

RSA No. 3776 of 2017 (O&M)

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

**RSA No. 3776 of 2017 (O&M)
Date of Decision: 27.7.2017**

Omwati and another

.....Appellants

Vs.

Sudha @ Surdha Kumari

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajesh Lamba, Advocate
for the appellant.

RAMESHWAR SINGH MALIK J. (ORAL)

Defendants are in regular second appeal against the concurrent findings of facts recorded by both the learned courts below, whereby suit filed by the plaintiff-respondent for declaration with consequential relief of permanent injunction and for possession was decreed by the learned trial court vide its impugned judgment and decree dated 13.3.2015, which was affirmed by the learned first appellate court vide its impugned judgment and decree dated 26.4.2017.

Brief facts of the case, as recorded by the learned first appellate court in para 1 to 5 of its impugned judgment, are that plaintiff Sudha @ Surdha Kumari claimed that she was born on 1.7.1996 from the wedlock of Smt.Sushma and Virender, who died on 18.1.2004. But whereabouts of her mother Sushma were not known for the last more than seven years, so she was presumed to be dead. As per plaintiff, she was only the class-1 legal heir of her deceased father-Virender and

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was entitled to succeed to his property, which included agricultural land, a residential plot situated in village Naharpur Kasan, Distt.Gurgaon and another residential plot situated within the municipal limits of Gurgaon, fully described in para no.1 of the plaint. However, mutations of inheritance of suit property of deceased Virender were sanctioned in favour of defendant No.1 Omwati and defendant No.2 Ashu, by treating them as widow and daughter of deceased Virender.

Plaintiff Sudha, thus, challenged the impugned mutations on the ground that plaintiff being the only class-I heir of her father Virender, was entitled to succeed to the entire suit property. Plaintiff denied the fact that defendant No.1 was the widow and defendant No.2 was the daughter of Virender. On the other hand, defendant No.1 and her daughter Ashu claimed that although marriage of Omwati was solemnized with Surender and from said wedlock Ashu was born, but Surender died on 26.4.2000. Thereafter, Virender (also deceased now) married Omwati as per Hindu rites and rituals and in this way defendant No.1 Omwati, became legally wedded wife of Virender. Defendants No.1 and 2, mother and daughter, further claimed that, in fact, plaintiff-Sudha was not the daughter born from wedlock of Virender & Sushma. In fact, Sushma Devi had herself broken her matrimonial ties with Virender and she joined her matrimonial cord with one Ved Singh son of Giani Ram, r/o ward no.39, Indra Colony, Sonapat. In this way, plaintiff-Sudha was born from the relationship of Smt.Sushma and Ved Singh. Thus, rights in favour of plaintiff qua suit property never accrued because plaintiff was not the daughter of Virender. Defendants No.1 and 2 rather asserted that defendant No.1 being legally wedded wife of Virender and defendant No.2 being the daughter of Virender, who had taken defendant No.2 as his daughter by adoption, were the legal heirs to succeed to the suit property. Defendants No.1 and 2 in this way claimed that impugned mutations were legally sanctioned in their

favour and they are absolute owners in possession of suit property.

On completion of pleadings of the parties, learned trial court framed the following issues:-

1. Whether plaintiff is exclusive owner in possession of the suit property ?OPP
2. Whether mutation no. 1168 and 35607 are liable to be set aside as alleged ?OPP.
3. Whether the suit of the plaintiff is not maintainable in the present form ?OPD
4. Whether the suit of the plaintiff is bad for non-joinder of necessary parties ?OPD
5. Whether the plaintiff is estopped from filing the present suit ?OPD.
6. Whether the suit of the plaintiff is barred by limitation ? OPD.
7. Relief.

With a view to substantiate their respective stands taken in their pleadings, both the parties brought on record voluminous documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, the learned trial court came to the conclusion that plaintiff has duly proved her case, by leading cogent and convincing evidence. Accordingly, her suit for declaration with consequential relief of permanent injunction and for possession was decreed by the learned trial court vide its impugned judgment and decree dated 13.3.2015. Feeling aggrieved, defendants No.1 and 2 filed their first appeal, which was dismissed by the learned first appellate court vide its impugned judgment and decree dated 26.4.2017. Hence this regular second appeal at the hands of defendant No.1 and 2.

Heard learned counsel for the appellants.

It was duly proved on behalf of the plaintiff/respondent-Sudha that she was daughter of late Sh. Virender son of Kundan Lal out of his marriage with Smt.

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Sushma-defendant No.3 whose whereabouts were not known for more than seven years and she was presumed to be no more. It has also come on record that defendant-appellant No.1 was widow of late Sh. Surender son of Sh. Phool Singh whereas defendant/appellant No.2-Ashu was daughter of late Sh. Surender. Further, pleaded and proved case on behalf of the plaintiff-respondent was that after the death of Sh. Surender Singh-husband of appellant No.1, defendant-appellant No.1 started living in undesirable relationship with Sh. Virender-father of the plaintiff.

Later on, Sh. Virender also died. Sh. Surender-husband of appellant No.1 died on 26.4.2000 whereas late Sh. Virender-father of the plaintiff died on 18.1.2004. Marriage between late Sh.Virender and Sushma-defendant No.3 was never dissolved. Without dissolution of marriage between late Sh. Virender and his wife Smt. Sushma, undesirable relationship between appellant No.1 and Virender Singh would not confer any kind of title either on appellant No.1 or appellant No.2. It is so said because such kind of relationship was neither recognised in law, nor in the society. Having said that, this Court feels no hesitation to conclude that the learned courts below were well within their jurisdiction to decree the suit of the plaintiff and the impugned judgments and decrees deserve to be upheld.

The entire case set up by the appellants was that appellant No.1 was legally wedded wife of late Sh. Virender, which she has miserably failed to prove. Once marriage between appellant No.1 and late Sh. Virender could not be proved, there was no scope left for the appellants to claim that defendant-appellant namely Ashu was born out of wedlock of appellant No.1-Omwati and late Sh. Virender. In fact, appellant No.2 was born out of wedlock between Omwati-appellant No.1 and her husband-late Sh. Surender Singh. Appellant No.2 was born on 22.4.1999 whereas her father namely late Sh. Surender died on 26.4.2000. Plaintiff-Sudha

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was born on 17.1.1996 out of wedlock between her mother Smt. Sushma Devi and father-late Sh. Virender, who died on 18.1.2004. Since defendants proceeded on malafide intentions, colluding with revenue authorities, and got the property left behind by late Sh. Virender-father of the plaintiff mutated in their name on the basis of misrepresentation, plaintiff was left with no other option, except to file the suit for declaration with consequential relief of permanent injunction and for possession, for setting aside the mutation in favour of defendants No.1 and 2. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned courts below committed no error of law, while passing their respective impugned judgments and decrees, thus, same deserve to be upheld, for this reason also.

Before arriving at a judicious conclusion, the learned Additional District Judge rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Relevant and cogent findings recorded by the learned first appellate court in para 25 to 28 of its impugned judgment, which deserve to be noticed here, read as under:-

“Finally, a question arises whether any custom, as alleged by defendants no.1 & 2 has been proved, which recognized alleged second marriage between Virender and defendant no.1 Omwati without dissolution of first marriage of Virender with Sushma? The answer is no because when this fact has been proved that marriage between Sushma and Virender was not dissolved in accordance with law, so obviously alleged marriage between Virender and Omwati was void as per Section -5 of Hindu Marriage Act, so question of recognizing second marriage between Virender and Omwati did not arise. Otherwise even if there was any such

custom, it was opposed to public policy and could not be helpful to recognize marriage between Virender and Omwati in the eyes of law.

However, it is pertinent to refer these facts also that Balwant Singh (PW1) maternal grand father of plaintiff, in his cross-examination revealed these facts that plaintiff is living in his house and a compromise had taken place between plaintiff and defendants no.1 & 2 relating to properties of Virender. PW1 admitted that as per said compromise sum of Rs.10,00,000/- was agreed to be given by defendants to plaintiff. PW1 also admitted a fact that Virender in his reply Ex.D5 filed in a maintenance petition u/s 125 Cr.P.C. in the year 1999, denied the fact that Sudha was his daughter.

But PW1 in the same breath asserted that plaintiff was the daughter of Virender and Sushma. From said testimony of PW1 though these facts are reflected that although, parties earlier entered into a compromise regarding division of suit property left behind by Virender but for the purposes of determination of rights of the parties, of course law of the land shall prevail. Though the fact of compromise, admitted by PW1, smells that there was relationship between Virender and Omwati but such relationship cannot be recognized as legal in the eyes of law. Omwati had herself failed in her claim by her own act and conduct firstly by establishing relationship with Virender, who was already having a wife and secondly by even not paying money to the plaintiff as per compromise, which is also evident from the

fact that three cheques dated 16.6.2008 Ex.D1, Ex.D9 for Rs.3,50,000/- Rs.3,00,000/- and Rs.3,50,000/- respectively issued in the name of Sudha but said cheques were dishonoured. As such in such a situation, defendant no.1 is herself responsible for being deprived from the suit property by not paying agreed amount to the plaintiff, class-1 legal heir of Virender. Further this fact cannot be left unnoticed that defendant no.1 Omwati herself made clear cut admissions that her defendant no.2 daughter Ashu was born from her wedlock with Surender. Things did not end here since defendants no.1 & 2 in their joint written statement also claimed themselves as widow and daughter of Surender. Moreover, defendants no.1 & 2 had not produced even a single piece of documentary evidence, in which they had ever declared that they were the widow and daughter respectively of Virender.

Hence, plaintiff Sudha @ Surdha Kumari being the daughter and defendant no.3 Smt.Sushma being the widow of deceased Virender are entitled to succeed in equal shares to the suit property being class-1 legal heirs as per Hindu Succession Act. Therefore, impugned mutations have rightly been declared illegal by trial court. Resultantly plaintiff and defendant no.3 are entitled to be recorded as owners in equal shares in the suit property. Hence, findings of ld. Trial Court on all the issues are affirmed.”

During the course of hearing, learned counsel for the appellants failed to point out any patent illegality or perversity in either of the impugned judgments passed by the learned courts below. He also could not refer to any question of law

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much less substantial question of law, which is sine qua non for entertaining a 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 law laid down by the Hon'ble Supreme Court in **Naryanan Rajendran and another Vs. Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286** and **Santosh Hazari Vs. 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 misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

27.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No