

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

RSA No.400 of 1991 (O&M)

Date of decision : 15.3.2018

Bhulla

...Appellant

Versus

Sher Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Aashish Aggarwal, Sr. Advocate with
Mr. Govind Chauhan, Advocate for the appellant.

Mr. N.S. Dhillon, Advocate for the respondents.

ANIL KSHETARPAL, J.

CM No.14248-C of 2015

For the reasons stated in the application, which is supported by an affidavit, legal representatives of respondent No.1/plaintiff Sher Singh son of Shankar son of Kanhiya and respondent No.2/plaintiff Bakhtawari widow of Shankar, as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

Application is allowed.

CM No.10469-C of 2017

For the reasons stated in the application, which is supported by an affidavit, legal representatives of respondent No.1(a) Om Parkash son of Sher Singh son of Shankar son of Kanhiya as mentioned in the application

are ordered to be brought on record for the purpose of prosecuting the present appeal.

Application is allowed.

CM No.3185-C of 2018

For the reasons stated in the application, which is supported by an affidavit, legal representatives of deceased-appellant namely Bhulla as mentioned in the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

Application is allowed.

Main Case

The defendant-appellant is in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The dispute in the present case is with respect to the estate of Late Sh. Chanda who died unmarried. The plaintiffs and the defendants are children of separate brothers of Late Sh. Chanda.

Both the Courts below have recorded a finding that all the children of the brother of Late Sh. Chanda would succeed to the property equally.

I have heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned counsel for the appellant has vehemently argued that the plaintiffs had filed the suit claiming the entire property of Late Sh. Chanda on the basis of adverse possession. He submitted that both the Courts have correctly found that the plaintiffs have not become owners by

way of adverse possession. However, he submitted that the Courts have travelled beyond the pleadings and evidence led by the parties while recording a finding that all the children of pre-deceased brother of Late Sh. Chanda would be equally entitled to the property.

On the other hand, learned counsel for the respondents has drawn the attention of the Court to issue No.2 framed by the trial Court. He submitted that mutation No.3106 sanctioned on the death of Late Sh. Chanda had been specifically challenged and a issue on the validity of the aforesaid mutation was framed. He has also drawn the attention of the Court to the statement given by the defendant-appellant Bhulla who appeared in the Court as DW1. He has admitted that initially Late Sh. Chanda had become '*Sadhu*' and later on died. It is also stated by him that Chanda was not having any children. He has further drawn the attention of the Court to Ex.P7, copy of the mutation No.3106. He has submitted that the Revenue Authorities committed an error in mutating the land half in favour of the defendant-appellant who is son of Nandu, brother of Late Sh. Chanda, whereas other half share was mutated in favour of plaintiffs.

In the present case, mutation No.3106 is Ex.P7 on the file. The Revenue Authorities sanctioned this mutation as Late Sh. Chanda had died intestate. Hence, the mutation was sanctioned in $\frac{1}{2}$ in favour of defendant-appellant who is son of Nandu brother of Chanda, whereas remaining $\frac{1}{2}$ in favour of children of Kanihya, another brother of Late Sh. Chanda.

As per Section 8 of the Hindu Succession Act, 1956, in absence of Class-I heirs, relatives specified in Class-II are entitled to inherit the property. As per Section 9 of the Hindu Succession Act, 1956, in case of

Class-I heirs, the succession is simultaneous to the exclusion of all other heirs, whereas in respect of heirs mentioned in Class-II, first entry in the Class-II shall be preferred to those in second entry and those in second entry shall be preferred to those in the third entry and so on. Class-II of the Schedule attached to the Hindu Succession Act, 1956 is extracted as under:-

“Class II

I. Father

II. (1) Son’s daughter’s son (2) son’s daughter’s daughter, (3) brother, (4) sister.

III. (1) Daughter’s son’s son, (2) daughter’s son’s daughter, (3) daughter’s daughter’s son, (4) daughter’s daughter’s daughter.

IV. (1) Brother’s son (2) Sister’s son, (3) brother’s daughter (4) Sister’s daughter.

V. Father’s father; Father’s mother.

VI. Father’s widow; brother’s widow.

VII. Father’s brother; father’s sister.

VIII. Mother’s father; mother’s mother.

IX. Mother’s brother, mother’s sister.

Explanation.- In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.”

It is clear that all the parties to the litigation fall in entry No.4 being children of the brothers of the deceased.

Learned counsel for the appellant did not dispute this position, however, he submitted that in the absence of any pleadings, the Courts below have committed an error in going into the aforesaid dispute.

This Court has considered the submissions, however, do not find any substance therein. As noticed earlier, learned trial Court had framed

the issue with respect to the validity of the mutation of succession with respect to the property of Late Sh. Chanda. The parties were alive to the aforesaid challenge laid by the plaintiffs. The defendants did not lead any evidence to prove that entry No.4 in Class-II of the schedule would have no application.

Learned counsel further submitted that the defendants were not given any opportunity to prove that Nandu, father of the defendant died subsequent to Late Sh. Chanda.

This Court has considered the submission. A careful reading of the evidence led by Bhulla-defendant-appellant proves that the defendant-appellant has never asserted that his father Late Sh. Nandu died subsequent to the death of Late Sh. Chanda. As noticed by this Court, the validity of the mutation was subject matter of the issue before the Court. The defendant-appellant did not lead any evidence to prove that the mutation was correct. The defendant did not file any application for additional evidence either before the First Appellate Court or before this Court. In absence thereof, the defendant-appellant cannot be heard in saying that he has not been granted any opportunity.

In the considered opinion of this Court, the defendant-appellant has been granted opportunity because the defendant-appellant was represented by a counsel. The learned trial Court framed a issue with regard to the validity of the mutation of Late Sh. Chanda and parties led their evidence.

In view of the aforesaid discussions, this Court does not find any good ground to interfere with the concurrent findings of fact arrived at

by both the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in terms of the abovesaid judgment.

15.3.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No