

DIWAKER GULATI
2018.09.18 11:25

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

RSA No.3565 of 2016(O&M)

Date of decision: 28.8.2018

Lakhmi

....Appellant

VERSUS

Khacheru and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Panwar, Advocate for the appellant.

REKHA MITTAL, J.

CM No.11227-C of 2018

Heard.

Allowed as prayed for.

Annexure A-1 is taken on record subject to just exceptions.

Disposed of accordingly.

CM No.11228-C of 2018

Prayer in this application is for bringing on record legal representatives (in short 'LRs') of Lakhmi (since deceased) – appellant.

Heard.

In view of averments made in the application supported by an affidavit of Vinod Kumar, one of the alleged LRs of Lakhmi, the application is allowed and persons mentioned in para 2 of the application are allowed to be brought on record as LRs of deceased Lakhmi subject to just exceptions and for the purpose of present lis.

Amended memo of parties is taken on record.

Disposed of accordingly.

RSA No.3565 of 2016

The present appeal directs challenge against concurrent findings recorded by the Courts whereby suit for declaration filed by the plaintiff/appellant to the effect that the plaintiff and defendants No.7 and 8 are lawful owners in possession of the suit property and defendants No.1 to 6 have no right, title or interest therein and mutation No.7172 and subsequent revenue records are illegal, null and void and not binding on rights of plaintiff and defendants No.7 and 8 was ordered to be dismissed by the trial Court and the appeal preferred by unsuccessful appellant/plaintiff did not find favour with the District Judge, Palwal.

The appellant/plaintiff staked claim to the suit property on the premise that Smt. Golkha was married to Kalu and after death of Kalu, she performed marriage with Udai Ram. The suit property was inherited by Smt. Golkha @ Golo @ Shiv Dei wife of Sh. Kalu. After her death, the plaintiff and defendants No.7 and 8 inherited the suit land by virtue of succession. The Court in appeal has held that the appellant/plaintiff has failed to substantiate his plea that Smt. Golkha was also known as Golo @ Shiv Dei. The Court has accepted that the plaintiff and defendant are children of Udai Ram but he has failed to adduce positive, cogent and convincing evidence to substantiate that Smt. Golkha widow of Kalu performed marriage with Udai Ram after death of Kalu.

The sole submission made by counsel for the appellant is that the appellant filed an application for additional evidence to produce certificate issued by Sarpanch of Gram Panchayat Deeghot to prove identity of Smt. Golkha but the same was dismissed by the Appellate Court without appreciating that production of that certificate was material and

relevant for adjudication of the matter in controversy. It is argued that order passed by the Court in appeal dismissing the application for additional evidence may be set aside, additional evidence may be allowed to be adduced and the matter may be remitted to the Court in appeal for decision of the appeal afresh on the basis of material already on record and additional evidence to be adduced by the appellant and rebuttal evidence, if any, to be adduced by the contesting respondents.

Counsel for the appellant, in response to a query, would inform that order passed by the Court in appeal dismissing the application for additional evidence is not a part of paper-book. He is not in a position to make any submissions as to how any such certificate issued by the Sarpanch of Gram Panchayat would support cause of the appellant to establish his plea either with regard to Smt. Golkha being known as Golo @ Shiv Dei or to prove that Golkha performed kareva marriage with Udai Ram, father of the appellant and defendants No.7 and 8. The appellant has not placed on record copy of the application for additional evidence, the document sought to be produced by way of additional evidence and the order passed by the Appellate Court dismissing the application, sufficient to show that contention raised by counsel for the appellant is not meritorious and liable to be rejected. In this view of the matter, appellant cannot derive any advantage to his contention from dismissal order whereby application for additional evidence was rejected by the Appellate Court. Counsel for the appellant has failed to point out cogent much less clinching evidence on record to establish his plea that Golkha was known as Golo or Shiv Dei or she performed marriage with Udai Ram after death of Kalu. In this view of the matter, I do not find an error much less

perversity in the consistent findings recorded by the Courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay in refiling the appeal is of academic relevance only.

AUGUST 28, 2018
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no