

**C.M.No.4241-C of 2018 in/and
RSA No.5332 of 2016 (O&M)**

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

**C.M.No.4241-C of 2018 in/and
RSA No.5332 of 2016 (O&M)
Date of decision:21.03.2018**

Lakhmiri

...Appellant

Vs.

Agnu (deceased through LRs) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Hooda, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

C.M.No.4241-C of 2018

For the reasons stated in the application which is duly supported by an affidavit, order dated 13.03.2018 is recalled and the appeal is restored to its original number. The application stands allowed and the appeal is taken on board for hearing today itself.

C.M.No.13870-C of 2016

For the reasons stated in the application which is duly supported by an affidavit, delay of 10 days in filing the appeal, is condoned.

C.M. stands disposed of.

RSA No.5332 of 2016 (O&M)

The appellant-plaintiff is aggrieved of the dismissal of the suit,

vide judgment and decree dated 12.01.2016 claiming declaration with consequential relief of permanent injunction vis-a-vis share in the estate of Sukha, who had four sons including Khema to whom she had claimed to be his daughter and judgment and decree dated 26.11.2012 rendered by the Lower Appellate Court, whereby, the findings of the trial Court have been affirmed.

The facts as emanated from pleadings of the parties are that appellant-plaintiff instituted the suit aforementioned claiming 1/5th share in respect of agricultural land (hereinafter called “suit land”) on the premise that she was the real daughter of Khema, who was deceased son of Sukha and after the death of Sukha, who died in the year 1981 left behind four sons, namely, Agnu, Pancha, Bhajan Lal and Khema and the only daughter Shyama. On demise of Khema, mutation bearing No.1467, dated 06.08.1985, Ex.P1 was entered in her favour being daughter of Khema but in the year 1993, vide mutation no.1745, her share was usurped. On acquiring the knowledge about the same in the year 2006, the aforementioned suit was filed. The impugned entry in the revenue record at the hands of revenue official in the name of defendants No.1 to 6 was illegal, without any authority and against the principles of natural justice.

The aforementioned suit was contested by defendants No.1, 3 and 4 by denying that appellant-plaintiff was the daughter of Khema. It was averred that plaintiff had no concern at all with deceased Khema who died about 30 years back. The suit land was exclusively owned and possessed by

the defendants as the plaintiff had no right, title or interest in the suit land.

The trial Court on the basis of pleadings of the parties framed the following issues:-

- “1. Whether the suit property is ancestral property of the parties to the proceedings and the plaintiff is the owner in possession of 1/5th share in the same? OPP*
- 2. Whether the plaintiff is entitled to injunction as prayed for? OPP*
- 3. Whether revenue record is liable to be rectified? OPP*
- 4. Whether the suit of the plaintiff is not maintainable in the present form? OPP*
- 5. Whether the plaintiff has no locus standi and cause of action to file the present suit? OPD*
- 6. Whether the plaintiff has concealed the true and material facts from this Court? OPD*
- 7. Relief.”*

The plaintiff examined herself as PW1, Rajpal as PW2 and Girraj as PW3. On the other hand, defendants examined Leelay as DW1 and Sant Raj as DW2 and closed the evidence by tendering the documents Ex.D1 to Ex.DW5/A. Both the Courts below did not agree with the submissions of the plaintiff while dismissing the suit and affirming the findings of the trial Court.

Mr.J.S.Hooda, learned counsel appearing on behalf of the appellant-plaintiff submitted that entry in the mutation no.1467 dated 06.08.1985 (Ex.P1) was pointer to show that appellant was daughter of Khema and on his demise, she was entitled to 1/5th share in the suit land. There was sufficient compliance of the provisions of Section 50 of Indian Evidence Act, 1872 (in short “1872 Act”). If at all, the defendants were aggrieved of the aforementioned entry, period of almost 8 years had elapsed. The revenue authority on an application moved by the defendants was required to issue notice to the appellant for the purpose of correcting the revenue record. Having failed to adhere to the provisions of law, mutation no.1745 was without jurisdiction. The detailed explanation had been given in the suit as to how it came to be filed in the year 2006, therefore, it was not barred by law of limitation. Even otherwise, there is no limitation for claiming the right in the property and thus, urged this Court for setting aside the findings under challenge.

I have heard the learned counsel for the appellant, appraised the judgments and decrees of both the Courts below and of the view that there is no force and merit in submissions of Mr. Hooda.

For establishing the relationship between the parties, it is necessary to comply with the provisions of Section 50 of 1872 Act, which read thus:-

“50. Opinion on relationship, when relevant.—When the Court has to form an opinion as to the relationship of one person to

another, the opinion, expressed by conduct, as to the existence of such relationship, or any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact: Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, 1869 (4 of 1869) or in prosecutions under section 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860). Illustrations

(a) The question is, whether A and B were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant. Comments Contradiction in evidence of relationship of witness of trifle nature, not material in a partition suit; Gowhari Das v. Santilata Singh, AIR 1999 Ori 61.”

It is evident that for the purpose of establishing the relationship with a person, whose right of succession is sought to be claimed, a person is required to lead evidence through the testimony of relative and known persons. However, in the instant case, the appellant miserably failed to comply with the aforementioned provisions of law except by proving the mutation Ex.P1 which, in my view, has rightly been

discarded by both the Courts below as it was not sufficient for discharging the onus. The testimonies of other two witnesses asserted with regard to the fact that appellant was the daughter of Khema, is neither here nor there as it was on hearsay.

In view of what has been observed above, I do not find any illegality and perversity in the findings under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Resultantly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

March 21, 2018
savita

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