

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

**RSA No.2337 of 2014 (O&M)  
Date of Decision: 20.09.2017**

Basanta alias Gandhi

... Appellant

Versus

Pirithi and another

... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Maharaj Kumar, Advocate,  
for the appellant.

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**RAJIV NARAIN RAINA, J.(Oral)**

1. The appellant was the plaintiff in the suit for declaration that he is owner in possession of the suit land and for a permanent injunction against the defendants Pirithi and Raghbir sons of Dhaula alias Mai Ram son of Kundan son of Shankar resident of Village Hathlana, Tehsil and District Karnal. The plaintiff also sought as a consequential decree permanent injunction restraining defendants from alienating the suit property or creating any charge on the corpus. The plaintiff asserted that he was Dhola's brother's son. Dhola died issueless in November 1999. Plaintiff claimed to be his only rightful legal heir and successor-in-interest according to the provisions of the Hindu Succession Act, 1956. There is no doubt that he was not a Class-I heir.

2. On notice, the defendants appeared and then went ex parte never to join the proceedings. The position remained the same in appeal and

we cannot expect anything more in the second appeal as far as their appearance is concerned. However, since the plaintiff was to prove his case by production of evidence irrespective of the proceedings going *ex parte* defendants he could place reliance only on a single piece of documentary evidence which was the birth certificate Ex.PW-5/A to show that defendant Raghbir is not related to the deceased Dhaula. In the memo of parties, Raghbir was arrayed as an “alleged” son of Dhaula. The trial Court dismissed the suit.

3. In appeal carried to the Court of the learned Additional District Judge, Karnal the plaintiff again remained unsuccessful when his plea based on EX.PW-5/A was found misplaced on facts. The Court below came to the conclusion on appreciating the evidence on record that the document Ex.PW-5/A did not prove that it belongs to the defendant Raghbir. Defendant Raghbir was shown to be resident of Village Hathlana in the memo of parties in the plaint itself which turned out untrue. Even otherwise, the lower appellate Court reasoned that there is no averment in the plaint that the defendants are resident of Village Bazida Roran or are the sons of Badri @ Dhaula. Therefore, the document Ex.PW-5/A produced at the time of recording of evidence of the plaintiff is beyond pleadings and cannot be admitted or taken into consideration and be relied upon as unimpeachable evidence to govern right, title and interest in the corpus property in dispute.

4. The oral evidence of the plaintiff was not enough to prove that the defendants are not related to Dhaula. The plaintiff could always have proved in the trial his assertion by leading documentary evidence in the form of ration card, voters list etc. of Dhaula. However, no effort was made by the

plaintiff to bring on record such documents which may have shed light on the dispute. Withholding of such evidence would invite an inference that the plea set up in the plaint was false. On this reasoning, the lower appellate Court has affirmed the judgment and decree of the trial Court vide its judgment dated September 19, 2013 and I do not find myself in any disagreement with the findings of fact recorded in the judgment in appeal.

5. No question of law, much less substantial arises in this appeal for consideration of this Court.

6. The appeal is accordingly dismissed.

(RAJIV NARAIN RAINA)  
JUDGE

20.09.2017

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*Whether speaking/reasoned*                      *Yes*

*Whether reportable*                              *No*