

RSA No. 936 of 2013 (O&M) .

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

RSA No. 936 of 2013 (O&M).

Date of Decision: July 16, 2019

Jaswant Singh and others

..... APPELLANT(s)

Versus

Gurlal Singh and others

..... RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. P.K.S. Phoolka, Advocate
for the appellants.

Mr. Manpreet Singh, Advocate
for respondent no.1.

LISA GILL, J.

Appellants-plaintiffs are aggrieved of judgment and decree dated 04.09.2012, passed by the learned Additional District Judge, Bathinda as well as judgment and decree dated 02.12.2010, passed by the learned Civil Judge (Jr. Division), Bathinda.

Brief facts necessary for the adjudication of the case are that a suit for declaration was filed by the plaintiffs seeking declaration to the effect that defendant no.1 - Roop Kaur (since deceased and represented through her legal heirs – respondents no.1 to 3) in the present appeal was not the mother of Gurcharan Singh, who was the owner of the property in question. It is further prayed that defendant no.1 be restrained from alienating the suit property and dispossessing the plaintiffs therefrom. It is

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pleaded that Gurcharan Singh (since deceased) was the co-owner of land measuring 485 Kanals having a share of 19 Kanals 6 Marlas. Defendant no.1 Roop Kaur, it is pleaded wrongly claimed herself to be the mother of Gurcharan Singh son of Munshi Singh whereas she was the legally wedded wife of one Avtar Singh of village Matta. She thus had no concern with the deceased Gurcharan Singh and had wrongly succeeded to 1/6th share of the property of Gurcharan Singh. Assistant Collector, 1st Grade, it is claimed passed illegal orders dated 04.04.2006 and 09.09.2006 and mutation Nos.1875 and 6380 were wrongly entered with respect to the estate of Gurcharan Singh, to the extent that defendant Roop Kaur is recorded as a co-sharer. Hence, the suit was filed.

Defendant no.1 contested the suit while taking various preliminary objections. The averments on merits were denied. It is stated that Roop Kaur was the mother of the deceased Gurcharan Singh and after his death she has rightly inherited his estate to the extent of 1/6th share. It is further stated that Roop Kaur got married to Avtar Singh but only after the death of her previous husband Munshi Singh (father of Gurcharan Singh). Dismissal of the suit was sought.

Defendants no.2 to 4 did not file any written statement. Defendant no.8 filed a separate written statement challenging the *locus standi* of the plaintiffs to prefer the suit. Various other pleas were raised. Averments on merit were denied as incorrect. Other defendants were proceeded against *ex-parte*.

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Replication to the written statement was filed by the plaintiffs controverting the pleas taken by the contesting defendants.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i) Whether the plaintiffs are entitled to declaration as prayed for? OPP.
- ii) Whether the plaintiffs are entitled to permanent injunction as prayed for ? OPP
- iii) Whether the suit of the plaintiffs is not maintainable in the present form? OPD
- iv) Relief.

Learned trial Court on considering the evidence on record, facts and circumstances of the case concluded that the plaintiffs had failed to prove their case. They were unable to prove that Roop Kaur was not the natural mother of deceased Gurcharan Singh. Accordingly, their suit was dismissed.

Appeal preferred by the plaintiffs was also dismissed by the learned Additional District Judge, Bathinda vide judgment and decree dated 04.09.2012. Aggrieved therefrom present appeal has been filed by the plaintiffs.

Learned counsel for the appellants-plaintiffs vehemently argues that both the learned Courts below have grossly erred in law and facts while dismissing the suit filed by the present appellants. Learned counsel for the appellants argues that the evidence on record does not in any manner indicate that defendant no.1 Roop Kaur was the wife of Munshi Ram and

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mother of the deceased Gurcharan Singh. It is submitted that the testimony of PW-1 Baljinder Singh (plaintiff no.2) and PW-2 Chand Singh as well as the ration card Ex.PW3/A and Ex.PW3/B duly proved by PW-3 Amandeep Grover, Inspector Grade-II, Food and Supplies Department clearly prove that Roop Kaur was not the mother of deceased Gurcharan Singh. It is vociferously argued that the defendants did not lead any evidence to rebut the stand of the plaintiffs. Defendant no.1 did not even step in the witness box to testify in this case. Furthermore, the orders passed by the revenue authorities i.e. order of SDM and Deputy Commissioner, Bathinda not being appealed against, cannot be a ground to non-suit the appellants. It is, thus, prayed that this appeal be allowed. Both the impugned judgments and decrees be set aside. Consequently, suit filed by the plaintiffs be decreed throughout.

Learned counsel for the legal representatives of Roop Kaur i.e. respondents no.1 to 3 refutes the arguments addressed by learned counsel for the appellants. It is submitted that both the learned Courts below have rendered reasonable and logical judgments on the basis of the evidence on record which do not call for any interference. It is thus, prayed that the present appeal be dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The appellants claimed to be the sons of Gurcharan Singh son of Munshi Singh. In order to prove their stand that Roop Kaur was not the wife of Munshi Singh and mother of the deceased Gurcharan Singh,

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Baljinder Singh (plaintiff no.2) and PW-2 Chand Singh have stepped in the witness box. Furthermore, reliance is placed upon the ration card Ex.PW3/A and Ex.PW3/B to submit that Roop Kaur being married to Avtar Singh shows that she was not the mother of Gurcharan Singh.

I have perused the evidence on record. Ex.P-1 is a copy of order dated 04.04.2006, passed by the Assistant Collector 1st Grade, Bathinda in respect to sanction of mutation Nos. 1875 and 6380 with regard to inheritance of Gurcharan Singh. It is specifically mentioned therein that Roop Kaur was found to be the mother of Gurcharan Singh. Reference is made to the statement of Jarnail Singh, Lambardar, Tej Kaur wife of Gurcharan Singh. At this juncture, it is relevant to note that the plaintiffs in their replication have specifically stated that Nihal Kaur was the mother of Gurcharan Singh and not Roop Kaur. It is trite that it is incumbent upon the plaintiffs to prove their case. Learned counsel for the appellants is unable to deny that there is no evidence on record to show that it was Nihal Kaur who was the mother of Gurcharan Singh and not Roop Kaur. Ex.P-2 is copy of mutation No.6406 reflecting the pedigree table wherein Roop Kaur is reflected to be the mother of Gurcharan Singh. Defendant no.2 Nihal Kaur had filed an appeal against the order dated 04.04.2006, passed by the Assistant Collector 1st Grade, Bathinda, which was admittedly rejected by the learned Collector, Bathinda, vide order dated 29.09.2006 (Ex.P-5). It is to be noted that Nihal Kaur has not claimed any right to the 1/6th share of the property, which devolved upon Roop Kaur, in any other proceedings. Order dated 29.09.2006 has attained finality. Admittedly, no appeal or revision

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has been preferred against the said decision. Present suit has admittedly not been filed by Nihal Kaur.

Reliance by learned counsel for the appellants on the documents Ex.PW3/A and Ex.PW3/B to contend that Roop Kaur was not the mother of Gurcharan Singh is not tenable. PW-3 Amandeep Grover, Inspector Grade II, Food and Supplies Department, who has been examined to prove the ration card and form No. D-IV to prove Roop Kaur to be the wife of someone else in his cross-examination has clearly stated that the entry with regard to Roop Kaur is undated and that the said entry in the register has not been initialled or signed by its maker. Furthermore he did not recognize the signatures of Verifying Officer or the Distributing Officer. There is nothing on record to falsify the stand taken by the defendant Roop Kaur that she had married Avtar Singh of village Matta after the death of Munshi Singh. I do not find any merit in the arguments raised by the learned counsel for the appellants that an adverse inference should be drawn as Roop Kaur did not step into the witness box, as Roop Kaur admittedly died during the pendency of the civil suit. The exact date of death of Roop Kaur is not forthcoming, which would indicate the stage of the trial when she had passed away, though, a perusal of the file reveals that legal representatives of Roop Kaur were impleaded on 5th of September 2007. Affidavit by way of evidence of PW-1 i.e. Ex.PW1/A is dated 14.08.2008. Thus no adverse inference can be drawn due to the non-examination of Roop Kaur. Moreover, it is a settled position of law that it is for the plaintiffs to prove their case on the basis of positive evidence and not rely upon the weakness

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of the defendants.

Both the learned courts below have rendered concurrent findings of fact against the appellants on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument has been raised.

Learned counsel for the appellants is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 02.12.2010, passed by the learned Civil Judge (Jr. Division), Bathinda as well as judgment and decree dated 04.09.2012, passed by the learned Additional District Judge, Bathinda, respectively, which calls for any interference by this Court in second appeal.

There is a delay of 28 days in filing of this appeal. As the same has been adjudicated upon on merits, decision on the application for condonation of delay is rendered academic. Application is disposed of accordingly.

Appeal is accordingly dismissed with no order as to costs.

July 16, 2019.
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No