

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

**(1) RSA No.2865 of 2008 (O&M)
Date of Order: 06.09.2018**

Amir Chand (since deceased) through LRs ..Appellants

Versus

Rattan Chand ..Respondent

(2) RSA NO.4161 of 2011 (O&M)

Nand Kaur and others ..Appellants

Versus

Pritam Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikram Singh, Advocate &
Mr. Abhinav Sood, Advocate,
for the appellants.

ANIL KSHETARPAL, J(Oral)

This judgment shall disposed of Regular Second Appeal No.2865 of 2008 and Regular Second Appeal No.4161 of 2011. Counsel for the parties are agreed that issue to be decided is common. Hence, both the appeals can be disposed of by a common judgment. The facts are being noticed from Regular Second Appeal No.2865 of 2008.

Plaintiff-appellant through his legal heirs is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Plaintiff claims that brother of his grand father Prem Dass was issueless when he died in the year 1982 and therefore he along with his brother Dayal Singh are owners of the property and since the property is being cultivated through defendant Rattan Chand on “Batai” (lease),

therefore, he is entitled to possession of the property. Plaintiff also challenged a civil court decree suffered by Prem Chand in favour of Rattan Chand dated 29.03.1973 in Civil Suit No.151 of 1973 on the ground that the decree is result of impersonation and no title passes on account of non registration of the civil court decree.

Defendant Rattan Chand contested the suit and pleaded that his mother Smt. Kundo Devi had married with Prem Chand, although, she was earlier also married. Since from the lions of Prem Chand, Kundo Devi could not gave birth to any child therefore, Rattan Chand was being treated as son and Prem Chand executed a Will dated 11.12.1981 in favour of Kundo Devi @ Kundan Kaur. It was further pleaded that since Prem Dass was survived by Kundo Devi, therefore, in any case the property came to Kundo and thereafter to Rattan Chand.

Learned trial court after appreciating the evidence, dismissed the suit which has been affirmed by the first appellate court.

Learned first appellate court has given following reasons to uphold the decree passed by the trial court:-

- (1) No doubt original file of the previous suit i.e. Civil suit no.151 of 1973 has not been produced, being not traceable, however, photocopy of the register of the court has been produced which prove that a civil suit was filed by Rattan Chand against Prem Dass which was decreed on 29.03.1973.
- (2) Prem Chand remained alive upto the year 1992 but he never challenged or doubted validity of the civil court decree for a period of 9 years;

- (3) In a judgment and decree dated 30.03.1999 in which, of course plaintiff was not party, the Will dated 11.12.1981 was upheld and aforesaid judgment is a piece of evidence which proves that there was a marriage between Prem Dass and Kundo Devi @ Kundan Kaur.
- (4) First appellate Court also found that the suit was instituted after a period of 25 years from the date of decree and therefore, suit was hopelessly time barred.

Learned counsel for the appellant has been heard at length.

Learned counsel for the appellant submitted that once the original file has not been produced, existence of the civil court decree is itself doubtful. However, on being pointed out that photocopy of the register of the court has been produced, he was unable to support his argument.

Learned counsel for the appellant further submitted that both the courts have held that customary marriage (kareva) was not permissible, hence that would help the defendant.

This court has considered the submission.

In the present case, the decree dated 29.03.1973 suffered by Prem Dass in favour of Rattan Chand has been challenged. The aforesaid civil court decree was duly incorporated in the revenue record and thereafter Rattan Chand was being recorded as owner in possession. No doubt, mutation does not confer any title but mutation is an official act performed by the revenue officials in discharge of their duties. There is a presumption of correctness in favour of official acts being performed. It was the plaintiff who had come to the court with the assertion that Prem Dass was not

married. He did not lead sufficient evidence to prove that fact.

Still further as correctly noticed by the court that Prem Dass remained alive for 9 years after suffering a decree particularly when revenue record had been corrected in favour of Rattan Chand but he never challenged the decree. Still further counsel for the appellant could not justify as to why the suit was filed after a period of 25 years.

In view thereof, there is no good ground to interfere with the concurrent findings of fact arrived at by the courts below.

The regular second appeal is dismissed.

RSA No.4161 of 2011

The only difference in Regular Second Appeal No.4161 of 2011 is that the property in dispute in the present case is of different village. However, validity of the marriage between Kundo Devi @ Kundan Kaur and Prem Dass has been found to be legal in the judgment dated 30.03.1999 and paragraphs 17 and 21 of the aforesaid judgment is extracted by the trial court are extracted as under:-

“It is not in dispute that Smt. Kundan Kaur widow of Prem Dass was real mother of the plaintiff (herein defendants). It is also not in dispute that originally Kundan Kaur was wife of Gulab Chand (father of plaintiffs) and after the death of Gulab Chand said Kundan Kaur had contacted Kareva marriage with uncle of the plaintiffs (herein in this case defendants) named Prem Das son of Kisala son of Fatia. Prem Dass was cousin of Gulab Chand. After this Kareva marriage no issue was born to Prem Dass and Kundan Kaur. Both

Prem Dass and Kundan Kaur were old aged. Both of them were living with plaintiffs (now defendants) who were providing them food, medical care look after protection shelter and all other day to day services and basic requirements.

The case of the plaintiff (herein defendants) is very well proved. While the defendants (State of Haryana) have claimed their proprietary rights over the suit land being legal heirs of deceased, Smt. Kundan Kaur, who had contracted marriage with Prem Dass, therefore, being the sole surviving legal heirs of Smt. Kundan Kaur, the plaintiffs (herein defendants) are entitled to get proprietary rights in respect of the suit land. Hence, issue no.1 is answered in favour of the plaintiffs (herein defendants) and against the defendants (i.e. State of Haryana).

The judgment passed on 30.03.1999 is in a suit for mandatory injunction filed against the State of Haryana. The Will dated 11.12.1981 was attested by two witnesses, namely, Balwant Rai and Krishan Chand. Father of Balwant Rai i.e. Nand Lal has been examined, whereas Gian Chand had been examined since Krishan Chand had died, who has identified the signatures of Krishan Chand.

In view thereof, there is no good ground to interfere. The regular second appeal is dismissed.

September 06, 2018

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Whether speaking/reasoned

Whether reportable

(ANIL KSHETARPAL)
JUDGE

: Yes/No

: Yes/No