

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

**R.S.A. No 3484 of 2019 (O&M)**

**Date of decision : 30.08.2019**

Ajit Kumari

....Appellant

versus

Babu Ram and ors.

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. Rohit Joshi, Advocate  
for the appellant.

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**RITU BAHRI, J.**

***C.M. No. 9449-CI-2019***

For the reasons mentioned in the application, delay of 63 days in filing of the appeal is hereby condoned.

The application stands disposed of.

***R.S.A. No. 3484-2019***

The present appeal is directed against judgment and decree dated 11.02.2019 passed by learned District Judge, Hoshiarpur whereby appeal filed by respondent No. 1/defendant No. 1 against judgment and decree dated 29.09.2015 has been allowed.

Ajit Kumari plaintiff, filed suit for declaration to the effect that she is owner in possession of the land measuring 3 kanals 4 marlas 7 sarsahi being 1/7th share out of total land measuring 23 kanals 14 marlas comprised in khata no.6/7 bearing khasra number 5//88(1-13), 89(2-18), khata no.7/8 khasra number 5//83(0-13), 84(0-4), 85(2-2), 86(3-0), khata no.5/6 khasra number 5//31 (0-3), 53(3-4), 61(0-10), 62(0-16), 63(0-2), 81(5-11), 190/1(1-0), situated at village Parellian, HB No.362, Tehsil Mukerian District Hoshiarpur as per jamabandi for the year 1976-77, 2001-2002 and 1981-82 attached herewith. In the alternative

suit for joint possession of the suit land.

2. Brief facts of the case are that plaintiff and defendants are joint owner in possession of the suit land as detailed and described in the head note of the plaint. The pedigree table of the parties is as under:

|                                          |      |                                   |                                            |      |                                 |        |                                          |      |                                         |      |                                       |       |
|------------------------------------------|------|-----------------------------------|--------------------------------------------|------|---------------------------------|--------|------------------------------------------|------|-----------------------------------------|------|---------------------------------------|-------|
| Ghasitu Ram                              |      |                                   |                                            |      |                                 |        |                                          |      |                                         |      |                                       |       |
|                                          |      |                                   |                                            |      |                                 |        |                                          |      |                                         |      |                                       |       |
| Khushi Ram                               |      |                                   |                                            |      |                                 |        |                                          |      |                                         |      |                                       |       |
|                                          |      |                                   |                                            |      |                                 |        |                                          |      |                                         |      |                                       |       |
| Kartaro<br>(daughter)<br>defendant No. 4 | Devi | Babu Ram (son)<br>defendant No. 1 | Shakuntla<br>(daughter)<br>defendant No. 3 | Devi | Ajit<br>(daughter)<br>plaintiff | Kumari | Nirmala<br>(daughter)<br>defendant No. 6 | Devi | Uttari<br>(daughter)<br>defendant No. 5 | Devi | Kishan<br>(son)<br>defendant<br>No. 2 | Chand |

Khushi Ram was owner in possession of the suit property who died on 18.2.1980 leaving behind the plaintiff and defendants as his legal heirs. The suit land was succeeded by the plaintiff and defendants in equal shares. Plaintiff and defendants are now owner in possession of the suit land to the extent of their share. In the absence of plaintiff, defendant no1 was cultivating her share in the suit land and was giving produce of her share from time to time. The mutation was got sanctioned by the defendants no.1 and 2 bearing no.816 in the absence of plaintiff who was residing in Rajasthan at that time. The defendants no.1 and 2 got the said mutation sanctioned by impersonation i.e. producing some other lady and this fact came to the knowledge of plaintiff when defendants no.1 and 2 filed suit against defendant no.4 in civil courts at Dasuya. The alleged mutation no.816 is liable to be set aside as plaintiff is deprived from her legal right and title over the suit land. Upon coming to know about the wrong entries in the revenue record, she approached the revenue department and obtained copy of mutation as well as jamabandies for the last 25/30 years. The plaintiff requested the defendants several times to admit her lawful claim and to treat her as owner in possession of the suit land but they refused on one pretext or the other, hence

the present suit.

3. Notice of the suit was given to the defendants. The defendants no.1 and 2 appeared and contested the suit by filing joint written statement raising preliminary objections that suit is not maintainable; that plaintiff is guilty of suppressing true facts, therefore, is not entitled to any relief; that suit is barred by the principle of limitation and that suit is bad for non joinder of necessary parties. On merits, it is denied that parties are joint owner in joint possession of the suit land. The answering defendants are absolute owner in possession of the suit property. Plaintiff and defendants no.3 to 6 have no right, title or concern with the suit property. It is admitted that suit property was ownership of Khushi Ram father of the parties who during his life time executed a valid Will in favour of defendants no.1 and 2 and after his death, suit property has been mutated in their names being his only legal heirs. The plaintiff and defendants no.3 to 6 were well within the knowledge of this fact and they never raised any objection. Khushi Ram himself debarred plaintiff and defendants no.3 to 6 from his whole property and executed valid Will in favour of answering defendants and they are only legal heirs of Khushi Ram. The plaintiff was present at the time when mutation was sanctioned and the suit is counter blast to the suit filed by answering defendants and the suit has been got filed by defendant no.4 Kartaro Devi and her sons. Denying all other averments, it was prayed that suit of the plaintiff be dismissed.

4. Replication was not filed. From the pleadings of the parties following issues were framed:

*1. Whether the plaintiff is owner in possession of the suit property to the extent of 1/7th share? OPP*

*2. Whether the plaintiff is entitled to the alternative relief as prayed for? OPP*

*3. Whether the suit is not maintainable? OPD*

*4. Whether the plaintiff has concealed the material facts from the court?*

*OPD*

*5. Whether the suit is bad for non joinder of necessary parties? OPD*

*6. Relief*

*Following additional issue was also framed.*

*1.A Whether Khushi Ram duly executed Will dated 19.2.1978 in favour of defendants no.1 and 2, If so, its effect? OPD (1&2)*

The learned trial Court decreed the suit of the plaintiff/appellant and held that it is an admitted case of both the parties that Late Khushi Ram was exclusive owner in possession of the land in dispute who was father of plaintiff and defendant Nos. 1 to 6. Thereafter, after the death of Khushi Ram defendant Nos. 1 and 2 have propounded the will dated 19.02.1978 (Ex D1) allegedly executed by late Khushi Ram in favour of defendant Nos. 1 and 2 vide which, plaintiff and defendant No. 3 to 6 have been debarred from inheriting the estate left by late Khushi Ram. However, defendants have miserably failed to prove the will dated 19.02.1978 (Ex D1). It has further been held that mutation No. 816 does not bear the signature of plaintiff Ajit Kumari. Thus, defendant Nos. 1 and 2 have miserably failed to prove their exclusive title over the suit property. The plaintiff was held entitled to receive 1/7<sup>th</sup> share in property in dispute as fully detailed in head note of plaint.

However, on appeal, the lower Appellate Court reversed this finding and held that the onus to prove the will dated 19.02.1978 was upon defendant Nos. 1 and 2. Defendant No. 1 has stepped into witness box as D.W.1 and produced the original hand written will in Urdu dated 19.02.1978 (Ex D1) and its hindi translation on the file by Maulvi Shamim Ahmad DW3 i.e Ex D1/A. The will is unregistered document and signed by two witnesses namely Ram Chand and Bhola Ram. Both the marginal witnesses of the will have already expired. However, defendant No. 1 examined Subhash Singh DW4 who

identified the signatures of his father Ram Chand on the original Will dated 19.2.1978 Ex.D1 whereas Jagan Nath Lamberdar DW5 confirmed thumb impression of his father Bhola Ram on the Will in question. Apart from these witnesses, appellant/defendant no.1 was not having any other witness who could prove the Will of Khushi Ram which was executed by him in his own handwriting on 19.2.1978. As per will, Khushi Ram had performed marriage of his daughters except Uttari Devi and regarding her, he had already prepared her dowry articles. The contents of the Will further indicate that Khushi Ram with consent of his wife executed Will in question vide which he bequeathed his entire property in favour of his sons Babu Ram and Kishan Chand. He categorically stated that he and his wife were being looked after by their sons and they were happy with the services rendered by them. Ajit Kumar has also admitted this fact that Khushi Ram was looked after by his sons and last rites were also performed by his sons. Further the suit was filed by the appellant after a gap of 24 years, which has not been explained by the appellant.

Heard learned counsel for the appellant at length.

After going through the judgments passed by both the Court below, this Court is of the view that the learned Appellate Court has rightly allowed the appeal of defendant No. 1, as firstly the appellant remained mum for 24 years. Her father expired on 18.02.1980 and mutation No. 816 was sanctioned in favour of his sons on 16.05.1981 and the suit was filed on 15.01.2005. The appellant cannot derive any benefit on the account that marginal witnesses have expired and thus, the defendants failed to prove the will. Even if mutation proceedings did not bear the thumb impressions, even then the main dispute to be decided in the present case is whether Khushi Ram executed the will in favour of defendant Nos. 1 and 2 or not. The contents of the will clearly shows that Khushi Ram after performing the marriage of his daughters had executed the will in favour of

defendant Nos. 1 and 2 as he and his wife were being looked after by their sons. They were happy with the services rendered by them.

The execution of the will dated 19.02.1978 (Ex D1) has been proved by the defendant No. 1 by examining Subhash Singh DW4 who identified the signatures of his father Ram Chand on the original Will dated 19.2.1978 Ex.D1 whereas Jagan Nath Lamberdar DW5 confirmed thumb impression of his father Bhola Ram on the Will in question. The will dated 19.02.1978 (Ex D1) has been duly proved as the marginal witnesses of the will expired but their signatures and thumb impression have been identified by their sons. Further the reasons given in the will makes it abundantly clear that Khushi Ram with the consent of his wife executed the will in question vide which he bequeathed his entire property in favour of his sons Babu Ram and Kishan Chand. Further the remained mum for 24 years. Her father expired on 18.02.1980 and mutation No. 861 was sanctioned in favour of his sons on 16.05.1981 and the suit was filed on 15.01.2005.

In this backdrop, the finding of facts recorded by Lower Appellate Court does not require any interference by this Court, as it does not suffer from any infirmity or illegality.

No substantial question of law arises for adjudication by this Court.

The appeal stands dismissed.

August 30, 2019  
G Arora

**(RITU BAHRI)**  
**JUDGE**