

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RSA No.5744 of 2014 (O&M)

Date of decision: 13.12.2017

Dariya Singh and another

..... Appellants

Versus

Hawa Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. A.S. Ghangas, Advocate
for the appellants.

Mr. J.S. Saneta, Advocate
for the caveator-respondents.

ANIL KSHETARPAL, J. (ORAL)

Defendants-appellants are in regular second appeal against the judgments passed by the Courts below.

In the considered opinion of this Court, the following substantial questions of law arises in the present case:-

“Whether the judgments passed by the Courts below are result of non-reading of material evidence available on the file.”

Normally, the High Court does not interfere in the concurrent finding of fact, however, once it is apparent from the record that the Courts below has failed to consider the material evidence available on the file, it becomes the duty of the High Court to interfere in the second appeal.

FACTS

Dispute in the present case is with respect to property of one Sohan Singh son of Tika. The plaintiffs claimed that defendant No.1-

appellant Dariya Singh is not the son of Sohan Singh whereas it is the case of defendant No.1 that he is son of Sohan Singh.

Plaintiffs plead that Sohan Singh died on 05.03.2000 leaving behind Bhagwani Devi (widow), Ramdhan, Hawa Singh, Inder Singh (sons) and Kamla Devi and Bhago Devi (daughters). It is further the case of the plaintiffs that inadvertently while sanctioning mutation of inheritance, name of defendant No.1-Dariya Singh was mentioned as a son of Sohan Singh. Thus 1/7th share of the immovable property owned by Sohan Singh was inherited by defendant No.1-appellant Dariya Singh. It was further claimed that defendant No.1-appellant is son of Giani son of Risala. It is further the case of the plaintiffs that Bhagwani Devi, Kamla Devi and Bhago Devi respectively relinquished their share in favour of the plaintiffs (Hawa Singh, Inder Singh, Ramdhan) and defendant No.1-Dariya Singh jointly. It is submitted that the aforesaid mistake has occurred due to wrong mutation in favour of defendant No.1.

On the other hand, it is the case of the defendant No.1-appellant that he is not son of Giani rather he is son of Sohan Singh. The defendant No.1-appellant has submitted that his date of birth is 13.05.1937 and therefore, the mutation of inheritance and relinquishment deed executed by Bhagwani Devi, Kamla Devi and Bhago Devi are correct.

Plaintiffs in order to prove that defendant No.1-appellant is son of Giani produced on record certificate issued by Department of Birth and Deaths dated 02.04.2013 wherein date of birth of Dariya Singh i.e. defendant No.1-appellant has been shown as 15.09.1933. Plaintiffs have also relied upon the death certificate of late Smt. Maro where she has been shown as wife of Giani.

On the other hand, defendant has produced on file copy of the service record of defendant-appellant wherein he has been shown to be son of Sohan Singh. Date of birth of Dariya Singh-appellant has been shown as 13.05.1937. Joining report of the appellant is Ex. D-3 dated 12.01.1988 whereas bio-data duly signed by the District Public Relation Officer under whom the defendant-appellant was posted is Ex.D-4. There is another bio-data of the appellant which is Ex.D-5. Ex.D-6 is date of birth certificate issued by the Sarpanch of the Gram Panchayat which has certified that as per the register of the Chowkidar, defendant No.1-appellant was born to Sohan Singh on 13.05.1937. The defendant has further produced on file date of birth certificate issued by the Department of Birth and Deaths wherein the defendant-appellant has been shown to have been born on 13.05.1937 which is in consonance with the certificate issued by the Sarpanch of the Gram Panchayat and the service record. In this certificate, the defendant has been shown as son of Sohan Singh. However, grand-father's name has been wrongly shown.

At this stage, it would be relevant to note that on the death of Sohan Singh, mutation was sanctioned by the revenue officials in favour of the plaintiffs, defendant No.1, widow and two daughters. The mutation was sanctioned in the year 2005.

It is further not in dispute that Smt. Bhagwani Devi, Kamla Devi and Bhago Devi executed a relinquishment deed in favour of the plaintiffs and defendant No.1. It is clearly stated by Smt. Bhagwani Devi, Kamla Devi and Bhago Devi that Dariya Singh is son of Bhagwani Devi and Sohan Singh whereas Kamla Devi and Bhago Devi has stated that Dariya Singh-appellant is their real brother.

Hawa Singh, one of the plaintiff admitted that Dariya Singh was

employed in a Government Department. He admitted that everything was being done by their elder brother Dariya Singh and they used to follow Dariya Singh.

Plaintiffs have also produced on file a pedigree table prepared by the revenue authorities which is form No.36 known as Shazra Nasab. Giani son of Risala is shown to have only two sons i.e. Rattan Singh and Chatter Singh. Risala and Tika are brothers being sons of Gudan. Dariya Singh has not been shown to be son of Giani. It is the case of the defendant that name of wife of Giani was Smt. Maro. Since Giani died, therefore, his widow Maro performed marriage (Karewa which is a marriage based upon customs) with Sohan Singh who was cousin brother. From the cohibition of Sohan Singh and Smt. Maro, Dariya Singh was born whereas remaining three sons and two daughters were born from the marriage of Sohan Singh with Bhagwani Devi.

Both the Courts below have totally overlooked Ex. P-9, pedigree table prepared by the revenue authorities and the record of employment of the appellant is Ex.D/3, D/4, D/5 and D/7. The Courts have further overlooked the certificate issued by the Sarpanch of the Gram Panchayat based upon extract from the register of the Chowkidar which has been handed over to the police authorities Ex.D/6 proving that Dariya Singh-appellant is born on 13.05.1937 to Sohan Singh.

The Courts have further overlooked the relinquishment deed, execution whereof is not being disputed, executed by Bhagwani Devi, Kamla Devi and Bhago Devi clearly recording that Dariya Singh is son of Sohan Singh. Mother and sisters would not commit such a mistake as is sought to be projected by the plaintiffs. It is not in dispute that Kamla Devi and Bhago

Devi are alive and both the sisters have never challenged the correctness of

the relinquishment deed.

Still further, Hawa Singh one of the plaintiff has appeared in the witness-box. He has admitted that Dariya Singh is his elder brother. The Courts below have ignored date of birth certificate Ex.D/9 on the ground that Dariya Singh no doubt shown as son of Sohan Singh but however, name of grand-father has been wrongly shown Risala in place of Tika. However, this would not invalidate the date of birth certificate. Risala was uncle of Sohan Singh and not the father, therefore, it appears that some mistake has occurred. The Courts below have further relied upon the certificate of death of Smt. Maro Ex.P-10 on the file where Maro has been shown as widow of Giani. As noticed earlier, Sohan and Giani were first cousins. Smt. Maro died in the year 1973. She was initially married to Giani.

However, keeping in view the overwhelming evidence available on the file including admission of mother, two sisters, service record of Dariya Singh and admission of the plaintiff, it will not be proper to conclude that Dariya Singh failed to prove that he was son of Sohan Singh. It is further significant to note that Dariya Singh joined Government service in the year 1988 i.e. during the life time of Sohan Singh. At that time, Dariya Singh had given his date of birth as 13.05.1937. He has given name of his father as Sohan Singh @ Sohan Lal. At that time, there was no dispute between the parties.

Still further, in the year 2005 after the death of Sohan Singh, mutation was sanctioned by the revenue authorities. In the mutation of inheritance, Dariya Singh was shown to be eldest son.

Still further as noticed earlier, the mutation of inheritance was sanctioned in the year 2005. Bhagwani widow of Sohan Singh remained alive for a period of nine years. During her life time, no suit was filed. Smt.

Bhagwani Devi, Kamla Devi and Bhago Devi, mother and sisters (widow and daughters of Sohan Singh) executed a relinquishment deed (registered) on 08.06.2006. In this document also, Dariya Singh was shown to be son of Sohan Singh.

Plaintiffs filed present suit in May, 2013. In the written statement, defendant No.1 has disclosed reason for filing the suit. He is issueless and since the plaintiffs were not taking care of him, therefore, he had sold the property vide sale deed dated 24.12.2012. Late Sh. Sohan Singh died on 05.03.2000. Succession of late Sh. Sohan Singh opened in the year 2000 whereas the suit has been filed in May, 2013.

From the evaluation of evidence which has been discussed above, it is clear that the learned Courts below have totally overlooked the material evidence brought on the file. There is overwhelming evidence available on the file to prove that Dariya Singh is son of late Sh. Sohan Singh.

In view of the discussion made above, the question of law is answered in favour of the appellant. Hence, the judgments passed by the Courts below are set aside and the suit filed by the plaintiffs is ordered to be dismissed.

Regular second appeal is allowed.

13.12.2017
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No