were fully aware about the revenue entries made in the revenue documents by revenue officials like Patwari etc. based upon the admitted possession of the share of the LRs of late Risalo. The LRs of late Risalo have a legal right to file suit for mesne profit since the time of the alleged possession of both the plaintiffs. They denied that the plaintiffs learnt about the share of LRs of late Risalo only after having received the notice from the Court of A.C, Ist Grade, Rohtak. Even prior to this, they have been receiving 1/4th of compensation disbursed by Government of Haryana on account of Famine, floods etc.

Defendants No.16 to 28 chose to file their separate written statement, while taking preliminary objections on the grounds of limitation, maintainability, cause of action, suppression of material facts etc. On merits, they denied property was allotted to three sons of Phullu. It was further averred that mutation No.2314 was correctly sanctioned in favour of four legal heirs of Phullu, i.e. three sons and a daughter, namely, Risalo. After her death, mutation No.3264 was sanctioned in favour of her legal heirs. These mutations

and subsequent record including jamabandi were correct and legal. The story set up by the plaintiffs was false and concocted. In fact, Risalo was one of the legal heirs of her deceased father Phullu and by way of inheritance and as per Hindu Succession Act, she got 1/4th share in the property of Phullu. Admittedly, the suit property was not ancestral. On the death of Risalo, her share is owned and possessed by her legal heirs. They are owners and in possession of the suit land to the extent of 1/4th share. The daughter cannot be deprived of her share. Parties to the suit are joint owners in possession of the suit property and the story set up by the plaintiffs is concocted.

Defendant No.29 adopted the written statement filed by defendants No.1 to 6. Defendants prayed that the suit filed by the plaintiffs deserves to be dismissed with costs.

The trial Court framed as many as eight issues. The parties led their respective evidence on the issues framed. After appraisal of the evidence, the suit of the plaintiff was dismissed vide judgment and decree dated 25.03.2013, passed by Civil Judge, (Junior Division), Rohtak. It was observed by the trial Court that the plaintiffs failed to prove that they rendered any service in the military for which Phullu was granted the land in question.

Feeling aggrieved the plaintiffs filed appeal before Additional District Judge, Rohtak. The Additional District Judge, Rohtak dismissed the appeal vide judgment and decree dated

18.09.2013. The Lower Appellate Court held that the plaintiffs have failed to prove that the land in question was allotted to Phullu for the services rendered by his sons to the military. In fact, the perusal of Ext. P-2, Sanad jagir, went on to show that the land was allotted to their father, Phullu. Consequently, Risalo had 1/4th right in the property left by Phullu.

Still feeling dis-satisfied, the present regular second appeal has been filed by the plaintiffs against the aforesaid judgments and decrees.

It is contended that the Courts below have misread the evidence. There was sufficient evidence to prove that the land in question was allotted to Phullu on account of the services rendered by his sons. It is further contended that the Courts below have committed grave error in non-suiting the plaintiffs on the ground of limitation. It is further contended that Risalo after her marriage had left the house of Phullu and she became the member of her in-laws' house. Her right to inherit the property left by Phullu ceased to exist on account of her marriage.

I have heard the learned counsel for the appellants and have gone through the record of the case.

In this case, the short controversy raised at the hands of sons of Phullu is that the deceased-Phullu had three sons, namely, Abhey Ram, Ajit Singh, Munshi Ram and one daughter Risalo. Phullu was allotted land of 10 standard acres

and 5-1/2 unit in West Pakistan on account of the services rendered in the Second World War. The case of the plaintiffs is that Phullu was allotted land on account of services rendered by his three sons whereas, the case of the defendants is that Phullu was allotted land due to the services rendered by Phullu himself. In order to prove its case, plaintiff No. 1 himself stepped into the witness box as PW-I and further examined Azad Singh PW-2. Sanad of Jagir was tendered into evidence as Ext. P-2. This document Ext. P-2 is very much relevant to clinch the controversy. A perusal of the Ext. P-2 shows that the land was allotted to Phullu on account of services rendered by him. Otherwise also, Section 2 of the East Punjab War Awards Act, 1948 stipulates that war jagir of one hundred rupee can be granted to a person, who is now a citizen of India and before 15th August, 1947 resided in the undivided Punjab. It makes it clear that Sanad Ext. P-2 has been given to Phullu for being an eligible person, as discussed above, and not for being the father of the persons who participated in War. That apart, the other argument of the learned counsel for the appellants that since Risalo had married, her right to inherit the property of Phullu ceased to exist, carry no weight because the Hindu Succession Act, 1956 equally entitles the daughters as well to inherit the property like a son in case of intestate succession. The daughter like a son is Class-I heir under the Act, 1956. Further, there is a concurrent finding of fact recorded by the Courts

below that the plaintiffs have failed to prove that the land in question was allotted to their father on account of the services rendered by his sons. This being so, the Courts below were right in holding that after the death of Phullu, his three sons and one daughter equally inherited the property and thus, the mutation No.2314 dated 14.12.1960 was rightly sanctioned in favour of all the heirs of Phullu.

Consequently, the suit was rightly dismissed by the Courts below. There is no question of law involved in the regular second appeal. There is no mis-reading or misinterpretation of the evidence.

Consequently, the present appeal is dismissed.

April 29, 2016
SN

(JITENDRA CHAUHAN)
JUDGE