

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

**RSA No.1017 of 2015 (O&M)
Date of Order: 13.11.2017**

Lal Chand

..Appellant

Versus

Anil Kumar Sharma and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Prabhjeet Singh Sullar, Advocate,
for the appellant.

ANIL KSHETARPAL, J(Oral)

**C.M.No.3068-C-2015 &
C.M.No.3069-C-2015**

Prayer in these applications is for condonation of delay of 02 days in filing and delay of 240 days in re-filing the appeal.

For reasons mentioned in these applications, which are supported by an affidavits, the delay of 02 days in filing and 240 days in re-filing the appeal is condoned.

Applications are allowed.

RSA No.1017 of 2015

Plaintiff-appellant is in regular second appeal against the concurrent findings of fact arrived at by the Courts below.

Plaintiff claiming to be natural son of Chuni Lal, filed a suit for declaration and permanent injunction, claiming that he is owner in possession of ½ share of the land measuring 7 bighas and 4 biswas. He also challenged mutation no.22, sanctioned in favour of Smt. Durgi Devi widow of Chuni Lal. He also challenged subsequent sale deeds executed by Durgi

Devi through her General Power of Attorney dated 05.11.1996 and sale deed dated 20.04.2005 executed by the vendee of the sale deed dated 05.11.1996. Plaintiff also prayed for recovery of future mesne profit and decree for permanent injunction.

On the other hand, defendants contested the suit and submitted that the plaintiff is a stranger and is wanting to usurp the land. It was pleaded that real Lal Chand son of Chuni Lal was declared dead vide judgment dated 03.02.1987. It was pleaded that Lal Chand had gone missing more than 40 years ago. Both the Courts after appreciation of evidence dismissed the suit filed by the plaintiff.

Learned counsel for the appellant has vehemently argued that the findings of the learned first appellate Court in paragraph 15 of the judgment are erroneous. He submitted that once the plaintiff was not able to prove that he was adopted son of Sunder Lal, therefore, it must be inferred that he was son of Chuni Lal.

No doubt, in a flow the first appellate Court had committed a minor mistake, however, plaintiff while filing the suit has shown himself to be adopted son of Sunder Lal. In the plaint, the plaintiff has been described as “Lal Chand adopted son of Shri Sunder Lal (natural son of Sh. Chuni Lal son of Sh. Dwarka Parshad @ Dwarka Dall), resident of village Basola, Tehsil Kalka, District Panchkula.” Hence plaintiff now cannot be permitted to take a different stand.

It is the pleaded cases of the plaintiff that on the death of Chuni Lal entire property belonging to Chuni Lal was mutated in favour of Smt. Durgi Devi on the basis of succession certificate. Once the revenue record was corrected, Smt. Durgi Devi sold ½ share of the property through GPA

vide registered sale deed dated 05.11.1996 in faovur of Gurmail Singh. Gurmail Singh further sold the property in favour of one Baldev Singh on 20.04.2005. Smt. Durgi Devi died on 30.03.2000. Plaintiff filed the present suit on 29.11.2006. Both the Courts have further found that the defendants are bonafide purchasers of the property as the plaintiff was nowhere in picture.

Although learned counsel for the appellant has vehemently argued that sanction of mutation on the basis of succession certificate in favour of Smt. Durgi Devi was erroneous, as by succession certificate immovable property cannot be transferred but plaintiff has to stand on his own legs. Plaintiff has failed to prove that he was the son of Chuni Lal. Still further plaintiff in the plaint is showing himself to be adopted son of one Sunder Lal. Once the plaintiff himself claim that he is adopted son, then he would be deemed to have severed all his relationship with the family in which he was born. Plaintiff cannot be allowed to blow hot and cold in the same breath.

Taking into consideration the aforesaid fact, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below. The regular second appeal is dismissed.

November 13, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No