

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

RSA No.6109 of 2017 (O&M)

Date of decision: 07.02.2018

Krishna and another

..... Appellants

Versus

Sudhir and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjay Vashisth, Advocate
for the appellants.

ANIL KSHETARPAL, J. (ORAL)

Defendants No.5 and 7-appellants are in regular second appeal against the judgment passed by learned First Appellate Court dated 03.08.2017 reversing the judgment of the trial Court and decreeing the suit filed by the plaintiff that she is also entitled to 1/10th share of the suit land being legal heirs of daughter of late Sh. Bakhtawar.

Crucial issue which needs determination is whether that late Sh. Bakhtawar who died intestate has left behind nine legal heirs or ten or in other words, whether mother of the plaintiff Sudena Devi @ Brahma Devi was daughter of Bakhtawar or not.

Plaintiffs filed a suit claiming that they are entitled to 1/10th share of the suit property being children of Sudena Devi @ Brahma Devi, daughter of Bakhtawar Singh who has pre-deceased Bakhtawar Singh. Learned trial Court dismissed the suit whereas the learned First Appellate Court after re-appreciating the evidence available on the file decreed the suit while reversing the judgment of the trial Court.

Learned First Appellate Court has discussed the evidence of witnesses produced by the defendants. The Court has noticed that Ajit Singh, DW-1, appeared and he feigned his ignorance to the question whether any sister of Om Parkash, defendant No.1 is married in village Phoolpura or not. Phoolpura is the village where late Smt. Sudena Devi @ Brahma Devi was married. Similarly, Bhim Singh, DW-2 has stated in the cross-examination that out of Sudena Devi @ Brahma Devi and Bakhtawar, it was Bakhtawar who has expired earlier but he could not tell the number of children Sudena had. He further stated as under:-

*“visits of **relatives of village Phool Pura** are now stopped, nor they (those relatives) are on visiting terms; I have not visited **the relatives of village Phool Pura**, along with the defendants, **because** I do not have my personal relationship in that village.”*

The Court further after analyzing the evidence produced on file recorded a finding that the defendants had not even specifically pleaded that Sudena was not the daughter of Bakhtawar.

*“18. The second material averment of the plaintiffs is that their mother Smt. Sudena @ Brahma Devi was married with one Inder Singh of village Phoolpura, was daughter of Sh. Bakhtawar above, whereas the defendants no. 1 to 3 and Late Sh. Haripal were sons **and the** defendants no. 4 to 7 were the other four daughters of said Sh. Bakhtawar. After the death of Sh. Bakhtawar, he was left with 10 legal heirs in the following manner:*

- (a) His widow Smt. Ramsari – 1*
- (b) His four sons (defendants no. 1 to 3) and Sh. Haripal – 4*
- (c) His four **surviving** daughters (defendants no. 4 to 7) – 4*
- (d) His pre-deceased daughter Smt. Sudena (through the three plaintiffs) – 1*

*In other words, **more pertinently**, the material contention*

of the plaintiffs is that Smt. Sudena @ Brahma Devi was the pre-deceased daughter (of Sh. Bakhtawar expired on 15.02.1976), and the plaintiffs being the sons of Smt. Sudena, were entitled to inherit 1/10 share permissible to the share of Smt. Sudena, at the time of the death of Sh. Bakhtawar, i.e. in year 1979.

19. *These averments of the plaintiffs are envisaged in the paras no.1 to 3 of their plaint.*

***Surprisingly**, in reply of the averments of the plaintiffs, with respect to their relationship with Smt. Sudena (as sons) and of Smt. Sudena with Sh. Bakhtawar (as his daughter) and of the plaintiffs with sh. Bakhtawar (as his maternal grandsons), the reply of the contesting defendants vide para no.1 of their respective written-statements is that:*

“The averments of para no. 1 are based on evidence, which have to be strictly proved by the plaintiffs.”

*When **carefully apprised**, this preliminary stand of the defendants itself unravels the dimensions of whole of the case. Such like averments on the part of one party (like the plaintiffs here) should be either admitted or out-rightly denied by the other party (like the defendants here). The relations asserted by the plaintiffs were direct and closest of a family, because the plaintiffs were asserting that their mother Smt. Sudena had been the real sister of defendants no. 1 to 7. How can it be digested that the defendants facing such averments would take a stand of avoiding this assertion, by stating it to be a matter of evidence, without denying the same.*

20. *Taking the matter with a different perspective, should the Court allow the defendants to take their stand qua these averments in a position that if the plaintiffs are able to produce some documentary evidence or other convincing evidence un rebuttable on the part of the defendants, then the defendants would admit that Smt. Sudena was their real sister, but if the plaintiffs fail, they would deny that position. It shall be one of the greatest injustice to the social fabric and inter-personal relationship existing in the families. Meaning thereby that, the defendants are found to be taking benefit of a contingency, in*

case the plaintiffs fail to produce any documentary evidence to prove that their mother Smt. Sudena was born out of the womb of Smt. Ramsari, from the loins of Sh. Bakhtawar S/o Lekha Ram.

21. *Moving further, **in reply of the categoric averments made vide para no. 2 of the plaint**, that Sh. Bakhtawar had expired in year 1979, leaving behind his **widow** (Smt. Ramsari), **sons** (Om prakash, Mir Singh, Chatarpal & Haripal) **daughters** (Santosh, Krishna, Parkash & Bala) and the plaintiffs making a single set on behalf of the **5th daughter** Smt. Sudena, as his **10** legal heirs, who became owners-in-possession of the estate left behind Sh. Bakhtawar, in **10 equal shares**, the stand of the contesting defendants, vide corresponding para no.2 of the written-statements, is that:*

*“It is correct that Sh. Bakhtawar expired in year 1979, but it is totally incorrect that he was left with **10** legal heirs, inheriting his estate in 10 equal shares **and besides that**, when Smt. Sudena @ Brahma Devi had already expired in year 1976, that is in the life time of Sh. Bakhtawar itself, then she was not left with any right, title or concern with the estate left behind Sh. Bakhtawar.”*

22. *When the above reply of the contesting defendants is carefully appreciated and evaluated, it is out-rightly made out that the defendants themselves admit the existence of one Smt. Sudena, as daughter of Sh. Bakhtawar and have rather taken a stand that **when** Smt. Sudena had expired during the lifetime of Sh. Bakhtawar, **then** she was not entitled to inherit any share in his estate. Crowning point of the surreptitious reply of the defendants is that **they have no where denied the fact that any female like Smt. Sudena @ Brahma Devi was never a daughter born to Sh. Bakhtawar**. As such, the inference that Smt. Sudena was daughter of Sh. Bakhtawar gets fortified by the own act and conduct of attempt of defendants to conceal the true facts from the Court by replying in evasive terms and **rather** admitting the position other way round that Smt. Sudena was daughter of Sh. Bakhtawar, **but** had she not expired before the death of Sh. Bakhtawar, she would be entitled to a share in the estate of Sh.*

Bakhtawar.

23. *Moving further, vide the para no. 3 of their plaint, the plaintiffs had categorically averred that:*

*“their mother Smt. Sudena @ Brahma Devi was married with Sh. Inder Singh of village Phoolpura (Distt. Bhiwani) and that after the death of their (of the plaintiffs) maternal grant father, his estate deserved to have been entered by way of inheritance, in favour of the then surviving sons and daughters to the extent of 9/10 share **and also** in favour of the plaintiffs upon sons of the pre-deceased daughter if Sh. Bakhtawar, viz. Smt. Sudena, to the extent of 1/10 share, in equal shares. ****.”*

In reply of these peculiar averments, vide their corresponding averments in para no.3 of their respective written-statements, the contesting defendants stated only to the extent that:

*“it is completely incorrect (on the part of the plaintiffs) to contend that the mutation of inheritance of Sh. Bakhtawar has been wrongly entered and sanctioned in the names of **9** legal heirs **and that** a part to the extent of 1/10 share in the shape of Sh. Bakhtawar was required to be entered in the names of the plaintiffs, with respect to the share of their mother.”*

24. *When the above reply of the contesting defendants is carefully appreciated and evaluated, it is immediately noticed that they **completely refrained from commenting anything** with respect to the marriage of Smt. Sudena with Sh. Inder Singh of village Phool Pura Teh. & Distt. Bhiwani. Had the defendants been completely ignorant of the existence of any female like Smt. Sudena, they were required to **specifically assert** the position that they are not aware of any person like Smt. Sudena, and that neither Smt. Sudena nor the plaintiffs being the sons of said Smt. Sudena have any right title or concern in the estate left behind Sh. Bakhtawar.”*

As per Order 8 Rule 3, CPC, the denial in the written statement

has to be specific with respect to each allegation of fact which the defendant does not admit. Order 8 Rule 3 is extracted as under:-

“3. Denial to be specific – It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.”

Although, learned counsel for the appellant very vehemently argued the appeal, however, he failed to impress this Court that there was any misreading or non-reading of evidence by the learned First Appellate Court. This Court does not find any illegality or perversity in the judgment passed by the learned First Appellate Court.

In view thereof, there is no scope for interference with the finding of fact arrived at by the learned First Appellate Court.

Appeal is dismissed.

07.02.2018

Dinesh Bansal

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No