

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

1.

RSA No.2633 of 2012 (O&M)
Date of decision : 25.07.2017

Bisne Ram @ Bishe Ram

...Appellant

Versus

Bedo and others

...Respondents
2.

RSA No.3102 of 2012
Date of decision : 25.07.2017

Ram Mehar

...Appellant

Versus

Bishe Ram and another

...Respondents
3.

RSA No.4490 of 2012 (O&M)
Date of decision : 25.07.2017

Bedo and others

...Appellants

Versus

Ram Mehar and others

...Respondents
4.

RSA No.2510 of 2015
Date of decision : 25.07.2017

Bedo and others

...Appellants

Versus

Akhe Ram and others

...Respondents

5.

RSA No.2546 of 2015
Date of decision : 25.07.2017

Bedo and others

...Appellants

Versus

Virender and others

...Respondents

6.

RSA No.2547 of 2015
Date of decision : 25.07.2017

Bedo and others

...Appellants

Versus

Bishe Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. N.C. Kinra, Advocate
for the appellant(s) in RSA No.2633 of 2012.
for the respondent(s) in RSA Nos.4490, 3102 of 2012.
for the respondent(s) in RSA Nos.2547, 2546 & 2510 of 2015.

Mr. Sandeep Kumar Sharma, Advocate
for the respondent(s) in RSA No.2633 of 2012.
for the appellant(s) in RSA Nos.4490 & 3102 of 2012.
for the appellant(s) in RSA Nos.2547, 2546 & 2510 of 2015.

ANIL KSHETARPAL, J.

By this common order, I shall be disposing of six Regular

Second Appeals bearing Nos.2633, 3102 and 4490 of 2012, 2510, 2546 and 2547 of 2015 as these are connected RSAs.

In RSA Nos.2633, 3102 and 4490 of 2012, challenge is to the judgment passed by the Additional District Judge, Rohtak dated 17.03.2012.

Dispute in the present case is with respect to the succession of the property owned by Late Sh. Thambu Ram who died on 20.05.2002. The plaintiffs No.1 to 3 namely Bedo, Sumitra and Santosh in Civil Suit No.374/1 of 2003 are daughters of Late Sh. Thambu whereas plaintiff No.4- Nirman is widow of Late Sh. Thambu. The defendants in the aforesaid civil suit are Ram Mehar, Akhe Ram and Bisne Ram, who are sons of Late Sh. Thambu.

The plaintiffs filed a suit for passing a decree for declaration to the effect that they are owner in possession of 4/7th share in the land measuring 255 kanals 18 marlas situated in Village Ismaila, District Rohtak. The plaintiffs had also challenged the decree dated 02.11.1996 passed in Civil Suit No.948 of 1996 titled as Bise Ram (in the present suit, he has been shown as Bisne Ram) Vs. Thambu and a Will dated 14.02.2002.

The plaintiffs had asserted that the decree suffered by Thambu in favour of Bise Ram with respect to the land measuring 74 kanals 8 marlas is a result of fraud as Thambu did not file written statement or engage a counsel. It was further asserted that thumb impression on the alleged documents have been fabricated and forged. It was further pleaded that the land possessed by Late Sh. Thambu was ancestral and he was not competent to execute the Will.

The defendant Nos.1 and 2 filed a joint written statement. It

was submitted that Late Sh. Thambu during his lifetime executed a Will in favour of defendants (sons) bequeathing his entire estate. The defendant Nos.1 and 2 further took a stand that the alleged decree dated 02.11.1996 is null and void and has been challenged by the defendant Nos.1 and 2 in a separate suit.

The defendant No.3-Bisne Ram had filed a separate written statement and defended the decree passed in his favour. The defendant No.3-Bisne Ram also submitted that Late Sh. Thambu had executed a Will on 14.02.2002 and hence plaintiffs were left with no right, title or interest in the property.

The learned trial Court after appreciating the evidence available on the file upheld the decree dated 02.11.1996 suffered by Late Sh. Thambu in favour of Bisne Ram. It was held that plaintiffs have not been able to prove the fraud. It was held that Late Sh. Thambu himself had appeared in the Court, engaged a counsel, filed a written statement and suffered a statement admitting the claim of Bisne Ram while appearing in the Court. It was further noticed by the Court that Late Sh. Thambu remained alive for a period of 5 ½ years after suffering the decree and he never challenged the Civil Court decree. The learned trial Court further noticed that suit filed by the defendant Nos.1 and 2 challenging the decree has already been dismissed in default on 13.09.2005 vide Ex.D-C on the file and decree dated 02.11.1996 has been upheld.

The learned trial Court further noticed that Sh. Satbir Singh, Advocate who appeared as counsel for Late Sh. Thambu Ram in civil suit has admitted in his cross-examination that Late Sh. Thambu Ram appeared

in the Court and put his thumb impression. It may be noticed that Sh. Satbir Singh appeared as witness on behalf of the plaintiffs. The learned trial Court discarded the opinion given by the Handwriting Expert and Finger Print Expert.

The learned trial Court further held that the Will dated 14.02.2002 has not been proved in accordance with the Evidence Act as none of the attesting witness has been examined.

Thus, the learned trial Court upheld the challenge to the Will dated 14.02.2002 but dismissed the suit with respect to challenge to the Civil Court decree dated 02.11.1996.

First two appeals were preferred. One by the plaintiffs whereas another by Bisne Ram-defendant No.3. The learned First Appellate Court after re-appreciating the evidence available on the file upheld the judgment passed by the learned trial Court.

I have heard learned counsel for the parties and with their able assistance gone through the record.

Learned counsel for the appellant-defendants has submitted that mutation of decree dated 02.11.1996 was sanctioned only on 20.01.2003. Before that date, the Civil Court decree remained only in papers and was not implemented in the revenue record, therefore, decree has lost significance.

The contention of the learned counsel for the plaintiffs-respondents is that they were not in knowledge of the decree dated 02.11.1996. Even Late Sh. Thambu was not in knowledge of the decree. Therefore, the decree must be ignored.

Learned counsel for the appellant has further submitted that a

reading of decree dated 02.11.1996 would show that all the family members were not impleaded as parties. It is further submitted that decree is based on family settlement and without impleading all the family members, no decree could be passed.

I have considered the arguments raised by learned counsel for the appellant.

It has been concurrently found by the Court that Late Sh. Thambu suffered the decree with free will and violation. He not only engaged a lawyer, he even filed a written statement admitting the claim setup in the plaint by Bisne Ram. Thambu had also appeared in the Court and suffered a statement. The plaintiffs had not been able to establish anything on the file to establish their claim in the plaint that the decree is result of forged and fabrication.

Sanctioning of mutation is only administrative act of the Revenue Authorities. Sanction of mutation is only for fiscal purpose. Therefore merely because mutation was not sanctioned, the validity of the Civil Court decree cannot be questioned. The Civil Court decree is final between the parties and, therefore, the rights flowing therefrom, would not get vitiated merely because mutation has not been sanctioned.

Next submission made by learned counsel for the appellant is that since all the family members had not been impleaded as parties in the suit filed in the year 1996 which is resulted in decree dated 02.11.1996, therefore, such decree has no force in the eyes of law.

It may be noticed that Late Sh. Thambu was owner of 255 kanals 18 marlas of land. He suffered a decree with respect to land

measuring 74 kanals 8 marlas. It was mentioned in the civil suit filed on 01.09.1996 that late Sh. Thambu had accepted the ownership of Bisne Ram to the extent of 74 kanals 8 marlas. The family settlement, which the basis of the decree was not with respect to the entire land owned by Late Sh. Thambu. Therefore, the arguments of learned counsel for the appellant that since all the family members were not impleaded as parties in the previous suit, therefore, the decree is invalid, is not sustainable.

Regular Second Appeal Nos.2510, 2546 and 2547 of 2015 have been filed by the daughters and widow against the judgments passed by the trial Court and affirmed by the First Appellate Court. The daughters and widow had filed a suit challenging the sale deed executed by Bise Ram on 09.03.2007 with respect to the land measuring 23 kanals 12 marlas of land. The plaintiffs had also prayed for consequential relief.

Since the decree in favour of Bisne Ram is being upheld and Bisne Ram has been held owner of 74 kanals 8 marlas pursuant to decree, therefore, sale by Bisne Ram would be treated as sale from his share only.

In RSA No.3102 of 2012, Bishe Ram had filed a suit for injunction restraining his brothers-defendants from interfering in the possession of the plaintiff with respect to the land measuring 74 kanals 8 marlas which was subject matter of decree dated 02.11.1996. The learned trial Court decreed the suit filed by Bishe Ram. The appeal filed by the appellant was dismissed. The Civil Court decree dated 02.11.1996 has been upheld and Bisne Ram has been held to be owner of 76 kanals 8 marlas of land, therefore, the plaintiff is entitled to protect his possession. The judgment passed by the Courts below are correct. The appeal is thus liable

to be dismissed.

RSA No.2633 of 2012 has been filed by Bisne Ram against the finding of the Courts below discarding the Will dated 14.02.2002 executed by Late Sh. Thambu. Both the Courts below have found that the Will has not been proved in accordance with the Evidence Act. None of the attesting witness has been examined. Counsel for the appellant has not been able to dispute this fact. Since the Will itself has not been proved in accordance with the Evidence Act, therefore, there is no merit in the Regular Second Appeal filed by Bisne Ram.

Regular Second Appeal No.3102 of 2012 has been filed by Ram Mehar. Ram Mehar has also challenged the finding of the Courts below while upholding the decree dated 02.11.1996. For the reasons stated in RSA No.4490 of 2012, this appeal is also dismissed.

For the reasons recorded above, all Regular Second Appeals filed by different parties are dismissed.

25.07.2017

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**