

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

RSA No.345 of 2017 (O&M)

Date of decision : 29.08.2018

Dharambir and others

...Appellants

Versus

Mange Ram and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ajay Vijrania, Advocate for the appellants.

ANIL KSHETARPAL, J. (ORAL)

CM No.777-C of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 178 days in refiling the present appeal is condoned.

Application is allowed.

Main case

The defendants-appellants are in the Regular Second Appeal against the judgment passed by the learned First Appellate Court decreeing the suit filed by the plaintiffs claiming declaration that the plaintiffs and the defendants are joint owners in possession of land measuring 16 bighas and 10 biswas.

Some facts are required to be noticed.

Ami Lal, Harchand and Kheman were three brothers. Ami Lal

and Harchand were owners to the extent of 2/3rd share in the land measuring 18 bighas 15 biswas and 7 biswansi. Harchand was married to Smt. Ganga and they had a daughter namely Hawa Kaur. Harchand died before The Hindu Succession Act, 1956 came into force in the year 1956. Smt. Ganga contracted a karewa marriage with Ami Lal, brother of Harchand (deceased husband). Since the Hindu Succession Act, 1956 had not come into effect, therefore, the mutation of the land was entered in favour of Ganga exclusively.

It is the case of the plaintiffs that after marriage of Ganga with Ami Lal, four children were born namely Mange Ram, Mam Kaur, Hans Kaur and Sarti. However, on the death of Ami Lal, the mutation of inheritance was sanctioned only in favour of Mange Ram, Hans Kaur and Ganga and thereafter on the death of Ganga, the property was wrongly mutated in favour of Mange Ram, Hans Kaur 1/9th share whereas Dharambir, Balbir, Kamlesh and Sunita, children of Hawa Kaur to the extent of 1/3rd share. These two mutations are disputed.

The defendants contested the suit and pleaded that Ami Lal and Ganga had only two children i.e. Mange Ram and Hans Kaur. It was disputed that Mam Kaur and Sarti were also daughters of Ami Lal and Ganga.

Learned trial Court dismissed the suit primarily on the ground that the suit is barred by limitation, whereas the learned First Appellate Court reversed the aforesaid finding that the suit for declaration has been filed on the basis of inheritance by way of natural succession and all the parties claimed to be the joint owners in possession. The First Appellate

Court also found that the mutation of the property does not give rise to any cause of action.

Learned First Appellate Court further after discussing the evidence found that when Mange Ram and PW1 Nambardar of the Village appeared, the aforesaid witnesses were not cross-examined on the aspect of Mam Kaur and Sarti being not daughter of Ami Lal and Ganga. The First Appellate Court has while discussing the evidence recorded as under:-

“In the entire cross-examination of PW2 Mange Ram, it was not asked from him as to whether Smt. Sarti and Mamkaur were two daughters of Amilal and Ganga Devi or not, rather the specific question was put to the said witness regarding present residence as well as marriage of these two persons. PW2 had replied to the query of the defendants to the effect that Smt. Sarti was married at Village Dhakla and her marriage was solemnized about 40 years earlier. After her marriage, she had been residing in that village where she has her children including having her ration-card and voter card. Simultaneously, it was asked about Smt. Mamkaur and it was replied by PW2 that Smt. Mamkaur was also married alongwith Smt. Sarti in the same village but has since been expired. After marriage, Smt. Mamkaur had been residing at Village Dhakla with her children. This witness was also asked about the impugned mutations and it was replied by him that the mutation of inheritance of Smt. Ganga was to be entered and sanctioned in the names of her five children and he has disputed both the impugned mutations as to have been wrongly sanctioned. After going through the entire deposition of PW2, he was not specifically asked about the non-existence of Smt. Sarti and Mamkaur as the daughters of late Amilal and Ganga Devi. Meaning thereby, the defendants did not ask from the said witness about specific

*contents of his affidavit and thus, the learned counsel for the plaintiffs has rightly argued that the contents of the affidavit of evidence of PW Mange Ram, thus, have been admitted as correct by the defendants. The learned counsel for the plaintiffs has drawn the attention of this Court towards para No.4 of the affidavit Ex.PW2/A wherein it has been specifically mentioned that after the death of Har Chand, Smt. Ganga had contacted karewa marriage with Amilal and one son namely Mange Ram (witness himself) as well as three daughters namely Sarti, Mamkaur and Hanskaur had taken birth. In this regard, the reliance was placed by the plaintiffs on the case of **Surinder Kumar and others Versus Dr. Satwant Kaur, 1984 S.L.J. (P&H), 405** wherein regarding the scope and value of cross-examination of the witness under Section 137 of Evidence Act, it is held by the Hon'ble High Court that it is well settled that in case a witness is not cross-examined by the other side, it will be presumed that he did not challenge the correctness of his statement. Similarly, the reliance was placed on the case of **Mehanga Singh and others versus Gurdial Singh and others, 2004(1) RCR (Civil) (P&H) 338**, wherein it has been held by the Hon'ble High Court that failure to cross-examine on a vital issue would result into adverse inference against the party. Thus, where no specific question was put to PW2 on part of the defendants regarding the parentage of Smt. Mamkaur and Sarti, meaning thereby, the defendants have admitted the fact regarding parentage of these two persons to have taken birth from the karewa wedlock of Amilal and Smt. Ganga Devi.*

15. Further, another important witness PW1 who is none other but the Numberdar of Village Laad when appeared as PW1, he has also deposed about contacting of the karewa marriage by Smt. Ganga Devi with Amilal and from the said

wedlock as many as four children had taken birth. These four children were Mange Ram (plaintiff), Mamkaur, Sarti and Hanskaur. Through his affidavit Ex.PW1/A, he stated that he had special knowledge regarding relationship of the parties being the resident of the same village. Similarly, no specific question was put to the said witness by the defendants regarding parentage of Smt. Sarti and Mamkaur and it has only been asked from the said witness as it correct that whether these two persons have been married. This way, the defendants could not rebut this fact that Smt. Sarti and Mamkaur were not the daughters of late Amilal and Smt. Ganga Devi. Rather, the plaintiffs have been able to prove that these two ladies were the daughters of late Amilal and Ganga Devi who took birth after contacting karewa marriage by Smt. Ganga Devi with Amilal after the death of her husband Har Chand. In this regard, this Court has also gone through the evidence of the sole witness Balbir examined on part of the defendants. Thus, it is proved that Smt. Sarti and Mamkaur were also daughters of Smt. Ganga Devi and Amilal.”

At the time of the arguments, learned counsel for the appellants did not dispute this position. He admitted that the witnesses were not cross-examined on this aspect and the finding of the First Appellate Court on this factual aspect is correct.

However, learned counsel for the appellants submitted that since Mange Ram was present when the mutation was sanctioned in the year 1998 i.e. on account of the death of Ganga, therefore, he is estopped from challenging the mutation. The succession is governed by the Hindu Succession Act, 1956. The presence of Ganga, even she was present, would not debar the other class-I heirs from claiming the ownership. There cannot

be any estoppel against the statute.

Learned counsel for the appellants further submitted that Sarti, one of the plaintiff has not appeared in the witness-box. It may be noticed that the suit was filed by three plaintiffs i.e. Mange Ram, Smt. Sarti and Ramehar son of Smt. Mam Kaur as Mam Kaur has died. Ramehar has appeared in the witness-box and supported the case of the plaintiffs. Apart therefrom Nambardar of the village has appeared as PW1 and has also supported the case of the plaintiffs. He was a person who was having special knowledge regarding the relationship of the parties but he has not been cross-examined on this aspect. It is well settled that if a witness is not cross-examined on a particular aspect or his statement in examination-in-chief is not challenged in the cross-examination, the aforesaid part of the statement goes unchallenged and, therefore, deemed to be admitted by the other party.

In view thereof, there is no ground to interfere.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications, if any, disposed of in view of the abovesaid judgment.

29.08.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No