

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

RSA No.6861 of 2016 (O&M)
Date of decision: 13.09.2018

Bhanwar Singh and others .. Appellant

vs.

Birham Pal and others .. Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present:- Mr. Jarnail Singh Saneta, Advocate
for the appellant.

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Harinder Singh Sidhu, J.

The plaintiffs-appellants have filed the Regular Second Appeal impugning the judgments of the Courts below whereby their suit for declaration to the effect that the plaintiffs and proforma defendants were owners in possession of the suit land and that mutation No.557 sanctioned by Tehsildar/A.C. IInd Grade, Panipat in the year 1940 and the subsequent revenue entries on the basis of the same, were illegal, null and void and result of fraud and misrepresentation and not binding on the rights of the plaintiffs.

The case of the plaintiffs was that one Munshi Ram son of Shri Kushal, resident of Village Dadhola was owner in possession of the suit land. He died in the year 1938 leaving behind his daughter, namely, Bhullo Devi as his only legal heir. The predecessor-in-interest of the defendants in collusion with revenue staff got mutation No.557 sanctioned in his favour by concealing the fact that Bhullo Devi daughter of Munshi Ram was alive. It was further pleaded that predecessor-in-interest of the defendants was not legal heir of Munshi Ram. It was further alleged that mutation No.557 was sanctioned without holding public inquiry, without notice or munadi being

effected and no inquiry being made regarding the legal heir of Munshi Ram. Bhullo Devi daughter of Munshi Ram died in the year 1985 leaving behind the plaintiffs and proforma defendants as her legal heirs.

The case of the defendants was that Bhullo Devi was not the legal heir of the Munshi Ram as alleged. It was further the case of the defendants that mutation No.557 was sanctioned by following proper procedure. Moreover, the predecessor-in-interest of the plaintiffs never challenged the mutation before any Court.

In order to prove their case, the primary reliance of the plaintiffs was on Ex-P-1 birth certificate dated 19.02.2010, Ex. P-3 copy of mutation No.557 and Ex. P-7 copy of family register.

Learned Trial Court held that Ex.P-1 birth certificate was not sufficient to establish that Bhullo Devi was the daughter of Munshi Ram. The birth certificate did not mention the month and year of the birth of the child. It was noted that on 18.02.2010 an untraced report was issued stating that there was no record available about the birth of Bhullo Devi in the in the office of Registrar (Births and Deaths) but on the very next day i.e. 19.02.2010, birth certificate Ex. P-1 was got issued. Thereby the very authenticity of the birth certificate was doubted. The family register Ex.P-7 did not contain the name of Bhullo Devi as being the daughter of Munshi Ram. From the oral testimony of PW-1 Bhanwar Singh, PW-2 Asgar Ali, PW-3 Rehtu it could not be established that Bhullo Devi was the daughter of Munshi Ram.

Learned Trial Court also noted that the claim of the plaintiffs that mutation No.557 was not sanctioned by adopting the due course of law was also unsustainable as the mutation proceedings Ex. P-3/C revealed that

a proper verification and enquiry was conducted at the spot by the then Tehsildar. Numberdar of the village also there at the spot, and after due verification by the Tehsildar, Panipat, that Munshi Ram had died issueless, the mutation Ex.P-3 was sanctioned in favour of predecessors-in-interest of the defendant. It was further noted that Bhullo Devi had died in the year 1985 about 47 years after the death of Munshi Ram but no evidence was placed on record that she had ever visited the Village Dadhola, where the land was situated and where Munshi Ram resided.

It was further held that the suit was barred by limitation. The limitation for suit for declaration was three years whereas the present suit had been filed 70 years after the sanctioning of the mutation in 1940. The Courts further held that no reliance can be placed on the enquiry conducted by the Police, in which the plaintiffs are alleged to have admitted that Bhullo Devi was the daughter of Munshi Ram. It was held that plaintiffs had to prove their case independently before the Courts. The Ld. Lower Appellate Court has affirmed the findings of the Trial Court.

Ld. Counsel for the appellant has not been able to establish as to how the findings of the Courts below are perverse or against the facts.

No question of law arises for decision in this appeal.

Dismissed.

13.09.2018
Atul

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No