

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

CR-2155-2005(O&M)

Date of decision:-30.9.2019

Shrimati Harbhajan Kaur

...Petitioner

Versus

Ratni and others

...Respondents

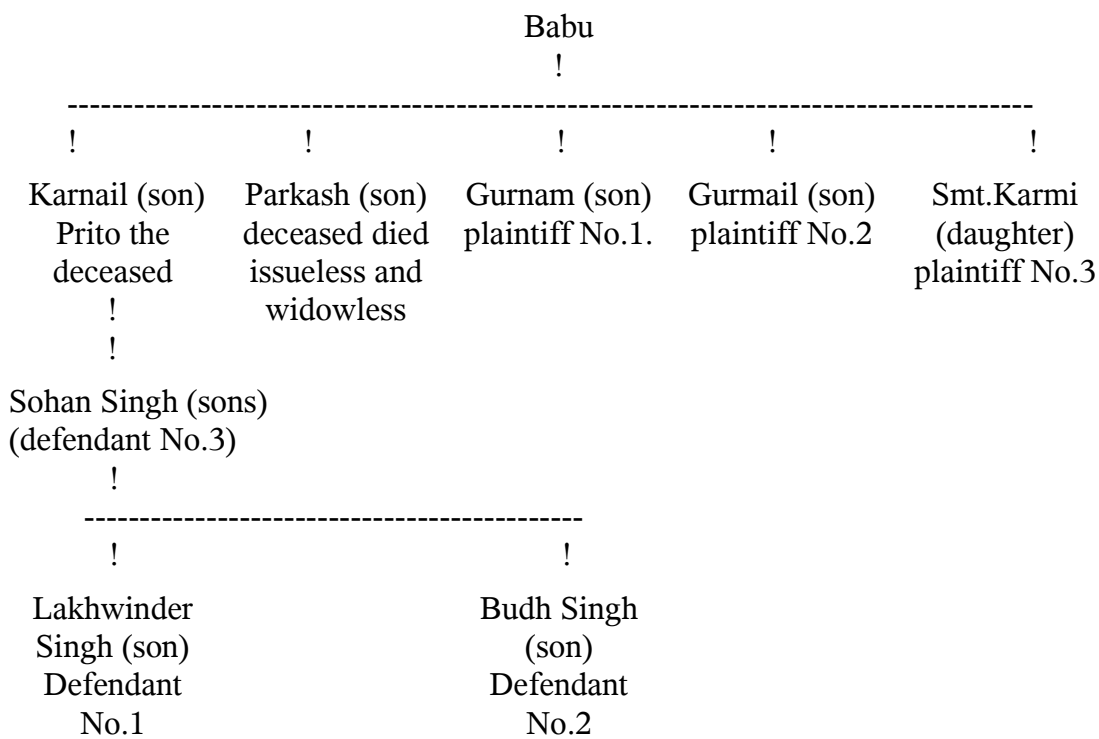
CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajeshwar Singh, Advocate
for the petitioner.

Mr.Malkiat Singh, Advocate
for the respondents.

H.S. MADAAN, J.

Briefly stated, the facts of the case as can be gathered from the record are that plaintiffs Gurnam Singh and Gurmel Singh – sons and Smt.Karmi alias Swaran Kaur daughter of Sh.Babu son of Khushahla, all residents of village Sangatpur, Tehsil Phillaur had originally brought a suit against defendants - Lakhwinder Singh and Budh Singh sons of Sh.Sohan Singh, residents of that very village. The relationship of the parties has been illustrated for better understanding by way of pedigree table, which is as under:



According to case of the plaintiffs, Sh.Babu Ram was original owner of the landed property; after his death his estate devolved upon his legal heirs; the suit property fell to the share of Sh.Parkash; Sh.Parkash died issueless and widowless on 6.8.1989, as such after the death of Sh.Parkash, the plaintiffs being his brothers and sister became owners in equal share of the suit land; Sh.Parkash and the plaintiffs had another brother by the name of Karnail Singh but said Karnail Singh had pre-deceased Sh.Parkash; defendant No.3 Sohan Singh is son of Sh.Karnail Singh, whereas defendants No.1 and 2 Lakhwinder Singh and Budh Singh are sons of Sohan Singh and as such grandsons of Karnail Singh; during the mutation proceedings with regard to inheritance of Sh.Parkash, the defendants produced a will on the basis of which mutation was sanctioned in favour of defendants No.1 and 2.

By way of filing the suit, the plaintiffs had sought setting aside of that mutation contending that as a matter of fact, they are owners

in equal shares of the suit land being natural heirs of Sh.Parkash. Since defendants No.1 and 2 had not acceded to claim of plaintiffs, they filed the suit in question against them.

On getting notice, defendants No.1 and 2 had appeared and contested the suit. Since the suit land had been sold by defendants No.1 and 2 to Smt.Harbhajan Kaur, she was impleaded as defendant No.4, whereas Sohan Singh father of defendants No.1 and 2 was impleaded as defendant No.3. Notice of the suit was given to defendant No.4 – Smt.Harbhajan Kaur but she did not appear in the Court, as such she was proceeded against ex-parte. Defendants No.1 and 2 had set up a will dated 25.7.1989 said to have been executed by Sh.Parkash in their favour stating that on the basis of the will after death of Sh.Parkash they had stepped into his shoes and become owners in possession of his estate. In the separate written statement filed by defendant No.3, he supported the case of the defendants No.1 and 2.

Issues on merits were framed and the parties were afforded adequate opportunities to lead their evidence.

After hearing arguments, the suit of the plaintiffs was partly decreed to the extent that mutation No.1472 regarding the inheritance of estate of Sh.Parkash was declared to be illegal, null and void and the sale deed dated 1.6.1994 executed by defendants No.1 and 2 in favour of defendant No.4 was also declared to be illegal, null and void and plaintiffs No.1 and 2 were held to be owners in equal share of the share of Sh.Parkash out of the suit land and they were found entitled to joint possession thereof. This was so done vide judgment and decree dated

24.3.1995.

While coming to this conclusion, the will set up by the defendants No.1 to 3 was rejected since defendants could not adduce any evidence to prove the execution of will in favour of defendants No.1 and 2. As a matter of fact defendants No.1 to 3 failed to examine any witness despite availing of a number of opportunities and their evidence was closed by order on 10.3.1995.

Smt.Harbhajan Kaur – defendant No.4 then filed an application before the trial Court for setting aside of the ex-parte judgment and decree dated 24.3.1995. The trial Court vide detailed order dated 1.5.2003 dismissed that application finding it to be time barred. Smt.Harbhajan Kaur had filed an application under Section 5 of the Limitation Act for condonation of 34 days delay in moving the application. However, the trial Court did not find any merit in the said application and it was rejected vide order of the even date.

Smt.Harbhajan Kaur – defendant No.4 had then preferred an appeal against that order, which too was declined by Additional District Judge, Jalandhar vide judgment dated 6.1.2005.

Still feeling aggrieved, Smt.Harbhajan Kaur has approached this Court by way of filing revision petition, notice of which was given to the plaintiffs/respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Section 3 of the Limitation Act, 1963 deals with Bar of Limitation providing that every suit instituted, appeal preferred, and

application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

Section 5 of that very act provides that any appeal or any application may be admitted after the prescribed period if the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

I find that the orders passed by the Courts below are well reasoned and do not suffer from any illegality or infirmity much less being apparent on the face of such orders. The orders are certainly not perverse. The revisionist could not explain any justifiable reason for belatedly approaching the Court for setting aside of ex-parte judgment and decree. Even otherwise before this Court, the revision petition filed was not pursued properly and since there was no representation on behalf of the revisionist for four successive dates of hearing, it was dismissed for non-prosecution vide order dated 27.8.2013. Subsequently, an application for restoration was filed, that too after delay of 158 days. Though the same was condoned and the revision petition was restored but that shows the casual and non-serious attitude of the revisionist throughout the proceedings. Such type of litigant is certainly not entitled to any indulgence. Furthermore, on merits also the revisionist does not have a good case. The main contest was between plaintiffs and defendants No.1 and 2 and defendants No.1 and 2 have lost the litigation. The sale deed in favour of the revisionist was executed during pendency of the suit, as such the same is clearly hit by the principle *lis pendens*. Even if, she had not been impleaded as a party, she would have been bound by the judgment

and decree passed in the litigation between the plaintiffs and her vendors. She cannot possibly set up any independent case different from that of her vendors. Furthermore, since the sale deed has been executed in her favour during pendency of litigation, she could not possibly take plea of *bona fide* purchaser for consideration, as such protected under law. The application for setting aside of ex-parte judgment and decree seems to have been filed solely with the motive to set the clock back and have a de novo trial prolonging the proceedings. Such type of tactics can certainly be not allowed to succeed.

The revision petition is found to be without any merit and is dismissed accordingly.

30.9.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : **Yes/No**

Whether reportable : **Yes/No**