

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM 14715-C-2015
CM 3813-C-2018 in/ and
RSA- 5911-2015 (O&M)
Date of decision: 12.03.2018

Lichhman Dutt @ Lichhman Devi (since deceased through his LRs)
.....Appellant(s)

versus

Joginder Singh Sharma (since deceased through his LRs) and others
.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sanjay Vashisth, Advocate for the appellant(s)

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

CM 14715-C-2015

For the reasons mentioned in the application the same is allowed and delay of 9 days in re-filing the appeal stands condoned.

CM 3813-C-2018

The present application has been filed for impleading legal representatives of Lichhman Dutt @ Lichhman Devi, who died during pendency of appeal.

In view of the prayer made in the application, it is allowed and legal representatives of Lichhman Dutt @ Lichhman Devi, as mentioned in paragraph no.4 of the application are impleaded and brought on record. Amended memo of parties is taken on record.

RSA 5911-2015

Impugned in the present Regular Second Appeal is the

judgment and decree dated 28.4.2015, passed by learned Additional District Judge, Panipat, affirming the judgment and decree dated 5.3.2013, passed by learned Additional Civil Judge (Senior Division), Panipat, vide which, suit filed by the plaintiff was dismissed.

Plaintiff Lichhman Dutt @ Lichhman Devi had filed suit for declaration to the effect that mutation of inheritance No.957 of year 1970 of Sukh Lal in favour of Shanti is illegal and that judgment and decree dated 26.7.1990 suffered by Shanti Devi in favour of Joginder Singh Sharma now deceased defendant, is also illegal, null and void and not binding on the rights of the plaintiff. Permanent injunction was also sought restraining the defendant forever from interfering in the peaceful possession of the plaintiff over the suit land and further restraining the defendant from alienating the suit land in any manner.

According to the case of the plaintiff, Sukh Lal was owner of the suit land. He died in the year 1970. Since his earlier wife and son was dead at that time, land was mutated in favour of Shanti as his wife. It was claimed in the plaint that Shanti was not legally wedded wife of Sukh Lal. Shanti further suffered a consent decree dated 26.7.1990 in civil suit no.445 of 1990 in favour of Joginder Singh Sharma. Plaintiff claims that he is the nearest collateral of Sukh Lal and entitled to the land of Sukh Lal in the absence of inheritance by Shanti and Joginder Singh Sharma. Therefore, he has challenged the same.

I have heard learned counsel for the appellant(s) and have also carefully gone through the file.

Both the Courts below recorded concurrent findings of facts that Shanti was the wife of Sukh Lal and the land was correctly mutated in

her name.

I am of the view that findings of facts have been recorded that Shanti was the wife of the Sukh Lal. Sukh Lal died in the year 1970 and land was immediately mutated in name of his wife Shanti. Plaintiff remained silent at that time. Thereafter, Shanti suffered a decree dated 26.7.1990 in favour of Joginder Singh Sharma. Even then the plaintiff remained silent. Shanti died on 21.11.1999. It was thereafter that in the year 2007 i.e. nearly 8 years after the death of Shanti, present suit was filed. I am of the view that the findings of facts have been recorded by the trial Court that Shanti was the wife of Sukh Lal. Inheritance of Sukh Lal was never challenged by the petitioner during the lifetime of Shanti. The said findings of facts cannot be gone into in the Regular Second Appeal. Shanti also died in the year 1999 and the present suit was filed after 8 years. Plaintiff claims to be collateral of Sukh Lal. Once, inheritance in favour of Shanti is upheld and the plaintiff does not claim to be collateral of Shanti, therefore, he cannot claim that he is entitled to succession. Trial Court has taken the view that the consent decree could only be challenged by the party which suffered it. Shanti remained alive for little less than 9 years after the passing of consent decree. She did not challenge it. Now, after 17 years, the plaintiff cannot come and challenge the decree claiming that he is collateral of Sukh Lal from which Shanti had inherited the property.

Learned counsel for the appellant has stated that the decree requires compulsory registration. He has relied upon the judgment of this Court in RSA 308 of 2003 decided on 9.12.2015 titled as *Balbir Singh vs. Jagdish Chand*.

I am of the view that in the said case, the decree was challenged

amongst others on the ground of fraud. In the present case, it has been challenged merely on the ground that it is not registered. Plaintiff has no locus standi to challenge the decree on the ground that it requires compulsory registration.

No law point arises. There are concurrent findings of facts of two Courts below. There is no ground to interfere in the same. Resultantly, the present appeal stands dismissed.

Since the main case has been dismissed, therefore, the pending CM, if any, also stands disposed of.

12.03.2018

gk

**(Kuldip Singh)
Judge**

Whether speaking/ reasoned:	Yes
Whether Reportable:	No