

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

RSA No. 540 of 2016 (O&M)

Date of decision : July 10, 2018

Pal Singh

.....Appellant

Versus

Major Singh and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rajinder Kumar Singla, Advocate
for the appellant.

LISA GILL, J.

Appellant-plaintiff is aggrieved of judgment and decree dated 03.09.2010 passed by the learned Civil Judge (Junior Division), Faridkot whereby the suit filed by the appellant was dismissed. He is also aggrieved of judgment and decree dated 16.12.2014 passed by the learned Additional District Judge, Faridkot, vide which his appeal has also been dismissed.

The appellant preferred a suit for declaration to the effect that his father is entitled to get half of the land left by his father Chand Singh (deceased) on the basis of custom prevailing in the area and not one third share as afforded to him.

Appellant-plaintiff pleaded that his grandfather – Chand Singh married twice. First marriage was solemnised with Sham Kaur. Maghar Singh - the appellant's father was born out of this wedlock. Chand Singh after the death of his first wife – Sham Kaur solemnised second marriage with Kartar Kaur. Two sons Major Singh and Baldev Singh – respondents No. 1 and 2 as well as four daughters were born out of this wedlock. It was pleaded that the parties are Jat Sikhs, therefore,

primarily governed by custom in the matter of marriage and succession. As Maghar Singh i.e. the appellant's father was the elder son born out of first wife of Chand Singh, the appellant was entitled to half share in the suit land on the basis of the custom based on Pagwand and Chundwand i.e. the son born from the first wife would be entitled to the half of the property whereas the children born from the second wife would get their commensurate share in the other half of the property. However, mutation of inheritance of Chand Singh was wrongly executed in favour of Maghar Singh, Major Singh and Baldev Singh in equal shares. The appellant, thus, prayed for declaration to the effect that he was entitled to half of the share of the property left by Chand Singh as described in his plaint.

The defendants contested the suit while specifically pleading that the suit was bad for non-joinder of necessary parties, as their real sisters Jangir Kaur, Chhota and Phino had died but their legal representatives were not brought on record. It was stated that the custom of Chundwand and Pagwand was not applicable in the village Chand Bhan since creation of the village. Moreover, according to Section 4 of the Hindu Succession Act, all customs relating to succession and inheritance ceased after coming into force of the Act. It was further pleaded by the defendants that the mutation of inheritance of Chand Singh was sanctioned on 16.05.1988. Since then, the defendants are owners in possession. Their possession, in any case, would even mature into adverse possession. Following issues were framed by the learned trial Court:-

1. Whether the father of the plaintiff was and is entitled to get half share in the land left by Chand Singh deceased? OPP
2. Whether plaintiff is entitled to injunction and declaration as prayed for? OPD

3. Whether the mutation of inheritance of Chand Singh is illegal, unlawful, null and void and liable to be set aside?
OPP

4. Whether the suit is bad for want of necessary parties? OPD

5. Whether the custom of Pagwand and Chundwand is applicable to the village Chand Bhan till the creation of village Chand Bhan?OPP

6. Relief.

Evidence was led by both the parties.

Learned trial Court on considering the evidence on record, concluded that the appellant-plaintiff failed to prove the existence of custom in the village. Issues No. 1, 2, 3 and 5 were decided against the plaintiff-appellant and in favour of the respondent-defendants. Issue No. 4 was not pressed by the defendants. Suit filed by the appellant was dismissed vide judgment and decree dated 03.09.2010 passed by the learned Civil Judge (Junior Division), Faridkot. Vide judgment and decree dated 16.12.2014, learned Additional District Judge, Faridkot dismissed the appeal filed by the appellant while upholding the findings of the learned trial Court and adding that the suit was time barred as well, as the appellant had chosen not to take any steps in this regard since 1988 till the year 2005. Aggrieved therefrom, the present appeal has been filed by the appellant.

Learned counsel for the appellant contends that once the defendants have taken a plea of adverse possession, they have admitted the claim of the appellant, therefore, both the courts below have erred in dismissing the plaintiff's suit. Moreover, it is proved on record that the parties are governed by custom. Reference is made to the evidence of the plaintiff himself as well as PW2 Kapoor Singh, PW3 Iqbal Singh and PW4 Baldev Singh. It is, thus, prayed that this appeal be allowed and impugned

judgment and decree dated 03.09.2010 passed by the learned Civil Judge (Junior Division), Faridkot and judgment and decree dated 16.12.2014 passed by the learned Additional District Judge, Faridkot be set aside. Consequently, the suit filed by the appellant be decreed through out.

I have heard learned counsel for the appellant and have gone through the photocopies of the record produced in Court.

There is no dispute regarding the appellant's grandfather Chand Singh marrying twice. Maghar Singh – the appellant's father was born out of the first wedlock. Respondents No. 1 and 2 as well as four sisters were born out of the second wedlock. The basic question for consideration in the present case is whether the parties are governed by the custom of Pagwand and Chundwand as alleged by the appellant. In order to prove the prevalence of custom, the appellant stepped in the witness box as PW1. Reliance is placed upon the testimonies of PW2, PW3 and PW4. Reference is also made to copy of mutation (Ex.P1) which relates to mutation of some other land allegedly on the basis of custom in village Jedo. PW1 - Pal Singh, the appellant in his cross examination has stated that he does not know the custom on the basis of which he is claiming his right. PW2 - Kapoor Singh in his cross examination stated that he did not know regarding the custom on the basis of which mutation of inheritance is to be entered in case of a person solemnising two marriages. PW2 further stated that he did not know whether any mutation on the basis of this custom was entered in their village or not. PW3 as well as PW4 in their cross examination have also not been able to prove the prevalence of such custom as alleged whereas on the other hand DW3 Sadhu Singh, Ex-member of the Panchayat of the same village, aged 70 years specifically deposed that no mutation was ever

entered in their village on the basis of the custom of Pagwand and Chundwand. It is further not in dispute that copy of mutation (Ex.P1) is not only of another village but of District Bathinda. The plaintiff cannot rely upon the same to prove his case.

It has been held by the Hon'ble Supreme Court in **Salekh Chand (through LRs) versus Satya Gupta and others 2008 (13) SCC 119** that, “it is incumbent on a party setting up a custom to allege and prove the custom on which he relies. It must be established inductively and not by a priori methods. Custom cannot be a matter of theory but must always be a matter of fact.”

In the present case the applicant has failed to establish the prevalence of custom, as asserted or that he is governed by the said custom in derogation to the statutory law.

Another relevant factor to be noticed in this case is that mutation of inheritance was entered in favour of the appellant's father – Maghar Singh and his two brothers in the year 1988. Maghar Singh never challenged the same. Even in the present suit, there is no challenge to the said entry.

In my considered opinion, no question of law much less a substantial question of law is involved in this appeal for the consideration of this Court.

No other point has been raised or argument addressed by learned counsel for the appellant.

Learned counsel for the appellant is unable to point out any illegality and infirmity in judgment and decree dated 03.09.2010 passed by the learned Civil Judge (Junior Division), Faridkot as well as judgment and

decree dated 16.12.2014 passed by the learned Additional District Judge,
Faridkot, which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

July 10, 2018

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Whether speaking/reasoned :
Whether reportable

(Lisa Gill)

Judge

Yes/No
Yes/No