

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101

RSA No.514 of 1987 (O&M)

Date of decision: 07.03.2018

Jugraj Singh

..... Appellant

Versus

Inder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Paramjit Batta, Advocate
for the appellant.

Mr. M.L. Sarin, Sr. Advocate with
Ms. Alka Sarin, Advocate
for the respondents.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-appellant is in regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment and decree passed by the learned trial Court.

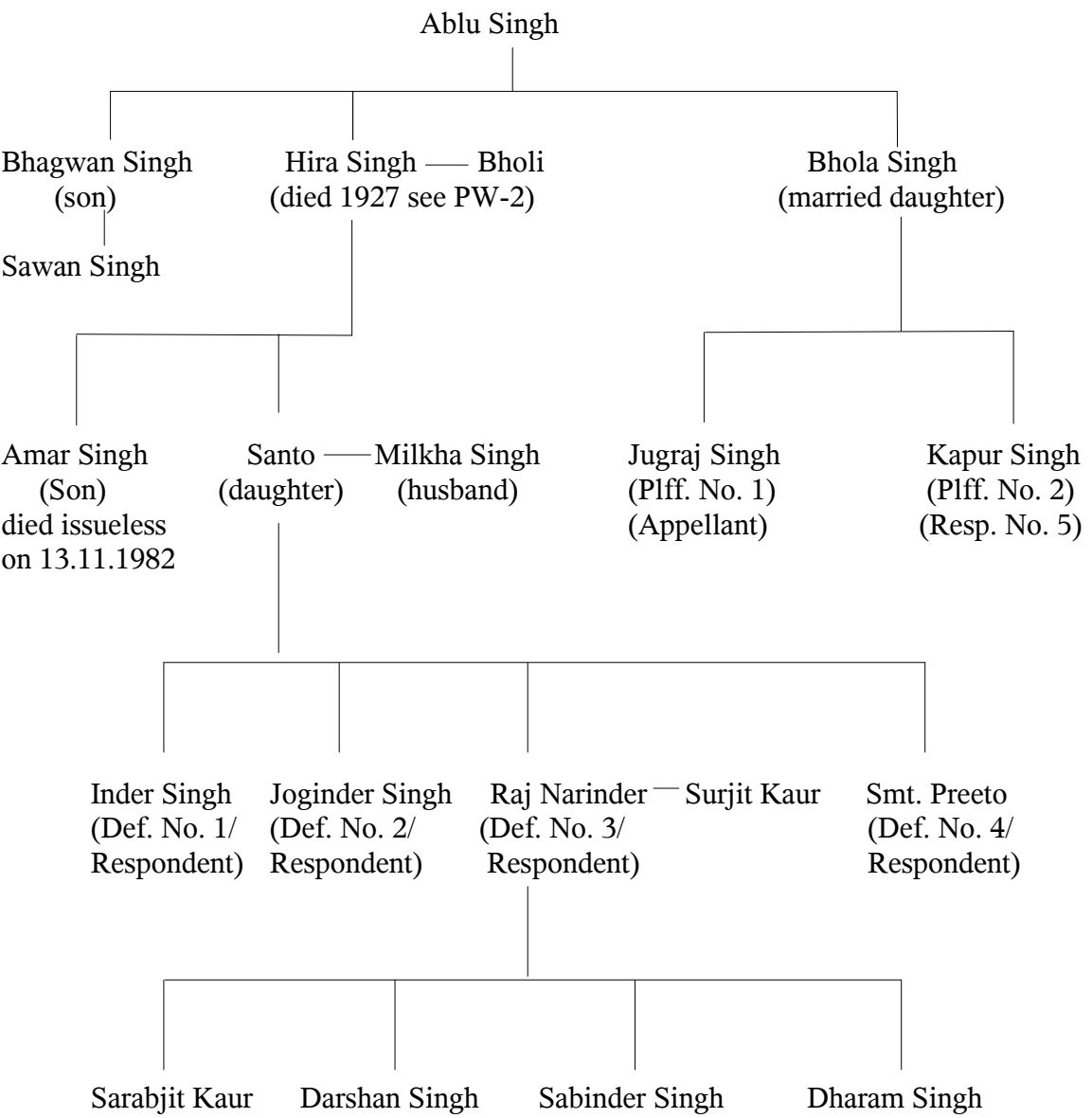
In the considered opinion of this Court, the following substantial questions of law arises for consideration:-

1. Whether an order passed by the Court while granting succession certificate which remains unchallenged, can affect the decision in a regular suit.
2. Whether in the replication, plaintiff is required to plead in detail, countering the assertions made by the defendant in the written statement.
3. Whether the judgment and decree passed by the learned First Appellate Court is result of misreading and mis-

appreciation of evidence available on the file.

FACTS

Plaintiffs-appellants filed a suit claiming that Amar Singh had died issueless and Santo was not his sister as claimed and therefore, the mutation entered is ineffective qua the rights of the plaintiffs. A short pedigree table would facilitate the Court in understanding the relationship between the parties.



The defendants contested the suit and pleaded that they are children of Smt. Santo, alleged sister of Amar Singh and therefore, they are entitled to succeed to the property of Amar Singh.

Learned trial Court after appreciating the evidence available on

the file decreed the suit and returned a finding that Smt. Santo, the mother of the defendants is not proved to be sister of Amar Singh whose estate is in dispute.

The defendants filed first appeal. Before the learned First Appellate Court, an application for additional evidence was filed. The application was allowed and the parties were allowed to lead evidence vide order dated 25.09.1986. Learned First Appellate Court on appreciation of evidence reversed the finding of the learned trial Court. Learned First Appellate Court has given the following reasons to set aside the finding of the learned trial Court:-

1. In a proceedings for grant of succession certificate, the succession certificate has been granted to the defendants. Although, such adjudication is of summary nature and does not bind the proceedings of a regular suit, however, since the validity of the succession certificate has not been challenged, therefore, the aforesaid finding has become final and the suit for declaration to challenge the succession certificate has become time barred. Therefore, the Court can rely upon the aforesaid judgment.
2. In additional evidence, the defendants produced Ex. DB, DC and DD, copies of original ration cards in Ex.DC Amar Singh is shown to be having four numbers, therefore, it is proved that the defendants were residing with Amar Singh.
3. Plaintiffs while filing replication has only denied the assertions made in the written statement in a cursory manner, therefore, vague denial amounts to admission as denial in pleadings has to be specific.

4. Although, as per the pedigree table (Shazra Nasab) prepared by the revenue authorities, name of Santo does not figure, however, the pedigree table was prepared at the time of inheritance of Ablu Singh, the common ancestral of the parties before 1956 and at that time, daughters were not entitled to the share in the property of father, hence, her name was not incorporated.

5. An adverse inference has drawn because Jit Singh, Nambardar was sought to be produced by way of additional evidence, the plaintiff objected to his being examination in evidence and adverse inference is to be drawn.

Now the stage of set for considering the questions of law.

Question No.1

(i) *Whether an order passed by the Court while granting succession certificate which remains unchallenged, can affect the decision in a regular suit.*

It is well settled that the proceedings for grant of succession certificate is governed by the procedure laid down in the Indian Succession Act. It is specifically provided in the Indian Succession Act that the proceedings for grant of succession certificate are summary in nature and would not be final and binding between the parties in a regular suit. Such findings are only for the purpose of deciding small controversy between the parties i.e. grant of succession certificate. Reference in this regard can be made to Section 387 of the Succession Act, 1925 which is re-produced as under:-

“387. Effect of decisions under this Act, and liability of holder of certificate thereunder. - No decision under this Part upon any question of right between any parties shall be held to bar the

trial of the same question in any suit or in any other proceeding between the same parties, and nothing in this Part shall be construed to affect the liability of any person who may receive the whole or any part of any debts or security, or any interest or dividend on any security, to account therefor to the person lawfully entitled thereto.”

A reading of the aforesaid, it is clear that decision of the Court under part X of the Succession Act, 1925, under which succession certificate is granted, shall not bar the trial of same question in a regular suit or any other proceedings. Hence, question No.1 is answered in favour of the appellant.

Question No.2

(ii) *Whether in the replication, plaintiff is required to plead in detail, countering the assertions made by the defendant in the written statement.*

In the considered opinion of this Court, filing of replication is not necessary. Major pleadings of the parties are contained in the plaint and the written statement. Filing of the replication is optional. While filing the replication, the plaintiff is not required to plead in detail, countering the assertions made by the defendants in the written statement. It is not in dispute in the present case that in the replication, the assertions made in the written statement were asserted to be wrong and denied. In replication, pleadings were not required to be elaborate. Hence, question No.2 is also answered in favour of the appellant.

Question No.3

(iii) *Whether the judgment and decree passed by the learned First Appellate Court is result of misreading and mis-appreciation of evidence available on the file.*

Learned First Appellate Court has tried to pick holes in the

evidence of the plaintiffs. It was the case of the defendants that their mother Santo was sister of Amar Singh. The defendants were to prove that fact. It is the case of husband of Santo i.e. Milkha Singh that Smt. Santo died in the year 1947. The defendants have examined the following witnesses:-

1. DW-1 Inder Singh-defendant.
2. DW-2 Milkha Singh, the alleged husband of Smt. Santo.
3. Smt. Sant Kaur who claimed that she belongs to the village Kotha Guru where Amar Singh used to live.
4. DW-4 Surjit Singh.

Before the learned First Appellate Court, the defendants examined Basakha Singh as DW-5, Darshan Singh as DW-6 and Joginder Singh as DW-7. The evidence of Milkha Singh has been discussed by the learned trial Court which is extracted as under:-

“Milkha Singh DW2, the father of the defendants and the husband of Santo alleged to be the sister of Amar Singh deceased has stated in his examination-in-chief, that he cannot tell as to whether Hira Singh was having any brother or not. Hira Singh is stated to have been, the father of Amar Singh deceased, the estate of whom is in dispute. Curiously enough, that Milkha Singh utterly failed to tell as to whether his alleged father-in-law Hira Singh was having any brother or not. In my opinion, this circumstance is sufficient to look upon the version of the defendants with reasonable suspicion. Had he (Milkha Singh) been the son-in-law of Hira Singh, then he might had been in a position to tell, as to whether Hira Singh was having any brother or not. By and large, every person knows the number of brothers of his father-in-law. But it is very peculiar circumstance that Milkha Singh stated that he does not know, as to whether Hira Singh did have any brother or not.”

The evidence of Smt. Sant Kaur has been discussed by the

learned trial Court in the following manner:-

“Now, I turn to discuss the statement of Sant Kaur (DW3), she has stated that Amar Singh and Santo were the son and daughter respectively of Hira Singh. She has further stated that Santo was her cousin sister from her brotherhood. The statement of this witness is replete with so much serious contradictions, as the same is insufficient to lead the court any where. In her cross-examination, she deposed that she has been brought by her Bhanja Inder Singh defendant in the court and that he (Inder Singh), is her real Bhanja. But in the next breath, while volunteering, she deposed that Santo was her cousin sister. Thus, it is quite clear that on the one hand, she is claiming Inder Singh defendant to be her real Bhanja, and on the other hand, she is claiming Santo, the mother of Inder Singh to be her cousin sister. Interestingly, as referred above, she (Sant Kaur), DW3 deposed that Santo was her cousin, sister from her brotherhood. Thus, all these inconsistencies, reveal that she (Sant Kaur) was groping in the dark and in fact she was not aware as to what relation if any she had got with Santo. Towards the end of her cross-examination she deposed that her grand-father was alone and her father was also alone. To paraphrase it, her grand-father and father did not have any brother and they were alone. As has been stated above she deposed that Santo was her cousin sister and that Inder Singh defendant is her real Bhanja. If her grand-father and father did not have any brother, then how did she claim that Inder Singh defendant was her real Bhanja and further how did she claim that Santo was her cousin sister. This, in my opinion, this suborned testimony of this witness cannot be acted upon safely and any tinge of veracity cannot be awarded thereto. Therefore, I reject the statement of this witness from evidence.”

Similarly, evidence of Surjit Singh has also been discussed in detail and the learned trial Court found that Surjit Singh could not disclosed any special means of knowledge to depose with regard to relationship between Amar Singh and Santo. Surjit Singh was examined in the year 1985.

He disclosed his age as 55 years. He has submitted that Santo died in the year 1947 when he was only 15-16 years old.

Before the learned First Appellate Court after the application for additional evidence was allowed, the defendants examined Basakha Singh as DW-5. Basakha Singh has stated that Hira Singh, father of Amar Singh had died 20 years back whereas Milkha Singh has stated that Hira Singh died after his marriage with Smt. Santo. The marriage between Milkha Singh and Santo somewhere in the year 1927-28. As per the statement of Milkha Singh, Hira Singh died about 50 years back. Basakha Singh has admitted that he was not living in the village at that time. He remained away from the village for 30 years. He left the village Kotha Guru in the year 1947 and came back 4-5 years back. In other words, this witness also does not have any special means of knowledge. DW-6 is Darshan Singh, who no doubt is a Nambardar aged about 36 years. Smt. Santo died in the year 1947 whereas Darshan Singh was born somewhere in the year 1950. Hence, the evidence also does not help the defendants. DW-7 is Joginder Singh, one of the defendant. This witness has stated that his brother Inder Singh, his wife Charno and their son Pritam Singh were residing with Amar Singh. He produced on file copies of the ration card Ex.DB, DC, DD. In these ration cards, names of Inder Singh, his wife Charno or Pritam Singh have not been mentioned. In one of the ration card, only thing mentioned as total number of family members is four whereas other ration cards proved that Amar Singh was living all alone. Still further, the plaintiffs have produced on file a pedigree table/Naksha Shazab prepared by the revenue authorities at the time when Ablu Singh died much before the dispute between the parties arise. The name of Smt. Santo has not been mentioned. Learned First Appellate Court has ignored this document which has been prepared by the revenue authorities in discharge of their

duties on the ground that at that time, daughters were not given any share in the property and therefore, her name was not mentioned.

In the considered opinion of this Court, such finding of the learned First Appellate Court is based only on assumption. The pedigree table is prepared by the revenue authorities to record the family members and not to enter mutation of inheritance. This pedigree table was prepared much before 1956. Learned First Appellate Court has further committed an error in relying upon the pedigree table produced by the defendants when the mutation was sanctioned in favour of defendants. This mutation itself is in dispute and challenged in the present suit. Hence, this pedigree table prepared by the revenue authorities at the time of sanctioning of the mutation which is under challenge, could not be relied upon. Learned First Appellate Court was further required to analyze the finding of the learned trial Court and after critical appraisal, record a finding that the conclusion drawn by the trial Court was wrong. A reading of the judgment does not establish the aforesaid fact.

In view of the aforesaid, question No.3 is also answered in favour of the appellant.

Hence, the judgment passed by the learned First Appellate Court is set aside and the judgment passed by the learned trial Court is restored.

Regular second appeal is allowed.

07.03.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No