

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

**R.S.A No.2499 of 2016(O&M)
Date of decision :04.09.2018**

Hari Ram and others

..... Appellants

Versus

Soni since deceased through his Lrs Nata and others

..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.K.S.Banyana, Advocate
for the appellants.

LISA GILL,J

Appellant-plaintiffs are aggrieved of judgement and decree dated 23.05.2013, passed by learned Additional Civil Judge (Sr. Division), Guhla, as well as judgement and decree dated 11.12.2015, passed by the learned Additional District Judge, Kaithal. Suit filed by the appellant-plaintiffs was dismissed.

Brief facts necessary for the adjudication of the case are that the appellant-plaintiffs filed a suit for declaration to the effect that they are owners in joint possession of the suit property as detailed in the plaint to the extent of ½ share at village Riwar Jagir and the defendants and their predecessors-in-interest are owners of the remaining half share in joint possession. It was pleaded that the property in question measuring 115 Kanal 11 Marlas duly detailed in the suit was originally owned by Bholu, common ancestor of the parties. After the death of Bholu, the land was inherited by his sons Churia, Khijri and Deo. Deo died unmarried

and issue less. His property was inherited by Churia and Khijri in equal shares. It was further pleaded that after the death of Churia, his property was inherited by his four sons namely Kalu, Sundu, Nanak and Jee Ram in equal shares. They alongwith the sons of Khijri namely Matu, Mangal and Sangat become co-sharers of half share each. The predecessors-in-interest of the plaintiff-appellants i.e. Kalu, Sundu, Nanak, Jee Ram, shifted to village Dhoolgarh in search of work. Kalu Sundu, Nanak died in Dhoolgarh. Kalu and Sundu died unmarried and issue less. Plaintiff-appellants no.1 to 21 are stated to be successors in interest of Nanak son of Churia. After the death of Jee Ram, his property was inherited by Nathu and thereafter by Rulda Ram and plaintiff no.22. It was pleaded that plaintiffs no.1 to 21, who are successors in interest of Nanak son of Churia inherited the property of Kalu and Sundu to the extent of $\frac{1}{2}$ share and Rulda Ram son of Nathu son of Jee Ram-plaintiff no.22 inherited the property of Kalu and Kundu to the extent of $\frac{1}{2}$ share. Therefore, the plaintiffs being successors-in-interest of Churia son of Bholu were joint owners of the suit land to the extent of $\frac{1}{2}$ share. The plaintiffs averred that the predecessors of the defendants-Matu and Mangal, in connivance with revenue officials obtained order dated 30.07.1906 vide which Mutation No. 87 was sanctioned wrongly deleting the name of predecessors of the plaintiffs namely Kalu, Sundu and Nanak. In the year 1916, another order was fraudulently obtained showing Jee Ram i.e. grandfather of plaintiff no.22 to be an absentee. Therefore, the said mutations, it was claimed were got sanctioned in a fraudulent manner by misrepresentation and in order to grab the land belonging to the plaintiffs

and their predecessors, therefore the said mutations were not binding on the rights of the plaintiffs. It is the case of the plaintiffs that they came to know about the illegal act of the defendants/their predecessors when Ratna, Hukam Chand and Rulda i.e. plaintiffs no.14, 18 and 22, went to village Riwar Jagir on 01.08.2008. It is then that they came to know about the death of Kalu, Sundu as well.

Suit was resisted by respondent-defendants no.12 (a), (b), 13, 14, 15(a), 15(b), 10 (b), 11(d), 17, 22, 23, 20, 28 and 29, whereas the other respondent-defendants were proceeded against ex parte vide order dated 18.12.2009. Joint written statement was filed by the said respondent-defendants by taking various preliminary objections as well as controverting the averments therein. It was specifically contended that the plaintiffs had no concern whatsoever with the suit property. Dismissal of the suit was prayed for.

Replication was filed. From the pleadings of the parties, the following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are entitled to a decree for joint possession regarding the suit land on the grounds as alleged in the plaint?OPP
2. Whether the suit is not maintainable?OPD
3. Whether the plaintiffs have no locus standi to file the present suit?OPD
4. Whether the plaintiffs have no concern with the suit land?OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties?OPD
6. Whether the suit is hopelessly time barred?OPD
7. Whether the defendants and their predecessors are owners in possession since their forefathers?OPD
8. Relief.

Both the parties led evidence in support of their respective claims.

Learned trial Court after considering the evidence on record dismissed the suit of the plaintiffs while concluding that the plaintiffs had failed to prove that they are descendants of Bholu. Moreover, even if they were accepted as descendants of Bholu, their predecessors-in-interest had abandoned their rights in the property in question. Therefore, their claim could not be accepted.

Appeal preferred by the appellant-plaintiffs was also dismissed by the learned Additional District Judge, Kaithal, vide impugned judgement and decree dated 11.12.2015.

Aggrieved therefrom, the present appeal has been filed.

Learned counsel for the appellants vehemently argues that it is clearly mentioned in Mutation no.87 (Ex.P-20), its translated version (Ex.P-20/T) of 1916 that Jee Ram, predecessor-in-interest of the plaintiffs and Nanak had shifted to village Dhoolgarh, therefore both the learned Courts below have erred in holding that the plaintiffs were unable to prove that they were descendants of Jee Ram and Nanak. There was no question of abandonment of their rights in land in village Riwer Jagir. Moreover, the defendants never set up a plea of adverse possession. Therefore, there is no question of the suit based on title being barred by limitation. It is thus prayed that the impugned judgements and decrees be set aside and the suit filed by the appellant-plaintiffs be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his able assistance.

The entire case of the appellant-plaintiffs is based upon the

assertion that they are the descendants of Bholu. The cause of action it was contended, arose to the plaintiffs in the year 2008 when plaintiffs no.14, 18 and 22 visited village Riwer Jagir on 01.08.2008 and they came to know about the alleged fraudulent acts of the predecessors-in-interest of the respondent-defendants. Surprisingly, none of the said plaintiffs stepped into the witness box. It is relevant to note that it is the case of the appellant-plaintiffs themselves that their alleged predecessors-in-interest shifted from village Riwer Jagir even prior to 1906. Mutation Ex.P-21 dated 30.07.1906 mentions Kalu, Sundu and Nanak to be absentees. The entire share is reflected of Jee Ram. However, in the year 1916, Jee Ram is also reflected as an absentee. Therefore, the whole share was reflected to be with the defendants, who were the co-sharers. It has been rightly held by both the learned Courts below that the plaintiff-appellants failed to prove that they are successors-in-interest of Churia son of Bholu. Learned counsel for the appellants is unable to point out any evidence on record to prove the same. It is relevant to note that PW-5-Madan Lal son of Shiv Lal, has specifically admitted in his cross-examination that the present suit was filed because names of their forefathers were identical to the names of the persons who were having some land in village Riwer Jagir.

Moreover, even if the appellants were proved to be successors of Churia son of Bholu, present is a clear cut case of abandonment of rights by their predecessors-in-interest. Argument raised on behalf of the appellants that there is a specific reference in mutation no.87 that Nanak son of Churia had migrated to Dhoolgarh is sufficient to

prove the title of the plaintiffs in the suit property, is devoid of any merit. It is not denied that there is no evidence on record to show that the predecessors-in-interest of the plaintiffs ever raised any objection to the entries in the revenue record or ever sought to take possession of the suit property or cultivate the same. Reliance has been rightly placed by the learned trial Court on the decision of this Court in **Kirpa and others Vs. Dharma and others 2006(3) PLR 613** wherein reliance had been placed on a judgement of the Hon'ble Supreme Court in **Bondar Singh and others Vs. Nihal Singh, 2003(2) R.C.R. 222**.

Learned counsel for the appellant-plaintiffs is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 23.05.2013 and 11.12.2015 passed by the learned Addl. Civil Judge (Sr. Division) Guhla and learned Additional District Judge, Kaithal, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

04.09.2018

s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No