

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**RSA No. 599 of 2011 (O&M)
Decided on: 08.11.2017****Smt. Sona and Ors.****.....Appellants****versus****Lachhman Dutt @ Lachhman Dev****.....Respondent****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT****Present:** Mr. Arjun Jain, Sr. Advocate with
Mr. Arjun Veer Sharma, Advocate
for the appellants.Dr. Surya Parkash, Advocate
for the respondents.*********RAJBIR SEHRAWAT, JUDGE (ORAL)**

The defendants have filed the present appeal against the judgment of reversal passed by the lower Appellate Court, whereby the decree passed by the trial Court dismissing the suit filed by the plaintiff, was reversed, and the suit filed by the plaintiff was ordered to be decreed.

The facts, as mentioned in the judgment of the trial Court, are that Smt. Shanti widow of Sukh Lal was the owner in possession of the agricultural land measuring 97 kanals 9 marlas situated in village Pardhana, as per the Jamabandi for the year 1996-97, detailed in the head note of the plaint at point 'A'. She was also Dohlidar of agricultural land measuring 6 kanals 5 marlas, detailed in the head note of the plaint at Point 'B'. It was claimed that she inherited this property from her late husband Sukh Lal son of Ramji Lal. It was averred that Sukh Lal was not having any issue. Smt. Shanti Devi, therefore, died issueless on 21.11.1999, leaving behind the plaintiff, as her nearer heir. It was claimed that the plaintiff is the natural collateral of her late husband Sukh Lal and as such, after the death of Shanti

Devi, the plaintiff alone had the right to succeed the properties left behind by her. Therefore, the plaintiffs claimed that the Mutations No.1319, and 1320 regarding the inheritance of Dohlidar rights of deceased-Shanti Devi, have been wrongly entered on 31.08.2000 in favour of the plaintiffs and the defendants both in various shares. It was further claimed that plaintiffs came to know about the mutations on 07.11.2000; on receiving the copy of mutation No.1319 from Halka Patwari.

It was further claimed that the plaintiffs are the nearer in degree of descent and the same is shown in Schedule one, which was attached with the plaint. Therefore, it was claimed that the defendants were the strangers to the suit property and have no right to inherit the property of the deceased-Shanti Devi. Hence, the mutations of the property were wrong and the defendants have forcibly occupied the property measuring 84 kanals 9 marlas shown in head note of plaint at point 'C', whereas, the plaintiffs had exclusive right to inherit the property.

On receiving notice, the defendants filed the written statement taking the routine preliminary objections. On merits, it was admitted that the land in dispute was owned by Shanti Devi and it was admitted that she died issueless. However, it was claimed that plaintiffs are not the nearest collateral of Shanti Devi. It was also denied that the mutation Nos.1319 and 1320 has been wrongly sanctioned. It was further claimed that at the time of sanction of these mutations, the plaintiffs were very much present. Still further, the pedigree table, as given by the plaintiffs, was disputed. The defendants claimed themselves to be the lawful owner-in-possession.

The parties led their respective evidence.

In order to prove his claim, the plaintiff Lachhman Dutt, appeared

himself as witness as PW1. He examined Kuldeep Kumar as PW2, Rakesh,
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Patwari Moharar as Pw3, Rakesh as PW4, Barbans Lal Kanoongo Israna as PW5 and another Rakesh Kumar as PW6. On the other hand, the defendants examined Randhir as DW1, Inder Singh as DW2, Chanderman as DW3 and Chander Lamberdar as DW4.

After hearing the counsel for the parties, the trial court dismissed the suit filed by the plaintiff.

Learned trial Court recorded a finding that the plaintiffs and all the defendants are the agnates of Sukh Lal, husband of Shanti, and fall in the 5th or 6th degree from common ancestor Ram Dutt. The revenue authorities has given one share to each line of inheritance of each agnate, who fell in the same degree in which Sukh Lal himself fell from the common ancestor Ram Dutt. It was further recorded that the plaintiff and defendants are all grand children and great grand children of Lakhi and Harbhaj. Therefore, they cannot be deprived of their share, because their fathers are not living, a fact, which makes them one or two degrees farther in the line of inheritance. Still further it was held that the plaintiff and the defendants got their respective share as per the provisions of Hindu Succession Act.

Aggrieved against this judgement and decree, the plaintiff filed an appeal before the lower Appellate Court.

The lower Appellate Court had reversed the judgment and decree passed by the trial Court and decreed the suit filed by the plaintiff. The lower Appellate Court recorded the finding that the plaintiff falls at 5th degree from the common ancestor and the defendants fall at 6th, 7th and 8th degree. Therefore, the lower Appellate Court held that as per the Sections 12 and 13 of Hindu Succession Act, the nearest degree of heirs would exclude the fartherer degree of legal heirs, and hence, the mutation

authorities in favour of defendants along with the plaintiffs. Therefore, the suit was decreed.

Aggrieved against the judgement and decree passed by the lower Appellate Court, the present appeal has been filed by the defendants. It is worth noticing here that earlier the matter had reached before this Court in RSA. However, this Court had remanded the matter to the trial Court for deciding the case afresh vide the judgement/order dated 29.08.2008. After the remand, the present judgement and decree by the trial Court and the lower Appellate Court has emerged.

While arguing the case, learned counsel for defendants/appellants has argued that the plaintiff has to stand on his own legs. The suit of the plaintiff cannot be decreed on the weakness of the evidence of the defendant. It is his further argument that no evidence has been led by the plaintiff to show the relation with Shanti. His argument is that to prove the relation, the evidence as required under Section 50 of the Evidence Act, from the person, who had the special knowledge regarding the relation was required. Since no such evidence has been led by examining a person to prove his opinion on the relation, therefore, the relationship does not stand proved. The next argument of the learned counsel for the defendants/appellants is that since the parties involved in the present case are 4th or 5th generation from the common ancestor, therefore, a very strong evidence is required to prove the relation with the intestate to claim inheritance. Mere proof or admission of 'Kurshinama', as claimed in the present suit, is not sufficient to show the degree of relationship. Still further, the counsel submitted that since the plaintiff himself is disputing and challenging the validity of the mutations, therefore, he cannot be permitted to rely upon any part or content of that mutations for any purpose

whatsoever. Hence the counsel submits that the plaintiff has failed to prove his case and the same was rightly dismissed by the trial Court. According to the learned counsel for the appellants, the findings recorded by the lower Appellate Court are perverse.

On the other hand, learned counsel for the plaintiff/respondents herein submitted that after the remand of the case by this Court, the document Ex.PW5/A and Ex.PW5/B has been duly confronted to the defendants/appellants. It is submitted by him the document Ex.PW5/A is an application moved by the defendants themselves, at the time of getting the mutations sanctioned in their favour. This application has even been admitted by the defendants during the evidence. Therefore, according to the counsel of the plaintiff/respondents, the defendants themselves have admitted the pedigree table of the parties as given on the backside of the mutations and also as given in the application, moved by them, for getting the mutations sanctioned. Learned counsel for the plaintiffs further submits that at the time of getting the mutations sanctioned, the defendants had also relied upon a *Shajra* received from the revenue authorities. That *Shajra* also shows the pedigree table in favour of the plaintiffs. Therefore, his submission is that the pedigree table as shown by Ex.PW5/A and the *Shajra* relied upon by the defendants themselves, show the plaintiffs to be a legal heir of Shanti Devi, of a degree nearer as compared to the defendants. Therefore, according to the learned counsel for the plaintiffs; since Sections 12 and 13 of the Hindu Successions Act excludes the farther decree of agnate legal heirs when nearer degree of agnate legal heir is present, therefore, the lower Appellate Court has rightly decreed the suit. Still further, it is the submission of the learned counsel for the plaintiff/respondents; that even otherwise, the pedigree table has been duly

proved on record as Ex.PW6/A, which again, shows the same pedigree table, which is claimed by the defendants, while getting the impugned mutations sanctioned.

While referring to the evidence led on the file, learned counsel for the plaintiff/respondents points out that the witness examined by plaintiffs have duly proved the degree of relation on the file. He further submits that DW1-Rajbir Singh has admitted the pedigree table and has also admitted that the plaintiffs are also in possession of land measuring 13 kanals on the basis of the same pedigree table being legal heirs of the same common ancestor, Shanti Devi. Still further, it is admitted by the DW-1-Rajbir Singh, a defendant, that the plaintiff- Lachhman Dutt is his great grand father. Therefore, the pedigree table relied upon by the plaintiff is admitted by the testimony of this witness as well. Still further referring to the statement made by DW3- Chanderman the counsel submits that even this witness has admitted the plaintiff to be his uncle. Meaning thereby, that the plaintiff is at least one degree nearer to the common ancestor as compared to this witness, who falls in 6th degree.

Having heard, the learned counsel for the parties, this Court is of the considered opinion that the arguments of the learned counsel for the plaintiff/respondents carry weight and the arguments raised by the learned counsel for the defendants/appellants cannot be legally sustained. The argument of the learned counsel for the defendants/appellants that plaintiff has to stand on his own legs and he cannot rely upon the weakness of the evidence of the defendants is to be noticed only to be rejected. In the present case, the plaintiffs have led positive evidence, including the pedigree table, to show the comparative nearness of the plaintiffs to the common ancestor vis-a-vis the defendants. Even the documents relating to

the defendants have been proved by plaintiffs independently as Ex.PW5/A and Ex.PW5/B. Otherwise also, when the evidence has come on the file, the plaintiff is fully entitled to get assistance from the evidence/admissions made by the defendants to sustain his claim. This would not be relying upon weakness of the evidence of the defendant. Rather this is relying upon what the plaintiff has succeeded in extracting in cross-examination of the defendant. This is certainly permissible in law. The next argument of the learned counsel for the appellants that to prove a relation only the evidence, as contemplated by Section 50 of the Evidence Act, was required to be led, is misconceived. Section 50 of the Evidence Act only makes the opinion of one person as to the relations between other two persons, as a relevant piece of evidence. This, by no means, can be exclusive method to prove the relationship between the two persons. In the present case, the relationship of a particular degree with the intestate has been claimed, even by the defendants. To show their own relationship they have relied upon a pedigree table. The plaintiffs are also relying upon the same pedigree table. The dispute is only regarding the degree of descent. In that situation, the defendants cannot take a summersault and make an attempt to disentitle the plaintiffs from taking benefit of a document, which otherwise has been duly proved by the plaintiffs in their own evidence and which was relied upon, admittedly, by the defendants themselves. Hence the plaintiffs rightly relied upon the pedigree which is claimed to be the same even by the defendants.

The next argument of the learned counsel for the defendants/appellants that once the plaintiffs dispute the mutations then they cannot take advantage of anything regarding that mutations, is also not worth acceptance. In the present case, the plaintiffs had challenged only the

entry of mutations of title of land in favour of the defendants. However,

that mutation was entered on the basis of a particular pedigree table and the other document, which is a *Shajra*, which were relied upon by the defendants. Incidentally, the pedigree table is also mentioned on the back side of the mutations as well. Therefore, simply because the entry regarding mutations of inheritance, qua the title of land is being disputed by the plaintiffs to be wrongly entered, does not mean that they stand debarred from taking advantage of even the pedigree table or *Shajra* on the basis of which that mutation was entered. The plaintiff definitely can rely upon a part of the basis of the mutation, despite challenging the entry of mutation qua the title over the land.

Otherwise, also the plaintiffs have succeeded in proving that they are is nearer in the decree of descent as compared to the defendants. A perusal of the record shows that the common ancestor of the parties was Ram Dutt. Sukh Lal husband of Shanti Devi is the 5th generation from the common ancestor Ram Dutt. Incidentally, the plaintiff No.1 is also the 5th generation of the common ancestor of Ram Dutt. Even the defendants while entering in witness box have admitted that plaintiff is the brother-in-law (Dewar) of Shanti Devi.

On the other hand, the defendants are either nephews or the grandsons and great grandsons of Shanti Devi; by agnates' relationship. This itself shows that the plaintiff stands at nearer degree of inheritance as agnate as compared to the defendants. Hence, as per the Sections 12 and 13 read with Section 15 of the Hindu Successions Act, the plaintiffs shall have exclusive right to inherit the properties left behind by Shanti Devi to the exclusion of the defendants. Therefore, the suit has rightly been decreed by the lower Appellate Court.

No other arguments was raised.

In view of the above, the judgement and decree passed by the lower Appellate Court are upheld. The present appeal is dismissed being devoid of merits.

8th November, 2017

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Whether speaking/reasoned

Whether reportable

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:

Yes/No

Yes/No

[RAJBIR SEHRAWAT]

JUDGE