

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

**RSA No. 1405 of 2013(O&M)
Date of Decision: 24.01.2017**

Sat Pal & Ors.

... Appellants

vs.

Pirthi & Ors.

... Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Keshav Partap Singh, Advocate
for the appellant.**

ANITA CHAUDHRY, J.

The defendants are in regular second appeal against the judgments and decrees passed by the Courts below by virtue of which the suit of the plaintiffs had been decreed and mutations No. 5401 and 5411 were held to be illegal, null and void and subsequent transfer made on the basis thereof were held to be not binding on the rights of the plaintiffs. The defendants were perpetually restrained from alienating the suit land.

The facts of the case first. Surja had three sons, namely, Nihala, Bhalla and Jiru. Jiru died issueless. Bhalla was married to Sibri and Nihala to Bhagwani. After the death of Bhalla, his land was transferred in the name of Sadhu and Sibri. Unfortunately, Sadhu also died issueless and his share was mutated in the name of Sibri. Sibri performed *karewa* with Nihala, who was already married to Bhagwani. Out of this alliance of Sibri and Nihala, children, namely Nathi, Babu,

Prithi and Roshni were born, whereas Bhagwani gave birth to Singari, Muktari and Lakhpat. Lakhpat had two sons, namely, Satpal (defendant No.1) and Ram Kishan and daughters Raj Bala, Saroj, Sheonan and Gurdevi. Ram Kishan was survived by widow Kamla and son Sanjiv (defendants No.2 and 3). Sibri also died.

The legal representatives of Sibri who were born out of *karewa* with Nihala, filed a civil suit questioning the mutations No.5401 and 5411 vide which the share of Sibri received by her from Bhalla was transferred by other legal heirs of Nihala and Bhagwani in favour of Satpal and Ram Kishan. It was their case that Sibri was their mother and grand mother and defendants have no right to inherit the estate of Sibri which was received by her from Bhalla and if the defendants wanted share, they had to first give the share received by them from Raj Bala, Saroj, Sheonan and Gurdevi being the legal heirs of Nihala and Bhagwani.

The defendants contested the suit on the ground that they were owners in possession of the land which was inherited by them from their ancestors. The other legal heirs relinquished their right in the suit land in favour of defendants Satpal and Ram Kishan(since deceased) and represented by defendants No.2 and 3 and therefore the mutations were rightly entered in their favour.

Both the parties led evidence. On appraisal thereof, the trial Court decreed the suit in the manner noticed above. The appeal filed by defendants No.1 to 3 was dismissed by the appellate Court below vide judgment dated 05.01.2013. Hence, the present regular

second appeal has been filed.

I have heard learned counsel for the appellant and perused the record.

The estate of Sibri received by her from her first husband Bhalla is in dispute. It has been established on record that Sibri was earlier married to Bhalla and a son Sadhu was born. After the death of Bhalla, his share was transferred equally to Sibri and Sadhu. Sadhu died issueless and his share was mutated in favour of Sibri. There is no serious dispute to the fact that Sibri performed *karewa* with Nihala, who already had a wife Bhagwani. It was also proved on record that the plaintiffs are issues of Sibri and Bhalla, whereas the defendants were issues of Bhagwani and Nihala. When Sibri inherited the disputed property from her first husband Bhalla and son Sadhu, she became absolute owner thereof. The issues born to Bhagwani and Nihala were not the legal heirs of Sibri, whereas in mutation Ex.P3 the land of Sibri was mutated jointly in favour of plaintiffs and other issues of Nihala and Bhagwani, who had no right in it because the issues of Nihala and Bhagwani did not become Class-I heirs of Sibri. It had come on record that Sibri had not inherited any property from Nihala. It was held that the children of Bhagwani and Nihala had no right to inherit the land belonging to Sibri. Mutation No. 5401 was rightly held to be illegal. With regard to mutation No. 5411 which was entered pursuant to the release-deed executed by daughters of Lakhpat, it was rightly held that the suit land was owned by Class-I heirs of Sibri and any alienation made by the daughters of Lakhpat son

of Nihala in favour of other brothers, carried no legal sanctity. The mutations and consequent alienation made pursuant thereto were held to be null and void and not binding on the rights of the plaintiff.

I find no reason to interfere with the concurrent findings recorded by the Courts below which are neither illegal nor suffer from perversity. The findings are affirmed. No substantial question of law arises for consideration in this appeal. Dismissed in limine.

24.01.2017

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No