

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

**RSA No.4783 of 2016 (O&M)
Date of Decision.15.11.2018**

Ali Mohd. and another

.....Appellants

Vs

Mohd. Hanif and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajbir Singh, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The appellants-defendants have not been successful in defending the suit for relief sought by the plaintiffs qua declaration, joint possession and permanent injunction in respect of land measuring 27 kanals 15 marlas and 1/3rd share of land measuring 2 kanals 9 marlas on the basis of jamabandi/revenue record for the year 2003-2004.

It was stated that Badra @ Badar Din was the owner of land and on his demise on 28.11.1985, his daughter Aisha along with defendants became owners of the suit property to the extent of 1/5th share but on 12.04.2006, the mutation of inheritance was sanctioned in favour of the defendants only by the Assistant Collector, 1st Class, Malerkotla leaving Aisha. The parties were Mohammedan and governed by their personal law. As per Mohamedan law after the death of Badra @ Badar Din, defendants became owner to the extents of 4/5th share and Aisha to the extent of 1/5th share. On her demise, plaintiffs became owner to the extent of 1/5th share.

The appellants-defendants opposed the suit by denying that plaintiffs had any relationship or concern with the defendants in any manner. It was alleged that Wazira son of Gainda was owner in possession of the land and after his death Badra @ Badar Din became owners of the land along with his brothers Sadar Din and Janni. Forefathers and grandfather of defendants were agriculturists and governed by the customary law. It was alleged that plaintiffs malafidely obtained mutation bearing No.1516 dated 14.12.1991 in connivance with the revenue officials and the same was corrected by mutation No.30261 of 12.04.2006. The factum of parties being Mohammedan was not disputed.

By way of counter-claim challenging mutation No.3573 dated 31.08.2006 allegedly obtained by the plaintiffs for the relief sought in the present shape, was also challenged. It was alleged that Aisha did not have any relation or concern with the defendants or their father, as the defendants had been living in the house after raising construction.

The aforementioned counter-claim was opposed by the plaintiffs and supported mutation bearing No.3573 dated 31.08.2006.

On the basis of pleadings, trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to inherit the estate of Badar Din, if so to what extent? OPP*
- 2. Whether the defendants have threatened for the sale, mortgage or transfer of disputed property? OPP*
- 3. Whether the present suit is maintainable? OPP*

4. *Whether the parties to the suit are governed by custom?*

5. *If issue No.4 is proved, whether the defendants alone are entitled to inherit the property of Badar Din? OPD*

6. *Whether the plaintiffs have suppressed true and material facts from the Court? OPD*

Additional issues were also framed as under:-

7. *Whether the plaintiffs are entitled to declaration, as prayed for? OPP*

8. *Whether the mutation No.30261 sanctioned on 12.4.2006 is illegal, null and void and is liable to be set aside? OPP*

9. *Whether the plaintiffs are entitled to joint possession to the extent of 1/5 share of the land measuring 27 kanals 15 marlas, fully detailed in head note of the plaint and to the extent of 1/5th share out of 1/3rd share of the land measuring 2 kanals 9 marlas fully detailed in head note of the plaint, as prayed for? OPP*

10. *Whether the plaintiffs are entitled to permanent injunction, as prayed for? OPD*

11. *Whether suit of the plaintiffs is barred u/o Rule 2 CPC? OPD*

12. *Whether the plaintiffs have got no cause of action to file the present suit? OPD*

13. *Whether the amended suit of the plaintiffs is beyond limitation? OPD*

14. Whether the plaintiffs have suppressed material facts from the court? OPD

15. Whether the mutation No.1516 dated 14.12.1991 and mutation No.3573 dated 31.8.2006 are illegal, null and void and are liable to be set aside? OPD

16. Whether the defendant is entitled to the counter claim, as prayed for? OPD

17. Whether the counter claim is not maintainable being false and frivolous? OPP

18. Relief.”

Plaintiffs Salam Din and Mohd. Hanif appeared themselves and tendered documents Ex.P1 to P-7.

On the other hand, defendant Ali Mohd examined himself as DW1 and tendered documents Ex.D1 to D7 and closed the evidence.

On the preponderance of evidence, the trial Court decreed the suit and the appeal laid before the lower Appellate Court was also dismissed.

Mr. Rajbir Singh, learned counsel appearing on behalf of the appellants-defendants in support of the memorandum of appeal submitted that both the Courts below have committed illegality and perversity as DW1 in examination-in-chief stated that they are governed by customary law and their forefathers had also adopted the same law, according to which the succession and inheritance only goes to the sons and not to daughters. On the contrary, plaintiffs miserably failed to establish that on demise of the common ancestor,

married daughter would have any share. The aforementioned statement has not been examined in correct perspective. Ex.P3, jamabandi for the year 2003-2004 has also not been referred to as revenue estate was mentioned as Malerkotla City, District Sangrur.

Ruler of erstwhile estate Malerkotla Nawab Mohd. Ahmed Ali Khan issued Farman-e-Sahib with regard to mutation of land as per the custom in respect of various castes including Kamboj to which defendants belonged. In support of aforementioned submission referred to judgment rendered by Division Bench of this Court rendered in *Ali Mohammad Vs. Mst. Karima 1992(2) PLR 136*, Muslim belonging to Kamboj caste of Jamalpura of Malerkotla town have been held to be governed by custom. In such circumstances, mutation bearing No.30261 dated 12.04.2006 could not have been declared illegal. The plaintiffs miserably failed to lead any evidence as per the provisions of Section 50 of the Indian Evidence Act. Statement of PW1 and PW2 are vague and not trustworthy.

I am afraid aforementioned arguments of Mr. Rajbir Singh are not sustainable, for, in the present case, Badra @ Badar Din was resident of Jamalpura and therefore, could not be said to be governed by the customary law as per ratio decidendi culled out in *Ali Mohammad's case* (supra). PW1 to a specific question in cross-examination stated that defendants were two brothers and one sister namely Aisha, who was married at village Bhaini Kamboa. Their relations were strained. To a suggestion put to PW1 he stated that it was not Aisha who gave affidavit that she had no objection if

inheritance of Badra was sanctioned in favour of defendants, therefore, the alleged evidence as per the provisions of Section 50 of the Indian Evidence Act would pale into insignificance.

DW1 Ali Mohd. admitted Aisha to be her sister and plaintiffs being nephews. Concededly, vide two sale deeds dated 15.01.1990 and 17.06.1991, Ex.P1 and P2, Aisha along with defendants Mohd. Din and Ali Mohd had sold part of the land. In such circumstances, defence of customary law taken by the defendants was an eye-wash and had no foundation to stand. The aforementioned sale deeds, despite setting up counter-claim, have not been challenged. It is clearly established that Aisha being daughter of Badra @ Badar Din did inherit the property of his father along with defendants.

Coming to the point of applicability of customary law, all Muslims belonging to Kamboj caste of Jamalpura of Malerkotla Town, as per the ratio decidendi culled out in **Ali Mohammad's case** (supra) are governed by personal law and not by custom. The aforementioned judgment pertained to village Jamalpura of Malerkotla Town and not generally to the Muslims of Malerkotla, therefore, ratio decidendi culled out in the aforementioned judgment would not be applicable and in the absence of any other contrary law, do not disentitle plaintiffs to claim discretionary relief.

As an upshot of my finding, concurrent finding of fact rendered by the Courts below qua applicability of personal law to Mohammedans cannot be faulted with, much less, no substantial question of law arises for determination by this Court. No ground for

interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No