

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:22.5.2019

RSA-873 of 2013(O&M)

Gurmit Kaur and others

---Appellants

vs.

Bhagwan Singh alias Mangu and others

---Respondents

RSA-834 of 2013(O&M)

Gurmat Singh and others

---Appellants

vs.

Bhagwan Singh alias Mangu and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Atul Goyal, Advocate
for the appellants

Mr. Rajesh Narang, Advocate
for respondent Bhagwan Singh and Lrs of Surjit Singh

Rekha Mittal, J.

CM 2400 C of 2013 in RSA 873 of 2013

Prayer in this application is for deletion of name of respondent
- Surjit Singh, alleged son of Chand Kaur alleged daughter of Santa Singh
from the array of parties.

Counsel for the applicants/appellants would urge that Surjit

Singh was impleaded as appellant No. 2 in the appeal before the first appellate Court and he died on 2.07.2012. On his death, no application was filed for bringing on record legal representatives of Surjit Singh nor factum qua death of Surjit Singh was brought to notice of the Court. It is further argued that as plaintiffs/applicants/appellants were not aware of legal representatives of Surjit Singh, his name may be deleted from array of respondents.

Counsel for the non-applicant/respondent No. 1 would argue that as Surjit Singh was contesting defendant in the suits and he was one of the appellants before the first Appellate Court, there is no question of deletion of his name from array of respondents.

Heard.

Counsel for the applicants/appellants has not disputed that Surjit Singh was one of the contesting defendants in both the suits. The decision thereof became challenge in appeals before the first Appellate Court. That being so, contention raised by the applicants/appellants for deletion of name of Surjit Singh from the array of respondents is misconceived and accordingly rejected.

Disposed of accordingly.

CM 4406 C of 2019 in RSA 873 of 2013

Prayer in this application is for impleading legal representatives of Surjit Singh (since deceased).

Heard.

Allowed as prayed for, subject to just exceptions.

Persons mentioned in para No. 5 of the application are allowed to be brought on record as legal representatives of Surjit Singh, for the

purpose of present lis.

Amended memo of Parties be filed in the Registry of the Court.

Disposed of.

Main case

This order will dispose of RSA Nos. 834 and 873 of 2013 as identical questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 873 of 2013.

The present litigation pertains to inheritance to the estate of Gurtej Kaur daughter of Ajmer Singh son of Santa Singh in respect of land measuring 90 kanal 17 marlas, 124 kanal 1 marla situated at village Phaphre Bhaike and 38 kanal 14 marlas in village Hasanpur, detailed in head note of the plaint.

Gurmat Singh, Amarjit Kaur, Gurmit Kaur son and daughters of Chanan Singh, appellants-plaintiffs have claimed that they alongwith defendants No. 1 and 2 are owners in equal shares by way of inheritance to Gurtej Kaur. Mutation No. 11124 dated 21.12.1994 sanctioned by Assistant Collector Ist Grade, Mansa in favour of Gurdev Singh defendant No. 3 and mutation No. 2011 dated 21.10.1994 sanctioned by Collector Ist Grade, Budhlada which was later rejected by ADC, Mansa on 26.4.1995 and Will dated 19.12.1991 in favour of Surjit Kaur and Ajmer Kaur and another Will dated 20.12.1991 in favour of Gurdev Singh are illegal, null and void and not binding on the plaintiffs and defendants No. 1 and 2. Defendants No. 4 to 6 by claiming themselves to be owners of land got the mutation sanctioned in their favour which was later rejected. Surjit Singh defendant No. 6 executed sale deed No. 2895 dated 21.6.1994 in favour of defendants

No. 7 to 9, which is null and void. Similarly, sale made by defendant No. 3 Gurdev Singh in favour of defendant No. 23 and mutation sanctioned on its basis are illegal, null and void. Defendants No. 12 to 23 and 25 have wrongly taken possession of some land situated at village Phaphre Bhaike. Defendant No. 23 has also taken possession of land situated at village Hasanpur and some land has been mortgaged without possession with State Bank of Patiala, Branch Mansa which acts are illegal, null and void. The appellants prayed for grant of permanent injunction restraining defendants No. 3 to 23 and 25 from raising construction on any part of suit land and alienating the same and mandatory injunction for demolition of construction raised on some part of suit land by defendant No. 25.

The plaintiffs have claimed that they are the great grand children of Basanta Singh brother of Santa Singh, father of Ajmer Singh and grand father of Gurtej Kaur. On the other hand, defendants No. 4 to 6 have claimed inheritance to Gurtej Kaur being children of Chand Kaur, sister of Ajmer Singh and Bua of Gurtej Kaur.

Defendant No. 6 filed the written statement raising preliminary objections inter alia that the suit is not maintainable in the present form; plaintiffs have no locus standi and cause of action to file the suit; the suit is not properly valued for the purpose of court fee; the suit is not within limitation; plaintiffs are estopped by their act and conduct from filing the suit and the suit is bad for mis-joinder and non-joinder of parties. On merits, it is admitted that Gurtej Kaur was owner in possession of suit property. The plaintiffs are not related to Gurtej Kaur and pedigree table

mentioned in the plaint is wrong. Santa Singh son of Bhagwan Singh left behind his widow Sant Kaur, Ajmer Singh son and Chand Kaur daughter. Chand Kaur was married with Sadhu Singh resident of village Warre Tehsil Rattia District Fatehabad (Haryana) and Chand Kaur has since died leaving behind Tej Kaur her daughter, Ranjit Singh and Surjit Singh two sons. After death of Gurtej Kaur, her entire property including the suit property was inherited by Tej Kaur, Surjit Singh and Ranjit Singh, children of Chand Kaur daughter of Santa Singh. Mutation of inheritance of Gurtej Kaur at the first instance was sanctioned in favour of defendants No. 4 to 6. The plaintiffs and other defendants, out of greed manipulated false, fictitious Wills and also manipulated to get orders of the higher revenue authorities as they had local political influence. The pedigree table in the mutation of inheritance of Gurtej Kaur reveals the true position in which defendants No. 4 to 6 have been entered as natural and legal heirs of Gurtej Kaur. Gurtej Kaur did not execute any Will during her life time. It is denied that she used to live with Gurmat Singh, Bant Singh or Amarjit Singh. She had her own residential house and used to live there and was being served by defendants No. 4 to 6. The alleged Wills are forged and fabricated documents. Surjit Kaur and Amarjit Kaur never entered into possession of suit land. All other material averments of the plaint have been denied with a prayer for dismissal of the suit.

Written statements have also been filed by other set of defendants but the same are not relevant for decision of the aforesaid appeals as claim on the basis of testamentary succession is subject matter of RSA Nos. 4556 and 4557 of 2013 and 3418 of 2014 which have been

dismissed for non prosecution, vide order of even date.

The Additional Civil Judge (Senior Division), Mansa (herein after to be referred to as “the trial court”) accepted claim of the plaintiffs that they alongwith defendants No. 1 and 2 being successors-in-interest of Chanan Singh, grand son of Basanta Singh brother of Santa Singh are entitle to inherit to the estate of Smt. Gurtej Kaur by rejecting claim of defendants No. 4 to 6, in view of its findings recorded in para 15 of the judgment dated 18.5.2011. In para 15, the trial court has held that in the pedigree table set up by the plaintiffs, there is no sister namely Chand Kaur of Ajmer Singh. Defendant No. 6 relied upon *kursinama* Ex. DW/11 on the back of mutation Ex. DA/10 showing Chand Kaur as sister of Ajmer Singh. The *kursinama* is attested by Lambardar Raghbir Singh but said Raghbir Singh has not been examined to prove that Chand Kaur was sister of Ajmer Singh. Further held that no documentary evidence has been produced regarding birth or death of Chand Kaur nor evidence relevant under Section 50 of the Evidence Act is produced. No record of immersion of last remains of Chand Kaur has been produced as is admitted by Surjit Singh DW9.

The trial court also rejected the Wills set up by some of the defendants and eventually suit filed by the plaintiffs was decreed for possession of suit land and permanent injunction as prayed for.

The judgment and decree passed by the trial court became subject matter of four appeals, detailed in para 1 (unnumbered) of the judgment of the first Appellate Court and the same were decided by common judgment and decree dated 31.10.2012 passed by the District

Judge, Mansa. The first Appellate Court accepted the appeal titled “ Surjit Singh etc. vs. Gurmat Singh etc.” CAD No. 83 dated 1.8.2011 whereas the other appeals were dismissed. Judgment and decree passed by the trial court were set aside and suit filed by the appellants-plaintiffs was dismissed leaving the parties to bear their own costs. The first Appellate Court, on a detailed consideration of evidence on record, while relying upon judgments of this Court **Sardul Kaur vs. Parsin Kaur 1997 (2) Civil Court Cases 359** and **Piara Singh Johal and another vs. Gej and others 2005(3) The Punjab Law Reporter 376** answered issues No. 1 to 3 against the plaintiffs-appellants and additional issue No. 6 is decided in favour of defendants No. 4 to 6 and against the plaintiffs.

Counsel for the appellants would fairly inform that dispute between the plaintiffs and defendants No. 4 to 6 revolves around the issue, if Ajmer Singh father of Gurtej Kaur had a sister namely Chand Kaur and defendants No. 4 to 6 are the daughter and sons of said Chand Kaur. He would further state that there is no dispute between the parties that the plaintiffs are the great grand children of Basanta Singh who was real brother of Santa Singh and Santa Singh was father of Ajmer Singh and grandfather of Gurtej Kaur as Gurtej Kaur was daughter of Ajmer Singh. It is also not denied that Gurtej Kaur was unmarried and died issueless on 21.12.1991. Counsel would argue that Surjit Singh defendant No. 6 has contested the litigation in order to help Gurdev Singh defendant No. 3 who has set up a Will purported to be executed by Smt. Gurtej Kaur but failed to substantiate his plea in this regard. It is further argued that Surjit Singh defendant No. 6 failed to adduce any documentary evidence to establish that there was a

daughter namely Chand Kaur born out of the wedlock of Santa Singh and Sant Kaur, parents of Ajmer Singh, father of Gurtej Kaur. It is argued with vehemence that the first Appellate Court has wrongly placed reliance upon the judgments in **Sardul Kaur's case (supra)** and **Piara Singh Johal and another's case (supra)** to hold that it was an obligation of the plaintiffs to establish that Santa Singh and Sant Kaur had no daughter or Chand Kaur was not the daughter of Santa Singh and Sant Kaur, as the plaintiffs have not raised any such pleadings in the plaint but, on the contrary, have stated in para 7 that mutation was wrongly sanctioned in favour of defendants No. 4 to 6 though the same was set aside by the Additional Deputy Commissioner, Mansa. It is further argued that as defendant No. 6 has staked claim to suit land by asserting defendants No. 4 to 6 to be class-I heirs of Chand Kaur who is stated to be sister of Ajmer Singh and Bua of Gurtej Kaur, it was for defendant No. 6 to establish his plea by leading cogent and convincing evidence but he has failed to do so.

Counsel representing LRs' of respondent Surjit Singh has supported the judgment and decree passed by the first Appellate Court with the submission that the same are based upon correct appreciation of materials on record, in the light of judgments aforesaid. It is further argued that Gurtej Kaur died when she was more than 80 years of age. Since Chand Kaur was the Bua of said Gurtej Kaur and she was born several decades before the instant litigation was started, defendant No. 6 was rendered helpless to lay his hand on any document wherein Chand Kaur was recorded to be daughter of Santa Singh. It is further argued that as the plaintiffs have denied Chand Kaur to be daughter of Santa Singh or sister of

Ajmer Singh and defendants No. 4 to 6 to be daughter and sons of said Chand Kaur, it was for the appellants-plaintiffs to prove that no daughter was born to Santa Singh and Sant Kaur. According to counsel, the first Appellate Court has rightly relied upon the judgments in **Sardul Kaur's case (supra)** and **Piara Singh Johal and another's case (supra)** to negate plea of the appellants that Chand Kaur was not sister of Ajmer Singh father of Gurtej Kaur. He would further argue that the witnesses examined by the plaintiffs have not specifically denied that Chand Kaur was the sister of Ajmer Singh and Gurmat Singh plaintiff No. 1 has even admitted that Chand Kaur was the sister of Ajmer Singh. Defendant No. 6 examined many witnesses to prove that Chand Kaur was treated as sister by Ajmer Singh but there was not even a suggestion to those witnesses that Chand Kaur was not sister of Ajmer Singh. Defendant No. 6 examined Des Raj aged 88 years and resident of village Phaphre Bhaike and he has categorically deposed that Ajmer Singh had one sister Chand Kaur who was married with Sadhu Singh of village Warre Tehsil Rattia District Fatehabad. He has further stated that she used to visit her parents namely Santa Singh and Sant Kaur and so he knew her. Chand Kaur was blessed with three children namely Ranjit Singh, Surjit Singh and Tej Kaur. Tej Kaur was married with Kishan Singh of village Khiala Kalan. Chand Kaur used to call Ajmer Singh as her brother and Ajmer Singh used to call Chand Kaur as her sister.

I have heard counsel for the parties, perused the paper book and records.

The contention of the appellants that defendant No. 6 contested

the suit to help Gurdev Singh defendant No. 3 does not get substantiated from any materials on record. Defendant No. 6 in the written statement has specifically denied that Gurtej Kaur executed Will either in favour of Gurdev Singh defendant No. 3 or Surjit Kaur and Ajmer Kaur defendants No. 10 and 11. In this view of the matter, the first contention raised by counsel for the appellants is not meritorious and accordingly rejected.

The plea of the appellants that they did not raise an issue denying Chand Kaur to be sister of Ajmer Singh is patently misconceived and untenable. In para 7 of the plaint, there is reference to mutation No. 11124 dated 22.1.1992 sanctioned by Assistant Collector 2nd Grade, Mansa in favour of defendants No. 4 to 6 which was later cancelled. However, in para 8 of the plaint, a categoric plea was raised by the plaintiffs that Tej Kaur, Surjit Singh and Ranjit Singh defendants No. 4 to 6 claimed themselves to be legal heirs of Gurtej Kaur being children of Bua of Gurtej Kaur but there was no Bua of Gurtej Kaur, therefore, question of defendants No. 4 to 6 being children of Bua of Gurtej Kaur does not arise. This plea in para 8 of the plaint also demolishes contention of the appellants that either they were not under a legal obligation to establish their plea in this regard or the judgments relied upon by the first Appellate Court have no bearing on the controversy involved in the present suit.

Kaka Singh PW1 was examined by the plaintiffs to establish their relationship with deceased Gurtej Kaur. In his cross examination, he has stated that his *got* is 'Johal' and that of Gurtej Kaur to be 'Sandhu'. He has admitted that he is not related to Gurtej Kaur. He even did not know father's or grandfather's name of Ajmer Singh. He did not specifically deny

that Santa Singh had a daughter namely Chand Kaur and Chand Kaur was married at village Warre and Chand Kaur had children namely Tej Kaur, Ranjit Singh and Surjit Singh. He was not sure of his age but had stated that his age was about 50 years and then stated to be 40-42 years. On appreciation of cross examination of Kaka Singh, it can safely be inferred that keeping in view his age at the time of recording his statement in the year 1999, he possibly could not have any personal knowledge, if Santa Singh had a daughter namely Chand Kaur.

Gurmat Singh plaintiff No. 1 in his cross examination conducted in the second sitting would depose that he cannot say if Chand Kaur was or was not sister of Ajmer Singh meaning thereby that he has not specifically denied that Ajmer Singh had no sister namely Chand Kaur. Not only this, in the same cross examination, he has deposed to the following effect:-

“Sant Kaur had died before he attained the age of understanding. Again said, Chand Kaur was the daughter of Sant Kaur and Santa Singh. Ajmer Singh was married at village Jawahar Ke and his wife was called Santo. Father of Gurtej Kaur was Ajmer Singh and maternal parents of Gurtej Kaur were in village Jawahar Ke. Gurdev Singh defendant No. 3 is the son of maternal uncle (Mama) of Gurtej Kaur.”

The aforesaid extract from testimony of Gurmat Singh clearly reveals that he has admitted that Sant Kaur and Santa Singh had a daughter namely Chand Kaur. The trial court, for the reasons best known did not advert to testimonies of witnesses examined by defendant No. 6 to prove

that Chand Kaur was daughter of Santa Singh and Sant Kaur, therefore, Ajmer Singh had a sister namely Chand Kaur. Defendant No. 6 examined several witnesses including Des Raj DW1, noticed hereinbefore, to prove that Ajmer Singh had a sister namely Chand Kaur and defendants No. 4 to 6 are the children of said Chand Kaur. Counsel for the appellants has failed to point out any facts elicited in cross examination of the witnesses examined by defendant No. 6 to prove that their testimonies are not worthy of credence or reliance much less that they are interested witnesses. Surjit Singh defendant No. 6 appeared in the witness box and reiterated his version set up in the written statement. Nothing tangible and material has been elicited in his cross examination to discredit him. This apart, counsel for the appellants has not made any submissions to challenge factual observations made by the first Appellate Court, on the basis of oral evidence on record.

Taking into consideration the admission made by plaintiff No. 1, the only plaintiff examined in the case coupled with the evidence adduced by defendant No. 6, it is difficult to accept contention of the appellants that findings of the first Appellate Court on additional issue No. 6 suffer from an error much less perversity, warranting intervention.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeals fail and are accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

22.5.2019

paramjit

Whether speaking/reasoned: Yes

Whether reportable : Yes/No