

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

RSA-5252-2015(O&M)

Date of Decision:17.07.2017

Basanti alias Dharmo Devi

.....Appellant

Versus

Nahar Singh and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.Kabir Sarin, Advocate,
for the appellant.

RAMESHWAR SINGH MALIK, J.(Oral)

Unsuccessful plaintiff is in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby her suit for possession and permanent injunction was dismissed by the learned trial Court vide its impugned judgment and decree dated 02.12.2011 and her first appeal was also came to be dismissed by the learned first appellate Court vide its impugned judgment and decree dated 30.03.2015.

Brief facts of the case, as noticed by the learned trial court in para 2 of its impugned judgment, are that Hira @ Hari Singh, father of the plaintiff was the owner in possession of 1/5 share of agriculture land comprised in khewat No. 254, Khasra No. 153 (2-7), 152 (5-3), 154 (41-2) total measuring 12 Bigha 2 Biswa Pukhta and was also the owner in possession of Shamlat Deh according to Hasab Rasad Rakba Khewat of the land comprised in khewat No. 253 total kitta 54 measuring 344 Bigha 9 Biswa Pukhta according to Jamabandi for the year 1943-44, situated in the

revenue estate of village Dhandlan Tehsil Beri Distt. Jhajjar. Hira @ Hari Singh son of Kallu breathed his last on 05.04.45 and Smt. Tehal Kaur wife of Late Shri Hira @ Hari Singh acquired the land mentioned in para No.1 of the plaint on the demise of Hira as life estate vide mutation No. 1210 dated 06.06.45 and on the death of Tehal Kaur, the plaintiff inherited and succeeded the entire estate of Tehal Kaur and Hari Singh being the daughter of Late Smt. Tehal Kaur and Late Shri Hira @ Hari Singh, but the revenue authorities wrongly and illegally sanctioned the mutation of Smt. Tehal Kaur wife of Late Hira regarding the suit land mentioned in para No.2 of the plaint in favour of Nanha, Ram Saroop, Hari Ram and Mam Chand sons of Kallu being the brothers of Hira without giving any notice to the plaintiff and without giving any opportunity to the plaintiff of being heard. So, the mutation no. 1456 dated 20.5.53 of Village Dhandlan was illegal, void and not binding upon the rights of the plaintiff, because the plaintiff inherited and succeeded the entire estate of Smt. Tehal Kaur wife of Late Shri Hira and the property of Hira son of Kallu being the only daughter of Tehal Kaur and Hira. Thereafter, Nanha son of Kallu died issueless and the mutation of inheritance of his estate was entered and sanctioned vide mutation No. 1843 dated 02.08.1971 in favour of Ram Saroop, Hari Ram and Mam Chand sons of Kallu. Hari Ram son of Kallu died in the year 1976 and the mutation of inheritance of Hari Ram son of Kallu bearing mutation No. 2135 dated 17.06.1980 was sanctioned in favour of the defendant No.1 and the predecessor in interest of defendants No.2 to 8. Thereafter, Ram Saroop son of Kallu died in or about 1986 and the mutation of inheritance of Ram Saroop son of Kallu bearing No. 2371 was sanctioned on 17.10.1986 in favour of defendants No.9 to 12 and mutation of inheritance of his estate in

village Dhandlan bearing No. 2629 dated 30.11.92 was sanctioned in favour of defendants No.13 to 15. Thereafter, consolidation operation took place in Village Dhandlan Tehsil Beri Distt. Jhajjar and the land comprised in khewat No. 281, Khata No. 350, rect. No. 36, Killa No.2 (6-0), 3(6-0), 8 (8-0), 9 (8-0) 10/1 (1-8), Rect. No. 37 Killa No. 3 (6-0), 4 (6-0) and khasra No. 325 (1-0), 328 (1-18), 525 (0-2), 596 (0-2), 597 (0-2), total land measuring 44 kanals 12 marlas and the land comprised in khewat No. 280, khata No. 349, Rect. No. 36, killa No. 1(5-14), 10/2 (6-4), Rect. No. 37 killa No. 5 (5-11), total land measuring 17 kanals 9 marlas, situated within the revenue estate of Village Dhandlan was allotted to Ram Saroop, Hari Ram, Mam Chand and Nanha sons of Kallu in lieu of the land mentioned in para No.1 of the plaint and at present the suit land was comprised in khewat No. 412, khata No. 523, Rect. No. 36, killa No. 1,2,3,8,9,10/1, 10/2, rect. No. 37, killa no. 3,4,5, khasra No. 325, 328, 595, 596 and 597 measuring 62 kanals 1 marlas and khewat No. 91, khatoni No. 113, rect. No. 37, killa no. 6, 15/1 measuring 8 kanals 9 marlas total land measuring 70 kanals 10 marlas, according to the Jamabandi for the year 2000-2001. The plaintiff was the joint owner in possession of the suit land to the extent of 1/5 share mentioned in para No.4 of the plaint after the demise of Smt. Tehal Kaur. The plaintiff gave the share of her land for cultivation to the defendants No.13 to 15 on the basis of Batai and Tehai, which defendants No.13 to 15 had been paying regarding the suit land upto June, 2002 and thereafter, the defendants No.13 to 15 refused to pay the Batai Tehai of the share of the plaintiff and asserted their title over the suit land. The plaintiff verified the record regarding the suit land and came to know in June, 2003 regarding existing state of affairs of the revenue record. The mutation No. 14565

dated 25.05.53 of village Dhandlan regarding the estate of Smt. Tehal Kaur wife of Late Shri Hira was illegally and wrongly sanctioned in favour of Nanha, Ram Saroop, Hari Ram and Mam Chand sons of Kallu, predecessor in interest of the defendants. Mutation No. 1456 dated 25.05.53 regarding the estate of Smt. Tehal Kaur is illegal, void and not binding on the rights of the plaintiff and in the same manner subsequent mutations regarding the suit land bearing No. 1843 dated 02.08.1971, mutation No. 2135 dated 17.06.1980, mutation No. 2371 dated 17.10.86, mutation no. 2629 dated 30.11.92 and the mutation no. 2643 dated 27.3.95 were illegal, void and not binding on the rights of the plaintiff and the plaintiff was the owner in possession of 1/5 share of the land mentioned in para no.4 of the plaint. The plaintiff requested the defendants several times to declare the mutation No. 1456 dated 25.5.93 regarding the estate of Smt. Tehal Kaur of village Dhandlan Tehsil Beri Distt. Jhajjar and subsequent revenue entries were illegal, void and not warranted under the facts and circumstances of the case and the same were not binding on the rights of the plaintiff and to admit the title of the plaintiff over the suit land and not to alienate the suit land in favour of any other person in any manner as the defendants were negotiating to alienate the suit land in favour of some other person, but the defendants did not pay any heed to the requests of the plaintiff and finally refused to accede to the demand of plaintiff on 25.04.2002.

Defendants were put to notice. They appeared and filed their joint contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial Court framed the following issues:-

1. Whether the plaintiff is owner in possession of 1/5 share of the suit land? OPP

2. *Whether the mutation bearing No. 1456 dated 25.5.1953 regarding the estate of Tehal Kaur wife of Late Shri Hira of village Dhandlan, Tehsil Beri, Distt. Jhajjar and the subsequent revenue record in the shape of Jamabandi, mutations and Girdawaries entries in the name of the defendants are illegal, void and not binding upon the rights of the plaintiff? OPP*
3. *If issues No.1 & 2 prove, whether the plaintiff is entitled to the injunction as prayed for on the grounds as alleged? OPP*
4. *Whether the suit of the plaintiff is not maintainable in the present form? OPD*
5. *Whether the suit of the plaintiff is time barred? OPD*
6. *Relief.”*

In order to prove their respective stands taken in their pleadings, both the parties produced on record their documentary as well as oral evidence. After hearing the learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that the plaintiff has failed to prove her case by leading cogent and convincing evidence. Accordingly, her suit for possession and permanent injunction was dismissed by the learned trial court vide its impugned judgment and decree dated 02.12.2011. Feeling aggrieved, plaintiff filed her first appeal which also came to be dismissed by the learned Additional District Judge, vide his impugned judgment and decree dated 30.03.2015. Hence, this regular second appeal, at the hands of the plaintiff.

Heard learned counsel for the appellant.

It has gone undisputed before this Court that after the death of father of the appellant in the year 1945, mutation Nos.1456 Ex.P4 and 1210

Ex.P3 came entered and sanctioned in favour of the defendants ignoring her

alleged preferential right in the suit land. Plaintiff claimed that she was minor at that time. However, it is also a matter of record that when the plaintiff stepped into the witness box on 07.10.2008 as PW1, she clarified her age as 64 years. The suit was instituted on 20.05.2004. The only attempt made by the plaintiff to explain this inordinate long period of limitation of about 50 years was that she came to know about the mutation in the month of June 2003.

This plea taken on behalf of the appellant-plaintiff does not appeal to reason at all. It is so said because she was not only brought up by the defendants after the death of her father but her marriage was also performed by the defendants. The entire case of the plaintiff-appellant was based on factually incorrect and misreading averment which was a result of an afterthought. It seems that the plaintiff-appellant was trying to put unwarranted pressure on the defendants-her collaterals so as to extract some money from them. This was the reason that the plaintiff was rightly non-suited by both the learned courts below. The plaintiff miserably failed to prove her pleaded case. Having said that, this Court feels no hesitation to conclude that the plaintiff-appellant had no case right from day one either on facts or in law because of which the impugned judgments and decrees passed by both the learned courts below deserve to be upheld.

Further, case of the plaintiff-appellant was based on the plea of fraud raised by her against the defendants. However, she miserably failed to substantiate her plea of fraud as well, while leading her evidence in affirmative. It is the settled principle of law that plea of fraud is liable to be proved like a criminal charge and onus would always be on him who raises the plea of fraud. It is very easy to raise the plea of fraud but it is equally

difficult to prove the same. It also goes without saying that the appellant being the plaintiff onus was on her to prove her pleaded case, but she miserably failed to bring on record cogent and convincing evidence to prove her pleadings.

It is pertinent to note that the pleadings alone would not be sufficient to decree the suit of the plaintiff. Averments taken in the pleadings are supposed to be proved by leading cogent evidence. In the instant case, plaintiff was unable to prove her case by bringing on record the relevant and cogent evidence. Under these circumstances, it can be safely concluded that the learned courts below were well within their jurisdiction to pass their respective impugned judgments and decrees and the same deserve to be upheld, for this reason also.

So far as the judgment relied upon by the learned counsel for the appellant in **Mohinder Singh (deceased by LRs) and another Versus Kashmira Singh**, AIR 1985 Punjab And Haryana 215 is concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, the same has not been found to be of any help to the appellant, being distinguishable on facts. It is so said because appellant never inherited the suit property.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533, **Union of India Vs. Amrit Lal Manchanda and others**, 2004 (3) SCC 75, **State of Orissa Vs. Md.**

Iliyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.

Even if the mutation in question was entered and sanctioned illegally, depriving the plaintiff-appellant from her right of inheritance to the estate of her father, she was supposed to challenge the said mutations well in time, particularly when after the death of her father, she was brought up by the defendants themselves. Not only that, marriage of the plaintiff-appellant was also performed by the defendants who were not strangers but brothers of her father.

During all these long 50 years, plaintiff kept on enjoying good relations and availed the services of defendants including customary gifts. But at this belated stage, it seems that the plaintiff had a second thought and filed the suit for possession and permanent injunction as late as on 20.05.2004. In the totality of facts and circumstances of the case, noticed here-in-above, plaintiff-appellant was bound to fail and she has been rightly non-suited by the learned courts below, while passing the impugned judgments and decrees and the same deserve to be upheld, for this reason as well.

Before arriving at his judicious conclusion, the learned Additional District Judge has rightly examined, considered and appreciated true facts of the case as well as evidence available on record, in the correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 13 to 15 of its impugned judgment, which deserve to be noticed here, read as under:-

“As is clear from the bare language of the provisions contained under Section 14, any female, who is keeping any limited interest in the property at the time of enforcement of

the Act in the year 1956, would become full owner of said property. So, the appellant has to first establish that she was possessing suit land with limited rights on 17.06.1956, i.e., at time of enforcement of the Act. There is, however, no document establishing such a right in her favour. Even no presumption could be drawn because right of maintenance to a daughter is distinct from a right of maintenance of a wife or widow in the estate of her husband. Widow would certain be having a life interest in the property as per old Hindu Law, but a daughter to claim a right of maintenance in the estate of her father or mother or both could be established only by an order of the court. It is a settled proposition of law that married daughter has no right of maintenance from her parents and in the present case appellant has not established whether she was married or unmarried at the time of death of her widowed mother. Reliance in this regard can well be placed upon case law Niranjan Singh Vs. Ramnath 2001(2) SLJ 1129 & Thoppa Naicker Vs. Smt. Chinnammal 2002(2) RCR (Civil) 227.

Lastly learned counsel for the appellant has gone arguing that learned trial court has wrongly held the suit as time barred whereas there is no question of limitation. Erroneous revenue record can be got corrected at any time. Moreover appellant was minor when mutation No. 1210 (Exh. P3) and mutation No. 1456 (Exh. P4) were entered ignoring her preferential rights in the suit land.

Even if any benefit of the minority is given to the appellant, then she was expected to bring the suit immediately after attaining the age of majority. While stepping in the witness box on 07.10.2008 as PW1, appellant has gone clarifying her age on that day as 64 years. The suit was instituted on 20.05.2004, as such she has brought the suit when she was in her fifty's. A minor cannot seek exemption from limitation period for such a

long stretch. Then, it is the admission of appellant herself in her plaint itself that in June, 2003 she came to know about the existing affairs of revenue record. Once appellant came to know about the entries of revenue record running against her for last decades, she has to bring her suit immediately and was supposed to clarify each days delay thereafter. But what to expect any convincing reason, appellant has not even prayed for condonation of delay. On one side she is admitting the knowledge of in June, 2003 and then she is not bringing the suit for next one year duration. She is challenging mutation No. 1456 dated 25.05.1953 and mutation no. 1210 dated 06.06.1945, but she is sleeping over her rights for last many decades. The Limitation Act is certainly running against the appellant in the given circumstances.”

During the course of hearing, learned counsel for the appellant could not point out any patent illegality or perversity in the impugned judgments and decrees passed by the learned courts below. He was also unable to refer to any question of law much less substantial question of law, which is *sine qua non* for entertaining any regular second appeal, at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the judgments of the Hon'ble Supreme Court in **Naryanan Rajendran and another Versus Lekshmy Sarojini and others, 2009 (2) RCR (Civil) 286** and **Santosh Hazari Versus Purshottam Tiwari, 2001 (3) SCC 179**.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference

has been made out.

Resultantly, with the above-said observations made, the present regular second appeal stands dismissed, however, with no order as to costs.

July 17, 2017
seema

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No

**CM-12526-C-2015 in
RSA-5252-2015**

**Basanti alias Dharmo Devi
Versus
Nahar Singh and others**

Present: Mr.Kabir Sarin, Advocate,
for the applicant-appellant.

Applicant seeks condonation of delay of 26 days in re-filing the
appeal.

After hearing the learned counsel for the applicant-appellant,
instant application is allowed, for the reasons stated therein. Delay of 26
days in re-filing the appeal is condoned.

C.M. stands disposed of.

July 17, 2017
seema

**(RAMESHWAR SINGH MALIK)
JUDGE**