

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

**RSA No.4768 of 2017 (O&M)
Date of Decision: 30.10.2017**

Jagni Devi through LRs

...Appellants

Vs.

Bimla Devi and others

...Respondents

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

Present: Mr.S.S.Kamboj, Advocate for the appellants.

RAJIV NARAIN RAINA, J.

1. The case of the plaintiff/appellant rested on a marked document to which the learned Additional District Judge, Kaithal refused to extend the benefit of presumption under Section 90 of the Indian Evidence Act, 1872 since its original was not produced in the trial. What was the importance of this document and whether it was admissible, is the question in appeal. A few facts may be noticed to conclude on its evidentiary value.

2. Late Jagni Devi claimed to be the widow of Phuman, father of late Rameshwar. The defendant-respondent Bimla Devi was the wife of Rameshwar. Resultantly, Smt. Jagni claimed to be the mother of Rameshwar who pre-deceased her. Phuman was the original owner in possession of the suit property. After his death, Mutation No.270 (Ex.D1) was sanctioned. This mutation entry is the only documentary claim to fame so far as the right to the property in dispute is concerned between Smt. Jagni Devi and Phuman. The

plaintiff has relied heavily upon this document, but it was only marked and not exhibited by adopting proper mode of proof.

3. In RSA No.6221 of 2016 between 'Dalip Singh and Bimla Devi and others', late Jagni Devi was held by the learned Additional District Judge, Kaithal not to be the mother of Rameshwar. She had no claim to share in the property held by late Rameshwar son of Phuman. The aforesaid RSA and connected RSA No.6222 of 2016 also titled as 'Dalip Singh vs. Bimla Devi and others' were dismissed by me on 13th September, 2017.

4. It would be appropriate to notice that the entire partition proceedings have come to an end and the *Sanad Taqseem* has been issued and entries have been made accordingly in the revenue papers dividing the property by the appropriate mode of partition.

5. Plaintiff Jagni Devi in the present suit challenged mutation no. 434 sanctioned in 1994 on the demise of Rameshwar being son of late Phuman. His property devolved on his widow, two daughters and Smt. Jagni Devi. Meaning thereby, the mutation was also sanctioned in favour of Jagni Devi and thus she claimed ownership to the extent of 1/4th share of land owned by Rameshwar. She sold her share as described in paragraph 1 (a) of the plaint which sale is under challenge in a civil suit.

6. Smt. Jagni Devi filed a suit earlier as admitted by her in paragraph 16 of her plaint. She filed that suit but she did not challenge the mutation of 1994 or claimed any rights under it. She filed the present suit in 2009. The learned Additional District Judge, Karnal held that the suit is barred by limitation. The plaintiff admitted that

she filed the suit, but she did not mention of its fate or that she withdrew it. But the suit was admittedly prior to the institution of the present one.

7. The cause of action in the present suit is pleaded to be 4th August, 2009. But nothing further has been explained about it. It is settled law that permission to file a suit on the same cause of action when filed does not extend limitation. Strangely, there is another mutation (Ex.D-2) where Smt. Jagni Devi has been shown as wife of Puran son of Fatta. Here the mystery deepens. It was then argued on her behalf that Puran was her first husband and after his death, she contracted second marriage with Phuman. But there is no such pleading in the suit. The date of death of Puran has not been shown. It was not disclosed as to how many legal heirs were there and how did she inherit the disputed property. In these circumstances, the learned Additional District Judge has found it very difficult to believe the claim of Smt. Jagni Devi that she is widow of Phuman, a fact which was stoutly disputed by Bimla Devi, widow of Rameshwar. Finding in this regard has been returned by the courts below after appreciating the evidence on record and I have no reason to upset them. To understand the case more clearly, the findings of the learned Additional Civil Judge (Sr. Division), Guhla recorded in her detailed judgment dated 28th February, 2014 may be profitable to read which are reproduced as under:-

“28. By way of the present suit the plaintiff has challenged Parat Patwar Mutation No.434 as well as 668. As per the case of the plaintiff the Parat Sarkar mutation no.434 is the correct document and Parat

Patwar of the same had been forged by defendants no.1 to 3. As per the case of the plaintiff, Rameshwar son of Phuman was son of plaintiff and plaintiff has inherited his property alongwith defendants no.1 to 3 in equal shares. Plaintiff while appearing in the witness box in her cross-examination had admitted that she was wife of Puran who was son of Fatta and Puran was the only son of Fatta. Perusal of documentary evidence mutation bearing no.316 Ex.D1, 396 Ex.D2, sale deed bearing no.137 dated 7.5.1984, sale deed bearing no.625 dated 31.5.1999, mutation no.540 dated 29.7.1999, jamabandi for the year 1989-90 Ex.P11, Jamabandi for the year 1994-95 Ex.P2, Jamabandi for the year 1999-2000 Ex.P1, all documents reveals Jagni as widow of Puran son of Fatta. It has no where been pleaded by the plaintiff that Jagni was widow of Puran and then married to Phuman who was father of Rameshwar.

29. There is no dispute that the said Phuman had three sons namely Ram Karan, Rameshwar and Tara Chand. The plaintiff claims to be wife of Phuman and mother of Ram Karan, Rameshwar and Tara Chand. However, in her own cross-examination while appearing in the witness box she had stated that Tara Chand had already expired 10 to 15 years back and at the time of his death he was 80-85 years old. The registered Will of said Tara Chand produced by defendant as Ex.D12 executed on 12.5.2008 also reveals age of Tara Chand as around 85 years. While appearing as PW1 in the year 2013, the plaintiff had stated her age to be 83 years. Meaning thereby it is not possible that the said Tara Chand would be her son. Tara Chand was brother of Rameshwar and therefore, the plaintiff has failed to prove that she was mother of Rameshwar. In order to prove the

relationship of Jagni and Rameshwar plaintiff has not produced any other witness in support of her case.

30. It has been pleaded by the plaintiff that on the Parat Patwar of mutation no. 434, the name of Jagni had been deleted later on by defendants no.1 to 3 in collusion with revenue officials. It is matter of record that separate criminal proceedings are pending as regards as to how the cutting on Parat Patwar was made. The defendants no.1 to 3 have assailed the validity of Parat Patwar of mutation no. 434 itself on the ground that plaintiff was not the mother of deceased Rameshwar son of Phuman. As observed earlier the plaintiff has failed to her relationship of mother of deceased Rameshwar. On the Parat Patwar of mutation no. 434, one Bhag Singh numberdar has been shown to have certified the inheritance in favour of plaintiff and defendants no.1 to 3 being legal heirs. However, said Bhag Singh numberdar has not been got examined in order to prove that mutation bearing no. 434 was rightly entered in the name of plaintiff being legal heirs. It has also come in the evidence of the plaintiff that no other documentary evidence or proof as regards relationship was checked at the time of sanctioning of mutation in favour of the plaintiff after death of Rameshwar.

31. The only other documents relied upon by the plaintiff is mutation no.270 Ex.P15 of the oral Will of Phuman in favour of his three sons Tara Chand, Ram Karan and Rameshwar. The Shijra Nasab of the said mutation gives the name of the plaintiff as wife of Phuman. However, there is no supporting documentary or oral evidence apart from the mutation no. 270 and that too was in favour of Tara Chand, Rameshwar and Ram Karan from their father Phuman and not the present plaintiff.”

8. For lack of evidence and reliable materials on record justifying a decree in favour of the plaintiff, it is not possible for this Court to interfere with the pure findings of fact recorded by the courts below taken after appreciating the pleadings and evidence adduced by the parties on the probative evidence. The judgments and decrees of the courts below, to my mind as well, do not suffer from any fundamental illegality, irregularity or perversity of reasoning. Nor can the same when reduced in writing be said to be tainted with any error of law or fact calling for interference by this Court against an appellate decree. Mere entry of name of late Smt. Jagni Devi in the mutation was not conclusive proof of right, title and interest in the suit property. Besides, such entries are only for fiscal purposes for payment of land revenue and not proof of ownership of property which issue has to be determined on a different set of principles.

9. For the foregoing reasons, this appeal is held to be without any merit or substance and is hereby dismissed.

(RAJIV NARAIN RAINA)
JUDGE

30.10.2017
MFK

Whether speaking/reasoned

Yes

Whether reportable

No