

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-3876-2014 (O&M)

Date of decision: 10.07.2017

Shingara Singh and others

..... Appellants

Versus

Nirpal Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Ms. Satpreet Grewal Kapila, Advocate for the appellants.

RAMENDRA JAIN, J. (ORAL)

CM Nos. 8975 and 76-C-2014

For the reasons stated in both the applications, the same are allowed and delay of 78 days in filing and 82 days in re-filing the appeal is condoned.

CM-8977-C-2014

This is an application under Order XXII Rule 4 CPC read with Section 151 CPC for bringing on record the legal representatives of deceased-Daljit Singh-defendant No. 2, who died during the pendency of appeal before the First Appellate Court on 03.03.2012, leaving behind his legal representatives mentioned in para 3 of the application. The application is duly supported by an affidavit.

The legal representatives of deceased-Daljit Singh as mentioned in para No. 3 of the application are ordered to be brought on record, subject to all just exceptions. It is, however, clarified that this order

shall not confer any title upon the legal representatives to the estate of deceased-Daljit Singh and this order has been passed only to allow the aforesaid legal representatives to pursue their rights, if any, in this Regular Second Appeal.

The amended memo of parties filed along with the application is taken on record. The same be tagged at an appropriate place.

CM stands disposed of.

RSA-3876-2014 (O&M)

1. This Regular Second Appeal has been filed by the defendant-appellants, against the judgment and decree dated 27.07.2013, passed by the First Appellate Court, SAS Nagar, Mohali, reversing the judgment and decree dated 03.10.2011, rendered by the trial Court.

2. Briefly stated, in the year 2005, the respondents claiming themselves to be the legal heirs of Smt. Gurdial Kaur widow of Mohinder Singh, instituted a suit for declaration against the appellants to declare them as owner in joint possession of 1/3rd share left by Mohinder Singh son of Thakur Singh, qua the land situated in village Majat, Tehsil Kharar, District Ropar, as per jamabandi for the year 2003-04. The respondents claimed that Smt. Gurdial Kaur, was married to Mohinder Singh in the year 1947. However, he was missing for the last many years, therefore, vide Fard Badar No. 3 dated 09.05.1967, he was declared dead (civilly) in the revenue record pertaining to the revenue estate of village Lakhnaur. Consequently, the property of Mohinder Singh, falling in village Lakhnaur was transferred in the name of his widow-Gurdial Kaur vide mutation No. 1167 sanctioned on 12.12.1968. Mohinder Singh, had also some property in village Majat, but mutation of the same could not be sanctioned in favour of Smt. Gurdial

Kaur, because of pendency of some litigation between the parties before Civil Judge (Junior Division), Kharar. The respondents, being the legal heirs of Smt. Gurdial Kaur, were also entitled to the succession of the property of Mohinder Singh, falling in village Majat. The suit after hotly contested was dismissed by the trial Court vide judgment and decree dated 03.10.2011. Being aggrieved, the respondents preferred an appeal before the First Appellate Court, who accepted the appeal by reversing the judgment and decree of the trial Court. Being dissatisfied, the appellants have filed the instant appeal.

3. Learned counsel for the appellants contends that there was no evidence on the record regarding the death of Mohinder Singh, therefore, learned First Appellate Court has wrongly treated him dead. The First Appellate Court ought not to have relied upon Fard Badar No. 3 dated 09.05.1967 and mutation No. 1167 sanctioned on 12.12.1968, in favour of Smt. Gurdial Kaur as these documents did not confer any title in her favour. The respondents have also not been able to prove inter se relationship in between Gurdial Kaur and Mohinder Singh, as that of wife and husband and, therefore, the learned First Appellate Court had wrongly decreed the suit filed by the respondents.

4. I have given my anxious consideration to the submissions made by learned counsel for the appellants.

5. Admittedly, Mohinder Singh was having immovable properties in two villages i.e. in village Lakhnaur and village Majat. It has also not been disputed that Mohinder Singh had two brothers, namely; Pritam Singh and Darshan Singh and Fard Badar No. 3 dated 09.05.1967, was entered in the revenue record pertaining to the revenue estate of village Lakhnaur,

declaring Mohinder Singh, dead (civilly) and consequently, his property falling in the said village was mutated vide mutation No. 1167 dated 12.12.1968, in favour of Smt. Gurdial Kaur, treating her as his widow. Though, the aforesaid Fard Badar and mutation, as argued by learned counsel for the appellants, did not confer any title upon Smt. Gurdial Kaur, but I would like to add here that non-challenge to the same at any point of time till date, amounts to acquiescence of the appellants to the fact that Smt. Gurdial Kaur was the widow of Mohinder Singh and he was rightly declared civilly dead by the aforesaid Fard Badar, for not being heard since last many years. According to the respondents, after the death of Mohinder Singh, Smt. Gurdial Kaur, entered into Karewa marriage with the real brother of Mohinder Singh, namely; Pritam Singh and they were the outcome of the said marriage of Gurdial Kaur and Pritam Singh. Though the appellants took a categorical stand in the written statement that Mohinder Singh, had not expired nor was ever declared as civilly dead legally, but they have not been able to prove this fact. Hence, unchallenged Fard Badar No. 3 dated 09.05.1967, cannot be declared as nonest. It is pertinent to mention here that earlier to filing of the instant suit by the respondents, some litigation was already going on in between the parties. The First Appellate Court, referring to two judgments and decrees dated 27.05.1985 (Ex. PA and PB) coupled with judgment and decree dated 14.02.2003, held that the above judgments speak about the fact that Mohinder Singh had been missing since long. According to Section 108 of the Indian Evidence Act, the question as to whether a man is alive or dead or is not being heard for seven years by those who would naturally have heard of him, if he had been alive, the burden to prove that he is alive, is

shifted to the person, who affirms that he is alive. Since, the appellants did not lead any such evidence regarding existence of Mohinder Singh, therefore, I am not inclined to differ with the findings of the learned First Appellate Court, qua this fact. In case of **Gurmail Singh Vs. Prem Kaur, 1970 PLJ, 173**, the word “entry” in Section 44 of the Punjab Land Revenue Act, includes relationship of parties as stated in record-of-rights. Person shown in record of rights as having a particular relationship with other person interested in the estate must be presumed to possess the relationship unless contrary is proved. More so, it is well settled that mutation entries carries presumption of truth and are admissible per se, unless rebutted.

6. It is worth mentioning that at the time of sanctioning of the aforesaid mutation in favour of Smt. Gurdial Kaur, on 12.12.1968, Pritam Singh brother of Mohinder Singh, had introduced Gurdial Kaur, as widow of Mohinder Singh before the revenue officials and he was identified by Lamberdar Bachan Singh. Mohinder Singh, having died, the property left behind by him, had to be inherited by his widow Smt. Gurdial Kaur being class-I legal heir. Since, she has also died leaving behind respondents-plaintiff as her class-I legal heirs, therefore, they are also entitled to inherit her property to the extent of her share.

7. In view of the discussion made above, the instant appeal being completely devoid of any merit, is dismissed.

July 10, 2017
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**