

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

1. RSA No.803 of 2004 (O&M)
Date of decision : 23.01.2019

Karan Singh and another

...Appellants

Versus

Jai Parkash and others

...Respondents

2. CWP No.2316 of 2008 (O&M)
Date of decision : 23.01.2019

Maru Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shilak Ram Hooda, Advocate for the appellants.
(In RSA No.803 of 2004)
for the petitioners (In CWP No.2316 of 2008)

Mr. Sudhir Aggarwal, Advocate for the respondents
(In RSA No.803 of 2004)

Mr. Saurabh Girdhar, AAG, Haryana
for respondent Nos.1 to 4 (In CWP No.2316 of 2008)

ANIL KSHETARPAL, J. (ORAL)

CM No.1220-C of 2019 in RSA No.803 of 2004

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of deceased appellant No.2-Maru Singh as mentioned in para 2 of the application are ordered to be brought on record for the purpose of prosecuting the present appeal.

Application is allowed.

Amended memo of parties is taken on record, subject to all just exceptions.

CM No.997-CWP-2019 in CWP No.2316 of 2008

For the reasons stated in the application, which is duly supported by an affidavit, legal heirs of petitioner No.1-Maru Singh, as mentioned in para 2 of the application are ordered to be brought on record for the purpose of prosecuting the present petition.

Application is allowed.

Amended memo of parties is taken on record, subject to all just exceptions.

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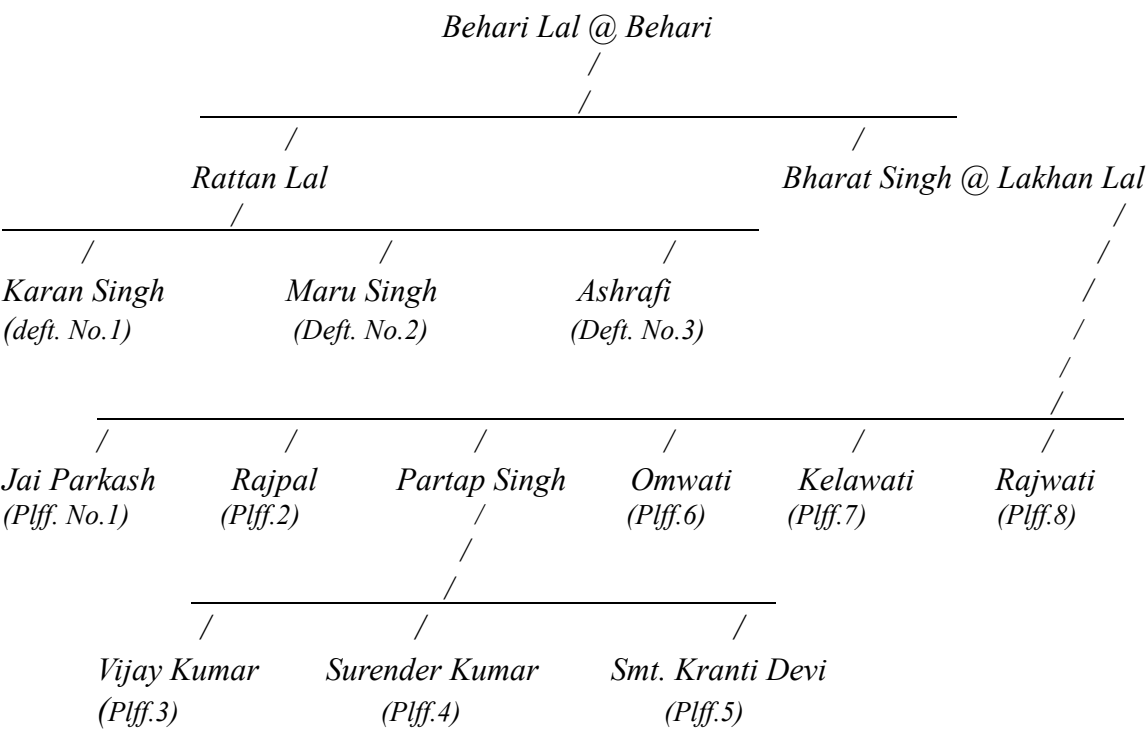
By this judgment, RSA No.803 of 2004 and CWP No.2316 of 2008 shall stand disposed of.

Let us first deal with Regular Second Appeal.

Defendants-appellants are in the Regular Second Appeal against the concurrent findings of fact arrived at by both the Courts below.

The question which this Court is called upon to answer is whether Bharat Singh and Lekhan Lal was one and the same person or Bharat Singh @ Lekhan Lal was brought in by the second wife of Behari in marriage and, therefore, he was not son of Behari, hence, not entitled to succeed to the property left behind by Behari.

To understand the inter se relationship between the parties, a pedigree table as drawn by the First Appellate Court, is extracted as under:-



Both the Courts, on appreciation of the evidence, have found that Lekhan Lal and Bharat Singh was one and the same person and he was son of Behari and not from the first marriage of the second wife of Behari. The findings of fact arrived at by the First Appellate Court is extracted as under:-

“10. The respondent-plaintiffs to prove Bharat Singh to

be Lekhan Lal or Bharat Singh and Lekhan Lal are two names of one and the same person son of Behari Lal alias Behari, have relied upon certain documents pertaining to some land and property in villages Sadipur and Rithala, New Delhi, shown to have been owned and possessed jointly by the parties as LR's of Behari. Ex.P6/A is a copy of the plaint in suit for partition of immovable property between Karan Singh and Maru sons of Rattan Lal son of Behari, and Jai Parkash and Raj Pal both sons of Bhartu (Bharat Singh), Vijay, Surender and Smt. Kranti Devi LR's of Partap Singh son of Bharat Singh, pertaining to the land situated in village Sadipur, New Delhi. Ex.PW5/A is the written statement in that suit and Ex.PW6/B and Ex.P5/B are the replications. Ex.P21 is the copy of the order. In all the above documents Bharat Singh has been shown to be the son of Behari. Further relied upon copy of Award No.19/80-81 pertaining to the land situated in village Rithala (Delhi), jointly owned and possessed by the parties. In the above Award parties to the suit are shown at Sr.Nos.39, 40, 41 and 42 in the list of interested persons in the Award and Bharat Singh has been shown to be the son of Behari, to be the claimant of the land belonging to Behari at Sr. No.42 of Page No.25 of the Award. Ex.P6 is the copy of the order passed by the Hon'ble Mr. Justice D.P. Wadhwa and Hon'ble Mr. Justice Vijender Jain and Ex.P7 in the amended memo of parties in RFA No.287 of 1984 filed by the parties qua the land under acquisition. In the above documents also Bharat Singh has been shown to be son of Behari and the respondent-plaintiffs to be the LR's of Bharat Singh son of Behari. Further relied upon notice Ex.PW3/2 given on behalf of the respondent-

plaintiffs to the appellant-defendants through their counsel for settlement of account in respect of crops of the land in dispute and reply of Smt. Ashrafi, defendant No.3 in the main suit, and emphasized that in reply Ex.PW3/1 Smt. Ashrafi, who is daughter of Rattan Lal son of Behari and sister of the appellants admitted the claim of the respondent-plaintiffs, the LRs of Bharat Singh son of Behari. Further relied upon mutation Ex.P3 and its Hindi Version Ex.PW3/A sanctioned on 25.08.1961 pertaining to the land situated in village Hasanpur Tauru in which the land in dispute situate, in which there is an entry Lekhan Lal alias Bharat Singh son of Behari ½ share.

11. The above documents which pertains to the properties jointly owned and possessed by the parties have amply proved that Lekhan alias Bharat Singh is son of Behari and are the name of one and the same person.

12. There are some more circumstances on record which supports the above conclusion. The appellant-defendants have taken a specific plea in their written statement that Lekhan Lal or Lakhan Lal and Bharat Singh are two different persons and had a separate identity and Lakhan Lal had died in the year 1962 and Bharat Singh had died in the year 1990 and Bharat Singh had no concern with the ancestral property of the appellant-defendants and he was not the real son of Behari Lal but had come as 'Gallar' with his mother i.e. with the earlier husband of the second wife of Behari Lal. The appellant-defendants failed to prove the above plea on record. No documents to prove the above fact could be brought by the appellant-defendant on record. Even the oral evidence led by the appellant-defendants do not

support the above pleading. Maru Singh son of Rattan Lal son of Behari appearing as DW1 did not utter even a single word that Bharat Singh was not son of Behari Lal and he was "Gallar" i.e. son of the earlier husband of the second wife of Behari Lal. This witness is aged 86 years and he must be having special means of knowledge regarding the affairs of his family. His silence about the status of Bharat Singh in their family gives rise to an adverse inference against the appellant-defendants. One of the appellant-defendants Karan Singh appearing as DW2 also kept silence regarding status of Bharat Singh in their family. None of the above DWs has uttered even a single word that Bharat Singh and Lekhan Lal were two separate persons. The appellant-defendants even failed to suggest in their defence with regard to the status of Bharat Singh in their family to the witnesses produced by the respondent-plaintiffs. Kewal appeared as PW1 and Ram Chander as PW2, but no such suggestion as to their defence was given to any of the above witnesses by the appellant-defendants. This circumstance also gives rise to an adverse inference against the appellant-defendants.

13. There is one copy of the order passed by Ashrafi Collector IInd Grade, dated 11.10.2000 regarding the disputed mutation No.1182 Ex.P25 in which the appellant-defendants tried to prove the death of Lekhan on 09.11.1962 but the same was not believed by the court as the date of registration of the death certificate was shown to be 08.10.1996 i.e. about 34 years of the alleged date of death of Lekhan and the above document was, therefore, found to be procured one. The appellant has also fulfilled the requirement of Section 50 of the Evidence Act by

proving the relationship of Bharat Singh alias Lekhan with Behari Lal, by producing Kewal PW1 and Ram Chander PW2, friends of the family and having special means of knowledge regarding the same. There are three death certificates also on the files Ex.P18 pertaining to Smt. Rattani Devi wife of Bharat Singh who died on 21.08.1998 registered in the record on the same day, Ex.P19 regarding death of Bharat Singh on 11.03.1989 registered the same day and Ex.P20 pertaining to Partap Singh son of Bharat Singh who died on 30.03.1983 registered on 13.04.1983. The above documents further prove Bharat Singh to be the son of Behari Lal.

14. From the above evidence on record, it is amply proved that Bharat Singh was son of Behari. There is nothing on record to show that Behari was having more than two sons of Bharat Singh was "Gaillor" i.e. son of the earlier husband of second wife. In the pedigree table of the record of the year 1962-63 Ex.D3, Lekhan has been shown to be second son of Behari who is known as Bharat Singh also as shown in the other record. Similarly, in Mutation No.141 of 1950-51 Ex.D5 entry of Lekhan showing to be the son of Behari pertains to Bharat Singh shown to be son of Behari in the records of the property left by Behari in Shadipur as well as Rithala in the area of Delhi.

15. The appellant-defendants, therefore, have miserably failed in proving their plea that Bharat Singh and Lekhan Lal are two different persons and had separate identity and Bharat Singh was "Gaillor" i.e. son of the earlier husband of second wife of Behari Lal and he never inherited Behari Lal as his son."

Learned counsel for the defendants-appellants has contended that onus to prove that Bharat Singh and Lekhan Lal were one was on the plaintiffs and since plaintiffs have failed to prove the same, therefore, the suit could not be decreed. However, when learned counsel was called upon to substantiate his contention, he admitted that Lekhan Lal and Bharat Singh are separate person. However, he submitted that Bharat Singh had come alongwith his mother at the time of second marriage with Behari as pleaded in the written statement.

Once, it is the defendants who have taken a stand, the onus was on the defendants. Still further, on careful reading of the findings arrived at by the First Appellate Court while affirming the findings of the trial Court, it is apparent that voluminous record was produced which proved that Bharat Singh and Lekhan Lal were one person. Still further, the defendants-appellants only examined two witnesses namely Maru Singh and Karan Singh. Maru Singh was aged about 86 years and appeared for the defendants but did not state that Bharat Singh was the son of second wife of Behari from first marriage. Even, Karan Singh-defendant has failed to even state in oral evidence.

In such circumstances, merely because a plea has been taken in the written statement would not be sufficient because the pleadings have to be supported by evidence.

Still further, the Court has noticed that the entry of death of Lekhan Lal, who is alleged to have died on 09.11.1962, was for the first time got entered on 08.10.1996, after the litigation between the parties

started.

Learned counsel for the appellants further relied upon the order passed by the Assistant Collector, Ist Grade in the mutation proceedings.

The argument is mis-conceived as the aforesaid order has already been set aside by the Superior Authorities in appeal and the revision which is subject matter of challenge in the writ petition.

For the reasons recorded above, there is no merit either in the Regular Second Appeal or in the writ petition.

As noticed above, the writ petition is arising out of the mutation proceedings which are only for the purpose of updating the record. These are summary proceedings. The judgment passed by the Civil Court has to be given effect to by the Revenue Authorities.

Accordingly, appeal as well as writ petition are dismissed with costs of ₹1,00,000/- payable by the appellants.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

23.01.2019

Pawan

(ANIL KSHETARPAL)
JUDGE

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

Whether reportable:- **Yes/No**