

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No. 2427 of 1985 (O&M)
Date of Decision: April 01, 2019

Jogi Ram (deceased through LRs) and others

... Appellants

Versus

Nathu (deceased) through LRs and others

... Respondents

CORAM: HON'LE MR. JUSTICE AMIT RAWAL

Present: Mr. Amarjit Markan, Advocate with
Mr. Kanwal Goyal, Advocate,
for the appellants.

Mr. Ajay Kumar Kansal, Advocate, and
Mr. Shabad Ahmad, Advocate,
for respondent Nos. 1(ia), 1(b)(i), 1(b)(ii), 1(b)(iii),
1(c), 1(e), 3(a), 3(b), 3(d), 4(a), 4(b), 4(c), 4(d), 4(e).

Mr. R.K. Gupta, Advocate,
for proforma-respondents No. 8 to 11.

Amit Rawal, J. (Oral)

Present regular second appeal is directed against the judgments and decrees of the Courts below whereby suit of the appellants-plaintiffs for possession of the land measuring 208 kanals 5 marlas i.e. claiming 13/72 share measuring 37 kanals 12 marlas against the defendants on the premise that Muthari was owner in possession of the land and after her death, plaintiffs and proforma defendants became owner in possession of the suit land. On the demise of Muthari, the defendants mis-represented the revenue authorities and obtained mutation in his favour. Reliance to a pedigree table

reflects that Krishan Lal had three sons, namely, Sohan Lal, Mohan Lal and Jai Lal. Mohan Lal stated to have adopted one Dhania, whereas Sohan Lal had six sons. The dispute is not with regard to the progeny and the determination of the share of Jai Lal. On demise of Krishan Lal, the mutation was sanctioned on 03.08.1912 in favour of Mohan Lal, Sohan Lal and Jai Lal. However, the mutation in the year 1992 Ex.DW2/2 reflected the legal representatives as seven in number including Dhania. Sohan Lal had following children Dhania, Tahali, Prabhu, Ramu, Nanak, Hazari and Parladha. Hazari and Parladha had died issueless. Nanak had one son Bhagu, who died issueless. The dispute revolves around the share of Ramu, who had married Muthari, regarding 52 kanals 4 marlas. In the present Civil Suit No. 30 of 15.02.1973, the plaintiffs are grand children of Dhania who had three sons, Singh Ram, Munishi and Rikhi Ram, whereas defendants are the children of Tahali and Prabhu son of Sohan Lal and other defendants no. 6 and 7 are grand children claiming afore-mentioned relief.

The defendants contested the suit by averring that the suit was not maintainable as plaintiffs had no right to challenge the alleged mutation dated 04.04.1967 as there was remedy in law, which had already been decided in their favour. In fact, a statement was suffered that Dhania was adopted son and did not have any right to inherit the share of Sohan Lal. As per the pedigree table, Dhania had five sons instead of three sons.

The trial Court, on the pleadings of the parties, framed the following issues:-

“1. Whether Mst. Muthari was the owner of 52 kanals 4 marlas of land as mentioned in para no.1 of the plaint according to jamabandi 1968-69? OPP

2. Whether Mst. Muthari did prior to the Hindu

Succession Act came in force i.e. 1856? OPP

3. *Whether after the death of Mst. Muthari plaintiffs and defendants became owners in possession of property as mentioned in para No.4 of the plaint? OPP*

4. *Whether the mutation of the death of Muthari dated 4.4.1967 is wrong in effective and not binding on the rights of the plaintiffs and proforma defendant? OPP*

5. *Whether the plaintiffs and the proforma defendant are entitled to the possession of 37 kanals 12 marlas? OPP*

6. *Whether pedigree table mentioned in para No.2 of the plaint is correct, if so its effect?OPP*

7. *Whether the suit is hit by the rule of res-judicata? OPD*

8. *Whether the suit is within limitation? OPP*

9. *Whether the suit is not maintainable in the present form? OPD*

10. *Relief.”*

Both the parties have led extensive evidence. The trial Court dismissed the suit, after noticing, particularly, mutation proceedings, found that plaintiffs were estopped to claim the possession.

The appellants-plaintiffs preferred an appeal before the Lower Appellate Court. The Lower Appellate Court while keeping the appeal pending framed two additional issues and sought the report from the trial Court. The trial Court vide order dated 04.01.1983 submitted report to the Additional District Judge. It is pertinent to mention here that one Banwari and others sons of Chajju son of Tahali son of Sohan Lal during their life time had also filed a civil suit No. 494 of 1982 against the alleged mutation. The afore-mentioned suit was dismissed on 21.10.1982 by Sh. Surinder Singh, Senior Sub Judge, Jind. Civil Appeal No. 232 of 25.11.1982

preferred against the judgment and decree dated 21.10.1982 was also dismissed. Both the appeals were consolidated before the Additional District Judge. Civil Appeal No. 232 of 25.11.1982 filed by Banwari and others, the heirs of Dhania, claimed the estate of Hazari and Parladha was dismissed, similarly, other Civil Appeal No. 279 of 21.11.1980 filed by Jogi Ram and others has also been dismissed.

Along with present appeal, application bearing CM-2418-C of 1985 under Order 41, Rule 27 has been filed for placing on record the decision dated 28.1.1985 in Civil Appeal No. 232 of 1982, as additional evidence. As per order dated 05.11.2014, it was submitted on behalf of learned counsel for respondents no. 1 to 5 that they do not intend to file reply to the application for leading additional evidence.

Mr. Amarjit Markan, Advocate, assisted by Mr. Kanwal Goyal, learned counsel appearing on behalf of the appellants, submitted that in Civil Appeal No. 232/1982, the reasoning assigned by the Lower Appellate Court was total opposite to one rendered in the other civil appeal impugned herein. In other words, it was submitted that the right of legal representatives of Dhania were not eschewed to succeed his share, since Muthari widow of Ramu died issueless. Her share was required to be inherited by other brothers of Ramu in equal share and not only by the legal representatives – Nathu and Chajju sons of Tahali and Prabhu and other legal heirs. In fact the present appeal is espousing cause of Nathu. In view of two divergent views, it would be appropriate that matter be remitted back to the Lower Appellate Court, for, as per the finding in the impugned judgment and decree, the appellants have been deprived to inherit or succeed the share of Muthari, for, Dhania was held to be adopted son of

Mohan Lal and his natural father was Sohan Lal. In fact, the adoption was never acted upon. The statement before the mutation proceedings cannot be treated as estoppel to claim the right in a competent court of law. Attention, of the Court, was also drawn to the findings in civil appeal No. 232/1982.

Per contra, Mr. R.K. Gupta, learned counsel appearing on behalf of the proforma respondents submitted that they are proforma defendants whose case was espoused by the plaintiff in civil suit and submitted that they had also filed CM-7264-C of 2004 whereby request has been made for transposing them as co-appellants with the plaintiffs in the original suit.

Mr. A.K. Kansal, learned counsel, appearing on behalf of the respondents, pointed out that the similar application was filed before the Lower Appellate Court but the same was dismissed vide, order dated 07.10.1983, as such, present application is not maintainable. Order has been shown to the Court as well as Mr. R.K. Gupta. Mr. R.K. Gupta, on instructions from his client, seeks leave to withdraw of the application. Ordered accordingly.

Mr. A.K. Kansal on the other hand contested that the finding in Civil Appeal No. 232 of 1982 can not have the direct impact on the decision of the appeal in view of the finding in paragraph 16 whereby it was held that if Mohan Lal had allegedly adopted Dhania, so defendants no.1 to 6 descendants of Dhania and their interest would confine to only $\frac{1}{2}$, in the whole of the land and not to a share of Muthari. The other suit was pertaining to the land of Bhagu and Hazari and nothing to do with Muthari. Concurrent finding of fact, in such circumstances, cannot be suffering from illegality or perversity. The plaintiffs were estoppel to file the suit in the

year 1973 as the mutation was effected in 1922. They have already taken the benefit of inheritance qua the estate of Mohan Lal as per mutation Ex.DW2/2. The suit was also liable to be dismissed on the ground of limitation.

In view of stand taken by the respondents vide order dated 05.11.2014 as well as the fact that decision on Civil Appeal No. 232 of 1982 is essential and necessary to be taken on record by way of additional evidence as it has direct impact on adjudication of present appeal, accordingly, same is allowed.

I have heard learned counsel for the parties, appraised the paper book, record of the case with the able assistance of the learned counsel and of the view that it is fit case that matter requires to be re-visited by the Lower Appellate Court.

This Court vide order dated 14.10.2014, framed the following Substantial Questions of Law:-

“1. Whether the courts below have mis-interpreted the evidence and come to erroneous view with regard to adoption and legality of inheritance / competence of Dhania to inherit the estate of Mohan Lal?

2. Whether the plaintiffs are legally entitled to inherit the estate of Muthari by virtue of being descendants of Dhania?

It would be appropriate to reproduce the finding on Issue No. 7 in Civil Appeal No. 232 of 1982 arising out of decision rendered in Civil Suit No. 494 of 1982 titled as “Banwari and another vs. Jogi Ram and another”. Finding on issue no. 7 reads as under:-

“Issue No.7.

It is admitted that Mohan Lal at the time of his

death was owner of certain properties and was an occupancy tenant with respect to other property. It is also admitted that plaintiffs claimed a share in the property of Mohan Lal held by him as occupancy tenant. It is also admitted that on death of other persons in the family of Jai Lal, his property was inherited by all the seven sons of Sohan Lal including Dhania in the share of 1/7th each. The factum of adoption of Dhania was never pleaded or put forward in such claim. So fact remains that even after adoption, plaintiffs claim more share in the property left by sons of Jai Lal son of Kishan Lal without this factum of adoption. So now they will be estopped from filing the present suit. It is a settled law that estoppel does not create a right but it can be used only as defence. In 1970 Current Law Journal 276 Ram Niwas V. State of Haryana, it has been held that estoppel is rule of evidence, it bars a suit but not the right. In the present case as plaintiffs have already inherited the property of Sukhdei widow of Siri Ram son of Jai Lal and Jawahra son of Jai Lal equally with Dhania each getting 1/7th share, so now plaintiff cannot urge that descendants or Dhania have no right to inherit. If the factum of adoption would have been acted upon by the plaintiffs from the very beginning, the plaintiffs would have got only 1/2 share in the total land in suit, remaining 1/2 having gone to defendants No.1 to 2 on the basis of adoption. It is admitted that Kishan Lal ancestor of the parties had three sons namely Sohan Lal, Mohan Lal and Jai Lal. Jai Lal died issueless. So there remains only two branches one of Sohan Lal and other of Mohan Lal. Mohan Lal is alleged to have adopted Dhania, so defendant no.1 to 6 descendants of Dhania should have got 1/2 in whole of the land in suit. This is not the case here. The plaintiffs have already got more than half. So they will be deemed to be

estopped from bringing the present suit.”

However, in the impugned judgment, the findings given are as under:-

“18. The counsel for plaintiff-appellant to show that Dhania was never treated as son of Mohan Lal placed reliance on certain mutations sanctioned thereafter. It is true that on 3.8.1912, mutation with respect to the land owned by Sohan Lal was sanctioned and Dhania was given a share in that property. It is also true that land held by Mohan Lal as occupancy that was mutated in favour of all the sons of Sohan Lal and in the same claim of adoption of Dhania by Mohan Lal was not recognized. It is also true that mutation relating to estate of Bhagu and mutation relating to the estate of Hazari was sanctioned in favour of all the sons of Sohan Lal, wherein factum of Dhania adoption was never put forward. The counsel for plaintiff appellant contended that when in cases relating to inheritance, which have arisen after 1922, the factum of Dhania's adoption by Mohan Lal was never put forward and was never accepted then it should be held that Dhania was never adopted by Mohan Lal. I am of the view that from this fact no inference against adoption can be drawn. The admissions made by descendants of Sohan Lal in their statements are quite clear about the factum of adoption and in the face of the same, it cannot be held that no adoption took place in

mutation no dispute was about adoption.

21. As regards the finding of trial Court on issues No. 3,4 and 5 is concerned, they can be taken up together. I have already held under issue relating to issue of adoption by that it was valid and Dhania will be deemed to be transplanted in the family of Mohan Lal, that after the merger of Jind State in Pepsu heirs of Dhania will have no right to inherit in the property of Sohan Lal. In the present case it is admitted that Muthari died in 1951 i.e. after merger of Jind State in Pepsu, so present plaintiff-appellant who were none-else but descendants of Dhania have no right to inherit in the property of Dhania.”

The afore-mentioned reasoning of the same very Lower Appellate Court, in my view, are totally mutually opposite and contradictory. In Civil Appeal No. 232/1982, it was held that legal representatives of Dhania had a right to succeed, de hors of the alleged adoption but the impugned judgment prevented them from taking the benefit.

The afore-mentioned findings cannot be sustainable as per divergent views. The Substantial Questions of Law cannot be decided at this stage. The judgment and decree of the Lower Appellate Court is set aside. Since the additional evidence is already taken on record, it would not prevent to plaintiffs-appellants to refer to the same at the time of hearing of the appeal. Civil Appeal No. 279 dated 21.11.1980 is restored. Parties through their counsel is directed to appear before the Lower Appellate Court

on 29.05.2019. Original record be sent back. Decision be rendered within a period of one year. The parties are permitted to make their submissions and to raise the pleas and counter pleas before the Lower Appellate Court, which have been raised before this Court. However, the Lower Appellate Court is not prevented to summon the record of the trial Court attached with Civil Appeal No. 232 of 1982.

Disposed of accordingly.

April 01, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No