

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

**RSA No.1900 of 2008 (O&M)
Date of decision : May 29, 2018**

Munshi and others

..... Appellants

Versus

Puran and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. D.D. Gupta, Advocate for the appellants.

Mr. Harinder Singh, Advocate for respondent No.1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Impugned in the present regular second appeal is the judgment dated 30.04.2008 passed by learned Addl. District Judge, Sonapat, affirming the judgment and decree dated 09.10.2007 passed by learned Addl. Civil Judge (Sr. Divn.), Gohana, vide which the suit of the plaintiff for declaration and permanent injunction was decreed. A declaration was granted to the effect that mutation No.4205, dated 29.03.1986 and subsequent revenue entries on the basis of said mutation are illegal, null and void and not binding on the rights of the plaintiff, Satbir and Sunehari, who are owners of 1/6th share of Rukma and the defendants have no right to interfere in their possession over the said share.

The controversy between the parties is very short and can be summarized as under:

Chandgi was the original owner of the suit land. He contracted two marriages. From his first wife, Biran, defendants were born and from his second marriage with Channo by way of 'Karewa', Tek Chand and Rukma were born. Tek Chand died. Plaintiff, Satbir and Sunehri are his children. Rukma daughter of Dhanno and Chandgi also died on 14.05.1985. Plaintiff, his brother Satbir and sister Sunehari are her legal heirs and succeeded her 1/6th share in the suit land, measuring 138 kanals, 7 marlas, situated in village Mundlana. It is further claimed by the plaintiff that in February, 2004, the defendants proclaimed that they have got the share of Rukma by way of mutation. The plaintiff enquired from Halqa Patwari and came to know about mutation No.4205, which is regarding the property of Rukma, which was sanctioned in favour of the defendants on 29.03.1986.

Defendant Nos.2 and 3 in their joint written statement admitted the relationship between the parties. They pleaded that mutation No.4205 of 29.03.1986 did not create any title as it was inadvertently sanctioned. However, later on, share of Rukma was given back by all the defendants to the plaintiff, his brother and sister by way of consent decree passed in Civil Suit No.494 of 1985, decided on 14.09.1985. Mutation No.4206 was accordingly sanctioned on 29.03.1986.

It was further claimed that earlier the plaintiff had filed a suit titled "***Puran vs Bhima etc.***", which was dismissed on 10.09.2003 and the appeal was dismissed on 19.03.2004.

From the pleadings, following issues were framed:

- “1. Whether the plaintiff and his brother and sister are liable to be declared owner in possession of 1/6th share of Smt. Rukma and mutation No.4202 dated 29.3.1986 and subsequent revenue entries are liable to be declared illegal, null and void? OPP*
- 2. If issue No.1 is proved, whether the plaintiff is entitled to decree for permanent injunction, as prayed for? OPP*
- 3. Whether the suit is time barred? OPD*
- 4. Whether the plaintiff has no cause of action and locus-standi to file the present suit? OPD*
- 5. Whether the plaintiff has not come with clean hands and suppressed the material facts? OPD*
- 6. Relief.”*

The trial Court took the view that the plea of the defendants that the property of Rukma was given back, is not proved. Rukma had died on 14.05.1985. It was observed that the disputed mutation No.4205 was entered on 21.01.1986. The said mutation was sanctioned on 29.03.1986, whereas the suit titled **“Puran vs Smt. Sunehari etc.”** bearing No.494 was instituted later on 18.07.1985 and decided on 14.09.1985. Therefore, it cannot be said that through the said civil suit, mutation was got cancelled and the property of Rukma was returned, as the mutation was sanctioned on 29.03.1986 i.e. much after the decision of the civil suit on 14.09.1985. The said findings were affirmed in appeal.

This Court vide order dated 20.10.2009, allowed the additional evidence for production of certified copies of the plaint in Civil Suit No.494 of 1985, titled as **“Puran vs Smt. Sunehri etc.”**, the copy of Sanad Taqsim, the copy of judgment dated 14.09.1985 and the copy of the decree sheet

dated 14.09.1985. The said documents were, accordingly, brought on record and the report of the trial Court was also received. The short question before this Court is “as to whether the defendants had returned the property of Rukma to the plaintiff, which was wrongly mutated in their favour on the basis of mutation No.4205, which was entered on 21.01.1986 and sanctioned on 29.03.1986?”

I am of the view that there is no illegality or infirmity in the findings recorded by two Courts below. The plea of the defendants is not acceptable as the mutation was sanctioned on 29.03.1986 and Civil Suit No.494 of 1985 titled as “*Puran vs Smt. Sunehari etc.*”, was filed on 18.07.1985 and decided on 14.09.1985 i.e. before the sanctioning of the mutation.

In fact, the mutation was sanctioned much after the filing of the civil suit. Therefore, there is no question of said land being returned and mutation being cancelled by way of consent decree.

Moreover, the copy of the said judgment and decree makes it clear that it has nothing to do with the property of Rukma. The said suit was for declaration and by way of consent decree, the plaintiff and defendant Nos.2 and 3 were declared owners of the property in 1/3rd and 2/3rd share respectively. Therefore, the said decree has nothing do with the property of Rukma, which was entered in the name of defendants on the basis of mutation No.4205. Consequently, I do not find any illegality or infirmity in the findings of facts recorded by two Courts below. No law point has arisen. Accordingly, the present regular second appeal is dismissed.

Since, the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

May 29, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No