

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

**RSA No.4158 of 2016 (O&M)
Date of Decision:08.02.2019**

Liyakat

.....Appellant

Versus

Rawanak and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Kushagra Mahajan, Advocate
for the appellant.

LISA GILL, J.

Appellant-defendant no.1 is aggrieved of judgment and decree dated 10.09.2015, passed by the learned Civil Judge (Jr. Division), Mewat, as well as judgment and decree dated 26.04.2016, passed by the learned Additional District Judge, Nuh, whereby suit for declaration filed by plaintiff-respondent no.1 has been decreed.

Brief facts necessary for the adjudication of the case are that plaintiff-respondent no.1 filed a suit for declaration to the effect that mutation no. 2593, Rapt No. 247 dated 17.02.2006 should be set aside and declared null and void qua the rights of plaintiff-respondent no.1. It was stated that plaintiff and defendant no.3 (respondent no.3 in this appeal) are daughters of late Shaukat and defendant no.2-Smt. Asiya (respondent no.2 in this appeal). Defendant no.1 (respondent no.1 in this appeal) is the real brother of Shaukat. Subsequent to the death of Shaukat, marriage was solemnized between Liaqat Ali and Asiya. Plaintiff pleaded that the suit

property was the ancestral property of Shaukat, father of the plaintiff along with defendant no.3 and first husband of Smt. Asiya, defendant no.2. After the death of Shaukat, plaintiff along with defendants no.2 and 3 inherited the suit property. It was claimed that they were in possession over the suit land through their mother-defendant no.2. It was further stated that defendant no.1 hatched a criminal conspiracy with the help of Fateh Mohammad, Lambardar, Akbar Khan, Lambardar and the then Halqa Patwari, besides one Ex-Sarpanch, to usurp the land in question. They succeeded in obtaining the thumb impression of defendant no.2 and defendant no.3 on Rapt no. 247 dated 17.02.2006 on a false assurance of having the mutation of inheritance of Shaukat entered in their favour. Defendant no.1 along with other persons told defendant no.2 that she would become the owner in possession of the share of her deceased husband-Shaukat. However, mutation of inheritance was entered in favour of defendant no.1 at serial No. 2593 in a fraudulent manner. This fact came to the knowledge and notice of the plaintiff when she obtained Jamabandi of the suit property from the Halqa Patwari for financial assistance on 09.06.2014. Defendant no.1 in collusion with defendant no.2 threatened the plaintiff and proforma defendant that they shall be dispossessed from the suit property and the same would be alienated. Said defendants refused to admit the plaintiff's claim. Hence the suit was filed.

Defendant no.1 contested the suit. Various preliminary objections were taken in the written statement. Averments on merits were controverted. It was stated that the parties belonged to Meo Community. In case a Meo male dies without leaving a son behind, his property would be

inherited by his widow as a limited owner. On her death or remarriage, property reverts back to the reversioner of her husband. Defendant no.1 being brother of late Shaukat was thus entitled to the property in question. Defendant no.1 claimed to be the owner in possession of the suit property as daughters had no right over the property of their father. Dismissal of the suit was prayed for.

Joint written statement was filed on behalf of defendants no.2 and 3 taking various preliminary objections. Suit property was admitted to be ancestral. It was stated that the plaintiff and the proforma defendants being legal heirs of Shaukat are entitled to his property after Shaukat passed away on 15.07.2002. It was specifically stated that they are in actual physical possession over the suit land. Defendant no.1 in a fraudulent manner had got mutation no. 2593 sanctioned. A criminal complaint, it is stated had been filed against him and was pending adjudication. Dismissal of the suit was prayed for.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled for decree of declaration to the effect that rapat no. 247 dated 17.02.2006 and its mutation No. 2593 sanctioned on 28.04.2006 be declared as illegal, null, void, ab-initio, ineffective and inoperative as prayed for?OPP
2. Whether the plaintiff is entitled for decree of permanent injunction restraining the defendants from alienating the suit land detailed in para no.1 of the plaint as alleged/OPP
3. Whether the present suit is not maintainable in the present form in the eyes of law?OPD
4. Whether the suit land is ancestral property and parties are governed by custom in matters of alienation and succession?OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit?OPD

6. Whether the plaintiff is estopped from filing the present suit by her own act, conduct?OPD
7. Whether the plaintiff has concealed the true and material facts from this Hon'ble Court and have not come to the Court with clean hands?OPD
8. Whether the plaintiff is liable to pay special costs under Section 35-A of CPC?OPD
9. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances as well as the evidence on record concluded the plaintiff had successfully proved that the property belonged to Shaukat and the plaintiff along with proforma defendants being his legal heirs were entitled to succeed to the same. It was held that defendant no.1 failed to prove any custom to the contrary. The parties were not proved to be governed by any custom. Issues no.1 and 2 were decided in favour of the plaintiff. Issues no. 3 to 8 were decided against the defendants. Suit filed by the plaintiff was accordingly decreed.

Appeal preferred by defendant no.1 was dismissed by the learned Additional District Judge, Nuh, vide impugned judgement and decree dated 26.04.2016.

Aggrieved therefrom, present appeal has been filed by appellant-defendant no.1

Learned counsel for the appellant argues that both the learned Courts below have grossly erred in decreeing the suit filed by plaintiff-respondent no.1. The present appellant duly proved that the parties are governed by custom as they belong to the Meo Community. Custom as pleaded is duly established, accepted and followed in the area of Mewat in

the State of Haryana. Appellant is thus entitled to succeed to the property of his brother i.e., father of the plaintiff. It is thus prayed that this appeal be allowed and both the impugned judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the plaintiff-respondent no.1 be dismissed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Relationship between the parties, is a matter of record. Plaintiff and defendant no.3, are admittedly the daughters of late Shaukat and defendant no.2. Asiya-defendant no.2 performed second marriage with defendant no.1, who is none other but the real brother of Shaukat. Plaintiff had staked her claim to the property being the daughter of Shaukat. It is the specific case of the plaintiff that she along with defendants no.2 and 3 are entitled to succeed to the estate of Shaukat. Suit property in the hands of Shaukat is proved to be his ancestral property. Appellant-defendant no.1, on the other hand has laid the foundation of his case on the basis of the so called custom recognized in the Meo Community in District Mewat in the State of Haryana. Averment that as per custom, the widow of the deceased inherits limited estate of her husband and attains a life estate interest in his property after the husband's death and furthermore on remarriage the property goes back to the reversioner, is absolutely unsubstantiated by the evidence on record. It is a matter of record that anyone who pleads to be governed by custom has to prove the existence of the same. Learned counsel for the appellant is unable to point out any such evidence on record which proves that the parties were governed by any such custom.

Both the learned Courts below in the facts and circumstances of the case, have rightly concluded that no such custom has been proved to the effect that the right of a women to the property of her late husband would be a limited estate. Furthermore, no such custom depriving the daughters of their right to inherit the estate of their father and conferring any right on the revisioner has been proved on record. The appellant being the brother of Shaukat, is not entitled to the property in question. It is rightly held by both the learned Courts below that the plaintiff-respondent no.1 has duly proved her case.

Learned counsel for the appellant-defendant no.1 is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decrees dated 10.09.2015 and 26.4.2016 passed by the learned Civil Judge (Jr. Division) Mewat and learned Additional District Judge, Nuh, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

08.02.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.