

In the High Court of Punjab and Haryana at Chandigarh

RSA- 1061 of 2019(O&M)
Date of Decision: 27.5.2019

Jai Narain

---Appellant

versus

Smt. Ratni @ Ram Murti and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Kamal Sharma, Advocate
for the appellant**

Rekha Mittal, J.

Challenge in the present appeal has been directed against judgments and decrees passed by the courts whereby suit filed by the respondents/plaintiffs claiming 1/4th share each in the estate of Sh. Ram Diya, stated to be father of the respondents-plaintiffs, in land situated in village Jauli, Tehsil Gohana District Sonipat and challenge to mutation No. 3079 in favour of Jai Narain and Bimla; judgment and decree dated 23.2.2010 and mutation No. 3602 sanctioned on the basis thereof and sale deed No. 509 dated 12.3.2010 was decreed by the trial court vide judgment and decree dated 29.5.2015 that came to be affirmed in appeal except modification to the limited extent that the respondents-plaintiffs shall be entitle to possession of the land only by way of partition and as such they were to be deemed in joint possession of the suit property till its partition.

Counsel for the appellant has assailed concurrent findings by making two submissions. It is argued that the respondents-plaintiffs failed

to adduce sufficient much less cogent and convincing evidence to substantiate their plea that they are the daughters of Ram Diya, thus entitle to a share in the property left behind by Sh. Ram Diya. It is further argued that as the respondents-plaintiffs are not daughters of Sh. Ram Diya, mutation with regard to inheritance qua estate of Ram Diya bearing no. 3079 was rightly sanctioned way back in the year 1999 in favour of Sh. Jai Narain (appellant herein) and Smt. Bimla (since deceased) daughter of said Ram Diya.

The second submission made by counsel is that the courts have wrongly sustained challenge to the judgment and decree dated 23.2.2010 which was passed in favour of Jai Narain on the basis of consent recorded by Smt. Bimla. It is further argued that as Rinku son of Bimla and Maman husband of said Bimla are alive, the respondents-plaintiffs have no locus to challenge the judgment and decree dated 23.2.2010. It is further argued that findings of the courts that decree dated 23.2.2010 is the result of fraud are not based upon any materials when otherwise fraud is required to be proved akin to a criminal charge even in civil proceedings.

I have heard counsel for the appellant, perused the paper book and the judgments impugned.

Be that as it may, case set up by the respondents-plaintiffs is that they are daughters of Sh. Ram Diya and being class-I heirs along with Jai Narain and Smt. Bimla are entitle to 1/4th share each in suit land left behind by Sh. Ram Diya. Jai Narain-appellant-defendant No. 1 filed the written statement contesting claim of the respondents-plaintiffs. However, counsel for the appellant after going through the written statement has fairly conceded that there is no specific denial with regard to averments made in

the plaint qua relationship of the respondents-plaintiffs with Sh. Ram Diya as well as Jai Narain.

Order 8 Rule 5 of the Code of Civil Procedure, 1908 (in short “the Code”) deals with specific denial. A relevant extract therefrom, reads as follows:-

“Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.”

Jai Narain did not appear in the witness box to controvert evidence adduced by the respondents-plaintiffs that they are the daughters of Ram Diya and entitle to inheritance to his estate as class-I heirs. The Courts have also taken into consideration statement Ex. PW5/C recorded by Sh. Jai Narain before the SDM wherein he admitted that the respondents-plaintiffs are the daughters of Sh. Ram Diya. Keeping in view the above, it is difficult to accept contention of the appellant that factual findings recorded by the courts accepting plea of the respondents-plaintiffs that they are the daughters of Sh. Ram Diya either suffer from an error much less illegality, warranting intervention.

As the respondents-plaintiffs are proved to be daughters of Sh. Ram Diya and the appellant has not claimed any testamentary succession, the respondents-plaintiffs became entitle to 1/4th share in suit land left behind by Sh. Ram Diya.

Jai Narain claimed absolute ownership of suit land on the basis

of natural succession to the extent of half share and the remaining half share of Bimla on the basis of judgment and decree dated 23.2.2010. It has been established on record that Smt. Bimla wife of Maman died on 26.1.2009. Jai Narain did not appear in the witness box to counter this plea of the respondents or the death certificate Ex. PW3/A. As Smt. Bimla was no more in the world at the time when she allegedly filed written statement or recorded her statement in the court in civil suit filed by Jai Narain, courts have rightly held that the judgment and decree dated 23.2.2010 is vitiated by fraud and can be set aside even without going into the question of locus. This apart, as Bimla was co-owner only to the extent of 1/4th share, she was otherwise not competent to transfer land more than her share. In this view of the matter, challenge to findings of the courts qua judgment and decree dated 23.2.2010 carry no weight.

No other point has been raised.

In view of what has been discussed hereinbefore, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

27.5.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No