

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.6032 of 2017

Date of Decision: November 21, 2018

Sugan Chand & others

...Appellants

Versus

Manga & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Gopal Soni, Advocate,
for the appellants.

AMIT RAWAL, J.

The present Regular Second Appeal is directed against the judgment and decree of the Lower Appellate Court, whereby the suit of the plaintiff dismissed by the trial court has been decreed.

Respondent-plaintiff sought declaration with consequential relief of injunction on the premise that he along with proforma defendants were owners in possession of agricultural land measuring 146 kanals 15 marlas to the extent of 1/12 share and, thus, mutation No.1385 sanctioned on 23.06.1975 of deceased Bhartu son of Sundu and subsequent revenue entries were illegal, null and void. Bhartu died issueless and his brothers Sarupa and Chander Bhan had inherited his share in equal shares. Mutation qua Village Ballah was sanctioned in the name of both the brothers on 14.12.1968 and similarly with regard to land at Village Kurlan. Sarupa and Chander Bhan both brothers had died and in May, 2009 alleged to be owner of the land belonging to Bhartu situated at Village Kurlan. Mutation

No.1385 was sanctioned on 23.06.1975, whereas Bhartu had died prior to 1968.

Defendants opposed the suit and asserted that Bhartu had died on 28.02.1974, whereas Sarupa had died before the death of Bhartu and, therefore, only Chander Bhan was surviving brother of Bhartu and being Class-II heir inherited his share.

Plaintiff in support of the assertion examined five witnesses and brought on record the following documents:-

- “Ex.P1 - Mutation No.4462*
- Ex.P1/T - Hindu Translation of Mutation.*
- Ex.P2 - Mutation No.1385.*
- Ex.PW3/A - Sale Deed dated 19.12.1968.*
- Ex.PW4/A - Register of Death*
- Ex.PW4/T - Translation of Register.*
- Ex.PW4/B - Death Certificate*
- Ex.P5 - Jamabandi for the year 1968-69*
- Ex.P6 - Jamabandi for the year 1978-79*
- Ex.P7 - Jamabandi for the year 1983-84*
- Ex.P8 - Jamabandi for the year 1988-89*
- Ex.P9 - Jamabandi for the year 1973-74”*

On the other hand, defendants examined two witnesses and also brought on record the following documents:-

- “Ex.D1 - Mutation No.1489*
- Ex.D1/T - Hindi Translation of Mutation.*
- Ex.D2 - Girdawari of year 2009.*
- Ex.D3 - Mutation No.1809”*

The trial court, on the preponderance of the evidence, dismissed the suit by holding that the plaintiff failed to prove the joint possession.

Mr. Vijay Kumar Jindal, learned Senior Counsel assisted by

Mr.Gopal Soni, learned counsel representing the appellant-defendant that the Lower Appellate Court, being the last court of fact and law, has abdicated in reversing the well reasoned judgment of the trial court as it remained oblivious of the fact that the suit laying challenge to the mutation of 1975 was barred by law of limitation. Sarupa had died before the death of Bhartu and the father of the appellants No.1 to 3, namely, Chander Bhan, in such circumstances, was the sole surviving legal heir of deceased Bhartu and his entire share with respect to the suit land had rightly been inherited by him and necessary mutation entries in the Roznamcha were validly carried out.

It was next contended that the plaintiff failed to discharge the onus. Their father survived after the death of Bhartu. However, it has come in the evidence that the plaintiff in another connected civil suit admitted that he was maintaining the possession of the suit land only in respect of land measuring 12 kanals. The said land was inherited separately from his father and, thus, in such circumstances, failed to prove the joint possession qua the entire land measuring 143 kanals 15 marlas. Even if the issue of limitation was not taken, the court can always as per the provisions of Section 3 of the Limitation Act take the cognizance. It has also been proved on record that mutation bearing No.1809 reflected existence of partition between the parties.

I am afraid that the aforementioned arguments are not sustainable, for, as per the uncontroverted facts, Bhartu had died issueless and he was survived by his two brothers Chander Bhan and Sarupa. On their demise, the property was to devolve as per the natural succession to them being decedents. Partition of suit land was not reflected in the revenue

record and in such circumstances, possession was of all the co-sharers.

No doubt, the Lower Appellate Court discarded the objection qua limitation, but as as a matter of fact when title on the basis of inheritance is asserted, objection of limitation cannot cause any impediment. The aforementioned view of mine is derived from the ratio decidendi culled out in **Mohinder Singh Versus Kashmira Singh**, 1985 PLJ 82. Assuming for argument sake that the partition had been effected, but no Roznamcha in this regard had been proved or brought on record to the effect that the specific portions were delivered. Mutation Ex.D3 would not, thus, be sufficient requirement of law to establish partition. The Lower Appellate Court, being the last court of fact and law, in my view, has correctly set-aside the findings by according the relief of joint possession as sought by the plaintiff.

For the reasons stated above, no fault can be found with the findings of the Lower Appellate Court which are based on appreciation of evidence. No ground for interference is made out, much less involvement of any substantial question of law. Resultantly, the appeal is dismissed.

November 21, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No