

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

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RSA No.3439 of 2013 (O & M)
Date of Decision:22.02.2018

Bhajan Kaur

...Appellant

Versus

Nasib Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Priye Jain, Advocate
for the appellant.

Mr. L.S. Sidhu, Advocate
for the respondents.

ANIL KSHETARPAL, J.(Oral)

CM No.9231-C-2013

Deficiency in Court fee has been made good. Delay, if any is
condoned.

Application is allowed.

CM No.9232-C-2013

For the reasons stated in the application, which is duly
supported by an affidavit, delay of 166 days in filing the appeal is
condoned.

Application is allowed.

Main Case

Defendant-appellant is in the regular second appeal against the
concurrent findings of fact arrived at by the Courts below.

Ditu Singh was the original owner of the property, who died on
21.07.1974. He had left behind 4 Class I heirs namely Baso-widow,

owned by these 4 persons i.e. widow and three daughters i.e. 1/4th share each. However, revenue authorities committed a mistake by sanctioning the mutation in favour of Baso, Bhuri, Bhajan Kaur and Kewal Singh son of Bachno. Thereafter, Bachno also died in the year 1981. Even at that time, revenue authorities committed a mistake by sanctioning mutations in favour of Baso, mother-Nasib Kaur, Jeonpal Kaur, Kewal Singh and Veer Kaur, children of Bachno. Mutation was not sanctioned in favour of Surjit Singh husband and name of Baso was wrongly included as she was not Class I heir as per Sections 15 and 16 of the Hindu Succession Act. Baso also died on 25.08.2001 and the mutation has been sanctioned only in favour of Bhajan Kaur excluding Bhuri and children of pre-deceased daughter Bachno. Kewal Singh, son of Bachno had sold 10 kanals.

Both the Courts have found that Kewal Singh had sold more than his share. However, the Courts have committed an error in setting aside the sale deed in entirety. Kewal Singh had sold the land in favour of Bhajan Kaur, his mother's sister.

Argument of learned counsel is that at the most, the sale deed qua to the extent of excess share sold by Kewal Singh can be set aside. He submits that Kewal Singh has not challenged the sale deed and the plaintiffs Nasib Kaur and Jeonpal Kaur have no locus standi to challenge the sale deed to the extent of share of Kewal Singh.

On the other hand, learned counsel for the respondents does not dispute this position. The only contention is that since Kewal Singh has already sold some land, therefore, he could sell only the land, which falls to his share as per Hindu Succession Act.

favour of Bhajan Kaur executed by Kewal Singh shall operate and remain valid only to the extent of share of Kewal Singh.

Learned counsel for the appellant has vehemently argued that the suit filed by the plaintiff on 16.12.2007 was barred by time. He submits that since mutation of 1979 has been challenged, therefore, the suit was not maintainable.

This Court has considered the argument, however, the mutation does not confer any title and the same is only a fiscal entry entered by the revenue authorities. The succession is governed by Hindu Succession Act and a mere wrong entry in the revenue record would not take away the ownership of a Class I heir.

Hence, while dismissing appeal and upholding the judgments and decrees passed by the Courts below, it is declared that sale executed by Kewal Singh in favour of Bhajan Kaur shall be valid to the extent of his share.

22.02.2018
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No