

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No. 1251 of 2017 (O/M)
Date of decision : 23.5.2018

Bira alias Biru through LRs and another Appellants

Versus

Chander and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashish Aggarwal, Senior Advocate, with,
Mr. Kulwant Singh, Advocate,
for appellants.

Mr. S.S. Duhan, Advocate,
for respondent No. 1.

Mr. Sanjeev Sheoran and Mr. Madan Pal, Advocates,
for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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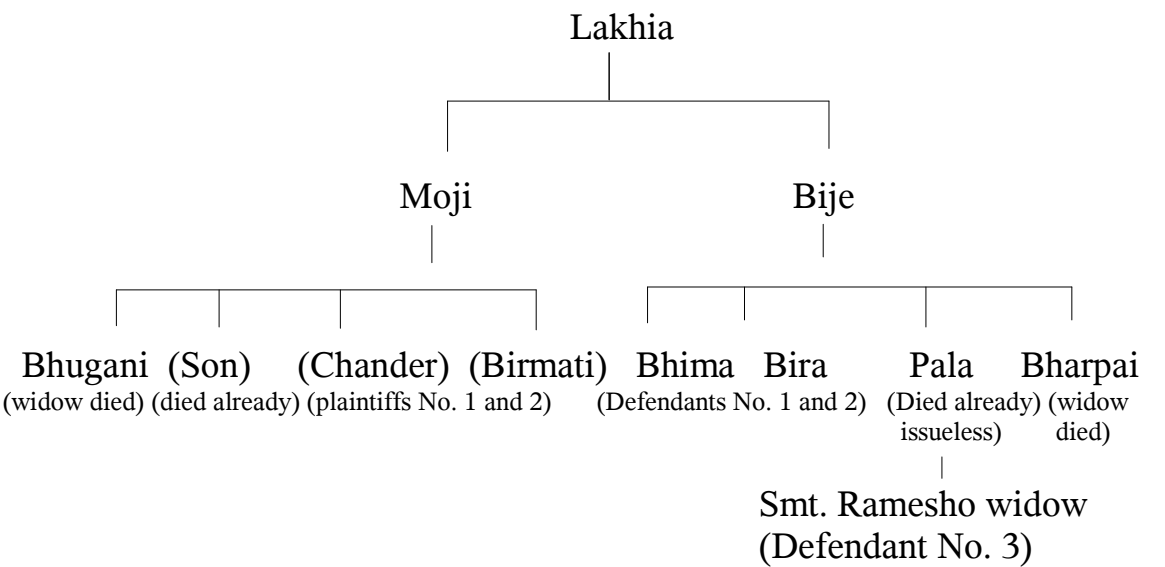
KULDIP SINGH J.

Impugned in present regular second appeal is judgment dated 10.11.2016, passed by learned Additional District Judge, Jind, affirming judgment and decree dated 13.12.2011, passed by learned Civil Judge (Senior Division), Jind, vide which suit filed by plaintiffs was decreed.

Plaintiffs had filed a suit for declaration that they are owners in equal shares to the extent of 1527/2486 shares in suit land i.e. 76 kanals 6 marlas out of total agriculture land measuring 124 kanals 6 marlas, situated within revenue estate of village Gatoli, Tehsil Julana, District Jind, fully detailed in head note of plaint as per jamabandi for the year 2004-05. They also claimed that mutation No. 403 dated 25.6.1961, sanctioned and

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attested in favour of Bijе and subsequent mutation No. 404 dated 25.6.1961 in favour of defendants No. 1 and 2 and Pala (now deceased) son of Bijе, husband of defendant No. 3 Ramesho and Smt. Bharpai (now deceased) widow of Bijе and mother of defendants No. 1 and 2 and said Pala wrongly showing that Moji died issueless and mutation No. 1714 are illegal and consequently subsequent revenue entries qua the suit land qua share of Moji are also illegal. They have also prayed for decree for possession of said agriculture land. Permanent injunction was also sought restraining defendants from alienating said agriculture land in any way. The pedigree table set up by plaintiffs is as under :-



Plaintiffs claim that they are daughter of Moji, who was owner alongwith his brother Bijе (now deceased), father of defendants No. 1 and 2 and father in law of defendant No. 3 of suit land in equal shares to the extent of 1/8 shares of agriculture land measuring 114 bighas 4 bishwas and to the extent of 1/4th share of agriculture land measuring 14 bighas 6 bishwas as per jamabandi for the year 1955-56 of village Gatoli, District Jind. Moji, father of plaintiffs died prior to 1960. Bhugani, wife of Moji, died one month later. They also had one brother, whose name is not known to plaintiffs, who also died between that period. At that time, plaintiff No. 1

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Chander was aged about 6 years and plaintiff No. 2 Birmati was aged about 2 years and said deceased son was aged about 4 years. After some time, Bijee, father of defendants No. 1 and 2, husband of Bharpai and father in law of defendant No. 3 Smt. Ramesho widow of Pala, also died. Plaintiffs were minor at that time aged about 6 and 2 years. Defendants No. 1 and 2, Smt. Bharpai their mother and Pala, husband of defendant No. 3 in order to grab the share of Moji, hatched a conspiracy in collusion with one Jogi Ram, Lambardar of Village Gatoli, District Jind, got the mutation of inheritance of Moji sanctioned, bearing No. 403, dated 25.6.1961, in the name of Bijee, who was also dead at that time and on the same date on 25.6.1961, got sanctioned another mutation of inheritance of Bijee in favour of defendants No. 1 and 2, Pala and Smt. Bharpai, wife of Bijee. The existence of plaintiffs was concealed. Moji was recorded as issueless and unmarried. Plaintiffs claim that they were entitled to inherit the estate of their deceased father Moji. It is further stated that Government of Haryana acquired land measuring 16 kanals out of said agriculture land and mutation No. 924 of Village Gatoli, District Jind, was sanctioned. The amount of compensation was received by defendants only and nothing was paid to plaintiffs. Thereafter, remaining agriculture land left was 136 kanals 13 marlas as per jamabandi for the year 1984-85. Thereafter, as per jamabandi for the year 1989-90, 0 kanal 3 marlas land was deducted from said khewat. Again, land measuring 12 kanals 4 marls was acquired by State of Haryana for construction of drain and compensation was paid to defendants only and nothing paid to plaintiffs. Mutation No. 1714 was accordingly sanctioned in favour of State of Haryana. Therefore, as per jamabandi for the year 2004-05, 124 kanals 6 marlas land was left. Plaintiffs claim that they are

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married and residing at their matrimonial houses. Defendants were giving batai to plaintiffs to the extent of one half share. In the first week of April 2007, when plaintiffs demand the batai, defendants refused the same. Therefore, suit was filed on 1.5.2007.

In the written statement, defendants claim that Moji died issueless and mutation No. 403 was rightly sanctioned. They also claimed that Pala had renounced the world 25 years ago and thereafter he died. It was further claimed that suit is barred by time. The mutation of inheritance was sanctioned on 25.6.1961 and plaintiffs never objected to same. They did not object even when land was acquired and compensation was paid to defendants.

From the pleadings, following issues were framed :-

1. Whether plaintiffs are owners in equal shares to the extent of 1527/2486 in the suit property ? OPP
2. Whether mutation No. 403 dated 25.6.1961 in favour of the deceased Bijie son of Lakhia resident of village Gatoli District Jind is wrong, illegal, null and void and not binding on the rights of the plaintiffs ? OPP
3. If issues No. 1 and 2 are proved, whether plaintiffs are entitled for decree of declaration as per with consequential relief of permanent injunction on the ground mentioned in the plaint ? OPP
4. Whether suit of the plaintiffs is not maintainable in the present form ? OPD
5. Whether plaintiffs have no cause of action and locus standi to file the present suit ? OPD
6. Relief.

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Trial Court took up issues No. 1 to 3 together and held that plaintiffs are daughters of Moji and accordingly decided issues No. 1 to 3 in favour of plaintiffs. Issues No. 4 and 5 were also decided in favour of plaintiffs. Consequently, suit was decreed to the extent that plaintiffs were declared owners in equal shares to the extent of 1527/2486 share in suit and were held entitled to recover possession of their share from defendants by filing separate suit for partition. Mutations No. 403, 404 and subsequent revenue records in favour of defendants qua share of Moji were held to be illegal and defendants were also restrained from alienating the share of plaintiffs in suit land.

I have heard learned senior counsel/counsels for parties and have also carefully gone through file and lower Court record also.

Before this Court, following law points have been raised by learned senior counsel for appellants-defendants :-

1. Whether findings of trial Court are perverse and passed on wrong appreciation of documents and records ?
2. Whether suit is time barred ?

In this case, primarily two issues are involved. First is as to whether plaintiffs are daughters of Moji ? If this issue is found in their favour, then, it has to follow that they were/are entitled to succeed him subject to law of limitation. Second, is as to whether limitation is to start from the date of mutation dated 25.6.1961 in favour of defendants' predecessor Bijie and if not, then from which date ?

To prove the relationship, plaintiffs have relied upon birth certificates as well as oral evidence. I will take up documentary evidence first, which are birth certificates of plaintiffs. The examination of original

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lower Court record shows that translated copies of birth certificates were tendered in evidence before trial Court by learned counsel for plaintiffs on 22.4.2011 and these were exhibited. Now, question is as to whether said copies of birth certificates are reliable documents ? First is the birth certificate (Ex.P22). The examination of same shows that it is not original certificate. It is translation of original issued by Additional Registrar, Births and Deaths, Jind, on 14.12.2010. The original certificate from which the said translation has been prepared was neither produced nor proved. Even the translation is undependable. In the said translated certificates, district of village Gatoli is given as Jind. The date of birth is mentioned as 15.8.1953. The Punjab and Haryana States were joint till year 1960. In the year 1953 and before year 1960, Jind was part of District Sangrur. Therefore, in the birth certificates, district should have been mentioned as Sangrur and not Jind. The name of child is not mentioned, though it is mentioned that it is female child. In the date of birth 15.8.1953, there is a note that digit 5 is not clear. There is overwriting over the month and 7 appears to have been converted into 8. In the serial No. 3062, there is overwriting. After the name Moji son of Lakhia, a note is given that same is not legible. Therefore, Ex.P22, which is translation of original birth certificate is not dependable document to hold that one of the plaintiffs was born on 15.8.1953 and was daughter of Moji. At the cost of repetition, it is again observed that original birth certificate was not produced or proved. Therefore, Ex.P22 is not reliable.

Now, coming to copy of birth certificate Ex.P23, which is again translation of original and issued on 15.12.2010, district is again mentioned as Jind and the date of birth is mentioned as 6.7.1957. As observed earlier,

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in the year 1957, Tehsil Jind was part of District Sangrur and District Jind was not in existence and, therefore, even the said translated version is incorrect. Father's name is mentioned as Moji son of Sukhia, whereas his father's name is Lakhia. Again, original of Ex.P23 was never produced or proved. Therefore, alleged translation of original birth certificates Ex.P22 and Ex.P23 were wrongly relied upon by both the Courts below to come to conclusion that both plaintiffs are daughters of Moji.

Mere exhibiting of documents does not mean that these have been proved in accordance with law. Reference may be made to authority of Court in *Marru Ram Versus Kheta Ram (since deceased) through LRs and others*, 2016 AIR (Punjab) 187.

In my view, for the reasons recorded above, translated copies of birth certificates Ex.P22 and Ex.P23 are unreliable and cannot be relied upon to record the findings regarding relationship of plaintiffs with Moji.

Now, coming to oral evidence, according to plaintiffs, their date of birth is 15.8.1953 and 6.7.1957. It is claimed that Moji died somewhere in the year 1960. Mutation No. 403 and 404 were sanctioned on 25.6.1961. Trial Court had relied upon the statement of witness Maha Singh (PW1), who is stated to be neighbour of Moji and statement of witness Rattan Singh (PW2), who is stated to be resident of Village Gatoli. The statements of both the witnesses were recorded on 10.12.2010 wherein they mentioned their age as 65 and 57 years respectively, meaning thereby that Maha Singh was born somewhere in the year 1945 and Rattan Singh was born somewhere in the year 1953, meaning thereby that in the year 1953, Maha Singh himself was aged about 8 years and in the year 1957, he was aged about 12 years. Similarly, second witness Rattan Singh was of the same age

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as one of the plaintiffs and was only 4 years old in the year 1957. Therefore, so far as statement of Rattan Singh is concerned, he himself might not have gained senses and cannot say whether plaintiffs are daughters of Moji.

So far as statement of Maha Singh is concerned, he was aged about 8 and 12 years at the time of birth of plaintiffs. In the year 1960 when Moji died, he was aged about 15 years only. Therefore, his evidence regarding relationship of plaintiffs with Moji could not be relied upon. No chowkidar, lambardar of village or a person of very senior age was produced to state that he was mature enough in the year 1953 and 1957 and had family relations with Moji and could state that plaintiffs are daughters of Moji. Plaintiffs themselves do not know name of their brother, who died when he was aged about 4 years. Maha Singh stated that both sisters were married at the same time. There is nothing to show from statement of Maha Singh that he was mature enough before marriage of plaintiffs and that he was having dealings with family of Moji to state about relationship of plaintiffs with Moji. The statement of Rattan Singh is undependable in view of his tendered age at relevant time and when he had not gained enough maturity to understand the surroundings. Therefore, statements of Maha Singh and Rattan Singh were wrongly relied upon by both the Courts below without considering whether in the year 1953, 1957 and 1960, they were mature enough or had dealings with family of Moji to state about their relationship.

Chander (plaintiff), who appeared as PW4, stated that she was married on 25.6.1967. Similarly Birmati (plaintiff) also stated that her marriage was solemnized on 25.6.1967. They are daughters of Moji. Their

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oral statement without any corroboration cannot be relied upon to hold that they are daughters of Moji.

About Pala son of Bije, brother of Moji, it was stated that he died at the age of 3-4 years, whereas it has come in evidence that Pala had renounced the world. Her statement is apparently incorrect. Chander has admitted in cross examination that Pala had renounced the world. Pala died in the year 2007. 25 years earlier, he had renounced the world and had become Sanyasi.

Statement of Balwan also cannot be relied upon as he mentioned his age as 64 years when he appeared as PW3 on 20.3.2011 for the same reason as is statement of Maha Singh.

Plaintiff Birmati also produced her husband Om Parkash, who appeared as PW6. Bhim Singh was also produced. He stated that Bhim Singh had done Kanyadaan of his wife at the time of his marriage. However, no proof in this regard was produced. Moreover, said fact is not sufficient to prove that plaintiffs are daughters of Moji. Om Parkash (PW6) stated that Pala died at the age of 49 years in the year 2007.

In these circumstances, when statements of Maha Singh, Rattan Singh and Balwan Singh are not dependable and there is no documentary proof, both the Courts erred in misreading evidence and alleged birth certificates which are infact translation of birth certificates and are not dependable.

Section 50 of Indian Evidence Act, 1872, lays down as under :-

'50. Opinion on relationship, when relevant.- When the Court has to form an opinion as to the relationship of on 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

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or otherwise, has special means of knowledge on the subject, is 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 prosecution under sections 494, 495, 497 or 498 of the Indian Penal Code (45 of 1860).'

It goes to show that opinion regarding relationship of one person with another expressed by conduct as to the existence of such relationship or by any person, who is member of family or otherwise has special means of knowledge on the subject, is relevant fact.

Now, it is to be seen whether witnesses produced by plaintiffs are member of family or have special means of knowledge regarding alleged relationship of plaintiffs with Moji?

For the reasons recorded above, the statements of witnesses about relationship is unreliable. Therefore, it is held that plaintiffs could not prove that they are daughters of Moji.

Now, I come to question of limitation, the learned counsel for respondents has relied upon authority of this Court in *Amar Singh Versus Man Phool*, 1992 (1) RRR 557, to press that limitation will not be counted from the date of mutation.

There is no dispute with said authority.

The learned counsel for respondents has also relied upon authority of this Court in *Mohinder Singh and others Versus Shangara Singh and another*, 2007 (5) RCR (Civil) 388, to press that limitation will start from date when right first accrued.

In this case, findings of facts have been recorded by both the Courts below that story of defendants regarding payment of batai is not correct. Infact, land was acquired twice, first in year 1977 and second in

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year 2000 when plaintiffs were not paid compensation for acquired land. Therefore, they had knowledge that land is not recorded in their name. Therefore, limitation in present case started from year 1977.

The learned counsel for respondents has also relied upon authority of this Court in *Gurcharan Ram Versus Tejwant Singh (Dead) through LRs and another*, 2008 (4) RCR (Civil) 266, to press that in the regular second appeal, Court cannot interfere in the findings of fact.

I am of the view that regular second appeals for the States of Punjab and Haryana are governed under Section 41 of Punjab Courts Act, wherein appeal lies on question of law and where there is perversity in the findings, misreading of documents or evidence, which resulted in failure of justice. In the present case, a question of law is involved and this Court can interfere in regular second appeal.

There is absolutely no reason why plaintiffs remained silent when according to them, land was acquired by State Government twice, once somewhere in the year 1977 and thereafter somewhere in the year 2000 and compensation was disbursed to defendants. When land was acquired and compensation was not paid to plaintiffs on the assumption that they are not daughters of Moji, then this was sufficient to alert them, even if, it is assumed that at the time of mutation in the year 1961, they were not informed about mutation. Mutation itself does not create title and if plaintiffs claim that they were not informed about mutation, limitation cannot start from the date of mutation. But in any case, from the date of first acquisition somewhere in the year 1977, the plaintiffs came to know that their land has been acquired by State Government and nothing has been paid to them when mutation No. 924 (Ex.P13) was sanctioned on

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27.11.1980. As per revenue entry, land was acquired, vide award dated 28.2.1977. Therefore, from the year 1977 when part of suit land was acquired by Haryana Government, plaintiffs should have been alerted. When compensation was not paid to them, they did not file any suit for next 30 years. Plaintiffs claim that 12 kanals 4 marlas of land was again acquired by State of Haryana, vide award dated 4.6.2000 and mutation No. 1714 (Ex.P18) was sanctioned in the year 2001. Even thereafter, plaintiffs remained silent. As such, suit is also held to be hopelessly time barred. Findings on issues No. 1 to 3 are reversed.

In view of foregoing discussion, impugned judgment dated 10.11.2016, passed by learned Additional District Judge, Jind, as well as judgment and decree dated 13.12.2011, passed by learned Civil Judge (Senior Division), Jind, are set aside and suit of plaintiffs stands dismissed, leaving parties to bear their own costs. Appeal is allowed. Decree sheet be prepared.

(KULDIP SINGH)
JUDGE

23.5.2018
sjks

Whether speaking / reasoned : Yes / No
Whether Reportable : Yes / No