

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

RSA No.1071 of 2015 (O&M)

Date of decision:14.05.2019

Ram Kumar and others

... Appellants

Vs.

Man Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Rathee, Advocate
for the appellants.

AMIT RAWAL J.

The present regular second appeal at the instance of the appellant-plaintiffs is directed against the concurrent findings of fact and law whereby suit claiming declaration to be owners in possession qua 5/8 share out of the suit land measuring 40 kanals 2 marlas, has been dismissed by the trial Court and affirmed in appeal.

The plaintiffs sought the aforementioned declaration on the premise that common ancestor-Asha had four sons namely Sawai, Bhuria, Dhansi and Mangla. Mangla had one son Sheo Chand. Sawai had married Mahakali and died issueless. Bhuria had one son Man Singh, defendant no.1 and one daughter Ramsilo alias Ramkali whereas Dhansi had four sons Satya Pal, Ram Kumar, Sher Singh and Raja Ram and one daughter Ram Pyari. Bhuria died about 70 years ago whereas Mangla 65 years. Mahakeli widow of Savai died in the year 1960. Ramsilo daughter of Bhuria died

about 25 years ago. Dhansi died in the year 1984. Sheo Chand died issueless in the month of December 2000. Satpal son of Dhansi died issueless on 1.6.2001. The parties were governed by the Customary Law. After demise of Sawai, his widow Mahakali became the limited owner to the extent of $\frac{1}{4}$ share. Bhuria and Mangla died during the life time of Mahakali and after the demise of Mahakali, her estate devolved upon Dhansi, brother of her husband Sawai, who became the absolute owner in possession of $\frac{1}{4}$ share of Mahakali. After the demise of Dhansi, his estate devolved upon the plaintiffs and Satpal. Satpal also died un-married and issueless and his estate devolved upon the plaintiffs. Thus, in such circumstances, the plaintiffs became the owners in possession of $\frac{5}{8}^{\text{th}}$ share of the suit land situated in village Mulodi and one-half share out of the suit land situated in village Beer Simli. The mutation 654 regarding inheritance of Mahakali was wrongly sanctioned. The mutation of inheritance of Sheo Chand was wrongly recorded in the name of Mahadevi wife of Man Singh on the basis of Will dated 22.08.1983. In fact, defendant no.1-Man Singh and Sheo Chand had already sold the land bearing khasra no.158 in favour of defendant no.10 being the share of joint khewat. Man Singh taking the benefit of wrong entries executed the release deed dated 5.11.2001 in favour of Satbir son of Man Singh and Ram Partap son of Ramji Lal, defendants no.8 and 9. After the death of Sheo Chand, plaintiffs and defendants no.1 to 6 became the owners to the extent of $\frac{1}{2}$ share each. The mutations no.727 and 735 were wrongly sanctioned.

The defendants no.1 and 7 in the joint written statement averred that Mahakali alias Dadkali performed Kareva marriage with Bhuria son of Asha and Man Singh and Ramsilo alias Ramkali were born out of their wedlock. After demise of Bhuria, Mahakali performed another kareva marriage with Mangla and Sheo Chand was born. All these factors were concealed by the plaintiffs. The land had already been partitioned and mutation of inheritance of Mahakali was rightly sanctioned in the name of Sheo Chand, Man Singh and Ramsilo. Man Singh and Mahadevi executed a release deed dated 5.11.2001 in favour of defendants no.8 and 9. The mutation in this regard was correctly entered. The claim of the plaintiffs in such circumstances was denied. Sheo Chand was stated to have executed a Will dated 22.8.1983 in favour of Mahadevi wife of Man Singh.

The trial Court framed as many as seven issues including 6-A regarding limitation. The plaintiff examined four witnesses and brought on record the documentary evidence Ex.P1 to Ex.P27. The defendants examined eight witnesses and brought on record the documentary evidence spanning from Ex.D1 to Ex.D24.

Mr.Balraj Singh Rathee, learned counsel appearing on behalf of the appellant-plaintiffs submitted that both the Courts below have committed illegality and perversity while dismissing the suit as revenue entry can be corrected at any time. There is no documentary evidence to show that Mahakali had entered into kareva marriage. The Courts below overlooked that taking the benefit of wrong entries, the respondents executed the release deed dated 05.11.2001 in favour of Satbir son of Man

Singh and Ram Partap son of Ramji Lal and mutation no.649 was also sanctioned. Mutations no.629 and 649 and 654 were wrongly entered. The partition proceedings were completed in haste and against the statutory provisions. If a widow re-married prior to the coming into force of Hindu Succession Act, 1956, she is divested of even limited ownership of her deceased husband property.

I am afraid the aforementioned arguments are not sustainable, for, the appellant-plaintiffs miserably failed to prove on record any evidence to belie the mutation of inheritance. It is a matter of record that property had already been partitioned amongst the co-sharers, resulting into severance of the status of co-sharers.

All the aforementioned documents referred to by the trial Court did not reveal that any effort was made to summon the pedigree table/kurshinama from the revenue record showing relationship of Dhansi and Mahakali with Bhuria, Man Singh, Ramsilo @ Ramkali, Sheo Chand. The factum of Bhuria from whose wedlock Man Singh and Ramsilo were born, was also not mentioned.

Amar Singh, PW4 did not prove the relationship between the parties. There was no compliance of the provisions of Section 50 of Indian Evidence Act. The final partition proceedings/sanad taksheem had already been prepared and possession as per the partition stood delivered amongst the co-sharers vide rapat numbers 441, 442 dated 4.5.2007 Ex.D-21 and Ex.D20, respectively, though it was during the pendency of the suit. The claim in such circumstances was rendered infructuous as the partition

proceedings had attained finality. The Will dated 22.08.1983, Ex.DW7/A was duly registered in the office of Registrar which stood proved through the testimony of DW7-Sheo Ram, attesting witness stated in terms of the provisions of Section 63(c) of Indian Succession Act, 1925. Moreover, it was a registered document and carried a presumption of truth.

As an upshot of my findings, arguments of Mr. Balraj Singh Rathee, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

May 14, 2019
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No