

Sr.No. 103

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

RSA No.2904 of 2011(O&M)

Date of decision: 20.11.2017

Sukhdev Singh and others

.....Appellants

versus

Surjit Kaur and others

.....Respondents

RSA No.3281 of 2011(O&M)

Tota Singh and another

.....Appellants

versus

Surjit Kaur and others

.....Respondents

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

Present: Mr. J.S.Brar, Advocate
for the appellants.

Mr. Sukhmeet Singh, Advocate
for the respondents.

Rajbir Sehrawat, J.(Oral)

This Order shall dispose of two appeals i.e. RSA No. 2904 and RSA No. 3281 of 2011. For reference, facts are taken from RSA No. 2904 of 2011.

For convenience, the parties herein would be referred as the plaintiff and the defendant as they were described in the suit.

This is an appeal filed by the defendant against the judgment of reversal; whereby the decree passed by the Trial Court dismissing the suit filed by the plaintiff was reversed and a suit of the plaintiff was decreed. In the connected appeal i.e. RSA No. 3281 of 2011 the defendants have challenged the dismissal of their cross objections, against finding on issue No. 5 and other issues, as wrongly decided by the Court.

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The facts of the case, without any intricate details are that the plaintiff Surjit Kaur had filed a suit for declaration that she is the owner of land measuring 246 kanals 15 marlas; described in the plaint; to the extent of her share; being natural successor of Smt. Jeoni, daughter of Indo. It was claimed that the suit property has come from Indo through Jeoni to the plaintiff Surjit Kaur, being daughter of Jeoni. It was further claimed that the mutation of the inheritance in the name of the defendants have wrongly been entered qua the suit property.

Upon notice, defendants filed written statement claiming, inter alia, that the plaintiff is not the daughter of Jeoni. It was further claimed that Roor Singh had two wives; Bachno and Jeoni. The said Jeoni died issueless and the plaintiff is the daughter, borne out of the wed lock of Roor Singh and Bachno. It was further pleaded that Bachno had no concern with the property. Therefore, the plaintiff has no right to succeed the estate left behind by Indo or Jeoni.

On the pleadings of the parties, the following issues were framed:-

“(1) Whether the plaintiff is entitled for the decree of declaration, as prayed for?OPP

(2) Whether the plaintiff is in possession of the land fully detailed in the head note of the plaint?OPP

(3) Whether the mutation sanctioned in favour of Gurdial Kaur and Tota Singh to the extent of more than share is illegal, null and void qua the rights of the plaintiff?OPP

(4) Whether the plaintiff is entitled for the decree of possession and permanent injunction,

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as prayed for? OPD

*(5) Whether the plaintiff is daughter of Jeoni,
as alleged?OPD*

*(6) Whether the suit is bad for mis joinder of
the parties? OPD*

(7) Whether the suit is time barred? OPD

*(8) Whether the defendants have become
owners of the suit property by way of adverse
possession, if so, its effect?OPD*

*(9) Whether Smt.Ind Kaur executed a valid
will in favour of defendants on 15.06.1969, if so,
its effect?OPD*

(10) Relief”

It is submitted by the learned counsel for the appellant that while deciding the issues, particularly, the most important issue in question, i.e., issue No. 5, whether the plaintiff is the daughter of Jeoni, as alleged or not; the Trial Court has committed a mistake which travels to the realm of perversity; and held that Jeoni is proved to be the daughter of Indo. This was not even a 'fact in issue' required to be decided. The 'fact in issue' was whether plaintiff was daughter of Jeoni or not.

Learned counsel for the appellant has further submitted that although the appellants/defendants had taken a plea regarding the adverse possession and on the pleadings of the parties, specific issue No. 8 was framed by the Trial Court, whether the defendants have become owners of the suit property by way of adverse possession, if so, its effect. However, no finding has been recorded by the Courts below; specifically; on this issue.

This Court finds that the submissions made by the learned counsel for the appellants are correct. The Trial Court has committed perversity on issue No. 5 and issue No. 8. In appeal the lower Appellate

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Court has also, only upheld the finding on issue No. 5 as recorded by the Trial Court. Therefore, even the lower Appellate Court has not properly appreciated the issue No. 5; which was regarding the relation of the plaintiff with Jeoni and not regarding the relation of Jeoni with Indo. Still further even the lower Appellate Court has not properly dealt with the issue of adverse possession.

Even the learned counsel for respondent/plaintiff could not dispute this fact that the findings recorded by the Courts below on issue No. 5 are incomplete/perverse. Still further it is not disputed by him that issue of adverse possession has not been properly appreciated and decided by the Courts below.

In view of the above, this Court is of the considered opinion that since the issues mentioned above are the core issues in the present case, therefore, their decision in the right earnest is of utmost importance. Hence, the matter deserves to be remanded to the Trial Court for a fresh decision of the case.

Accordingly, the judgments and decrees passed by the Courts below are set aside. The matter is remanded to the Trial Court for decision of the case afresh.

Parties/their counsels to appear before the Trial Court on
16.01.2018.

20th November, 2017
Shivani Kaushik

[Rajbir Sehrawat]
Judge

Whether speaking/reasoned *Yes*

Whether Reportable *No*