

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

**RSA-396-2014 (O&M)
Date of Decision: September 24, 2019**

Ram Kumar

...Appellant

Versus

Smt. Darshani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.

Present: Mr. Abhinav Sood, Advocate,
for Mr. Vikram Singh, Advocate,
for the appellant.

ARUN PALLI, J. (ORAL)

The suit filed by the appellant (plaintiff No. 1) was dismissed by the Trial Court, vide judgment and decree, dated 31.10.2011, as even the appeal preferred against the said decree failed, and was dismissed on 14.10.2013, he is before this Court in Regular Second Appeal. Parties to the *lis*, hereinafter shall be referred to by their original position in the suit.

Plaintiffs prayed for a declaration that they were owners of 1/2 share in agriculture land, measuring 44 Kanals 14 Marlas, comprised in specific numbers duly depicted in the cause title of the plaint, situated in the revenue estate of village Bajida Roran, Tehsil and District Karnal, and for injunction restraining the defendants from interfering in their possession over the suit property. Further that Mutation No. 548, be declared illegal, null and void.

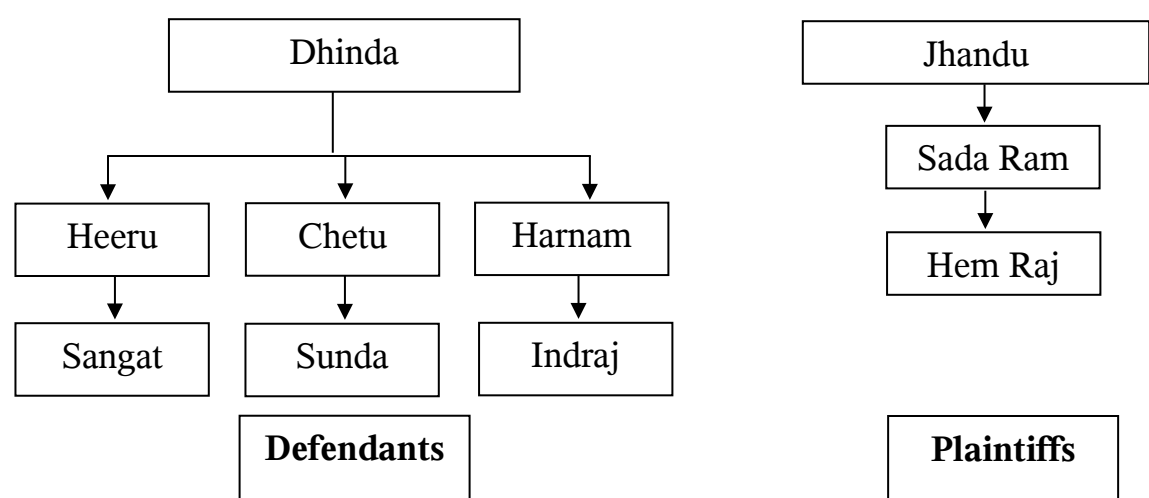
In brief, the case set out by the plaintiffs was that the predecessors-in-interest of the parties were owners of the above said land

measuring 44 Kanals 14 Marlas. The case of the plaintiffs has been that they were legal heirs of Hem Raj. Both Sangat @ Gabni and Hem Raj were born from the womb of Chameli, wife of Sadha Ram. Whereas the defendants were the heirs of Sunda son of Chetu. Chetu, Harnam and Heeru were sons of Dhinda. After the death of Heeru, his wife Chameli performed a Kareva marriage with Sada Ram, and from this marriage Hem Raj and Sangat @ Gabni were born. It was also the case of the plaintiffs that Sunda is son of Chetu and Indraaj is son of Harnam, sons of Dhinda. After the death of Indraaj, his wife Sugni performed a Kareva marriage with Sunda and from this marriage the defendants were born. It was in the last week of February, 2004, the plaintiffs came to know that share of Sangat @ Gabni, out of the suit property is being transferred in the names of the defendants and Mutation No. 548 was being sanctioned in their favour. For, the defendants intended to grab the suit land on the basis of Mutation No. 548, thus, the suit.

In defence, defendant Nos. 1 to 3 pleaded, *inter alia*, that predecessor-in-interest of the plaintiffs were owner to the extent of 1/4th share out of the land in question and not 1/2 share as claimed. Plaintiffs were not the legal heirs of Sangat @ Gabni. In fact, Hem Raj and Sangat @ Gabni were not born from the womb of Chameli, as alleged. For, Sangat @ Gabni was son of Heeru son of Dhinda. It was stated that the defendants are sons of Sunda son of Chetu. Further, Heeru, Chetu and Harnam were the three son of Dhinda, and were real brothers. Therefore, the defendants alongwith their sisters were owners of the land to the extent of 3/4th share.

The factum of Kareva marriage between widow of Heeru and Sada Ram was denied. Resultantly, the suit was prayed to be dismissed.

Upon a consideration of the matter in issue and the evidence on record, both the Courts concurrently concluded that pedigree table Ex. P-6, being depicted heither to below, showed that plaintiffs were legal heirs of Hem Raj, whereas the defendants were successor-in-interest of Sunda son of Chetu son of Dhinda.



The case set out by the plaintiffs that Chameli who was earlier married to Heeru, post his death performed Kareva marriage with Sada Ram, and from the said marriage two sons, namely, Hem Raj and Sangat @ Gabni were born, remained unsubstantiated for lack of evidence. The pedigree table Ex. P-6 brought on record by none other than the plaintiffs themselves, did not show that Sangat @ Gabni was son of Sada Ram, and rather was shown to be son of Heeru son of Dhinda.

Nothing was brought on record by the plaintiffs to rebut this position, except a self-serving statement of plaintiff Ram Kumar (PW-1). Lakhpat (PW-2), examined by the plaintiffs though tendered his affidavit

Ex. PW-2/A, but did not present himself for the purposes of cross-examination. Thus, his statement in examination-in-chief could not be read into evidence. Ram Kumar (PW-1) and Mohinder Singh (PW-3) were aged 50 and 55, respectively. Elbeit, these witnesses deposed as regards the factum of Kareva marriage of Chameli with Sada Ram, but both admitted in their cross-examination that said marriage never took place in their presence, and they merely heard about it. They also failed to specify in their deposition as to from whom they had heard about the Kareva performed by Chameli with Sada Ram. The argument that defendant Manga Ram in his cross-examination had admitted that Sangat @ Gabni was son of Sada Ram, and, therefore, the version of the plaintiffs was admitted, lacked conviction as the evidence on record proved that said admission was erroneous, and was explained by the defendants, and, thus, not binding upon them. In reference to the decision of of this Court, reported as **State Bank of Patiala v. Des Raj Jain, 2000 (3) RCR (Civil) 406**, it was observed that the admission if erroneous could always be explained. Not just that, the specific case set out by the defendants was that Sangat @ Gabni was son of Heeru son of Dhinda, the fact which was duly substantiated from the revenue record Ex. P-1, as also the pedigree table Ex. P-6. The factum of Kareva marriage between Chameli and Sada Ram remained unproved for lack of evidence. Likewise, plaintiffs failed to prove that Sangat @ Gabni was born from the marriage between Sada Ram and Chameli widow of Heeru. Once the plaintiffs failed to establish any relationship with Sangat @ Gabni, as claimed in the suit, the only and the

inevitable conclusion the Courts below could reach: suit filed by the plaintiffs was liable to be dismissed.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions concurrently arrived at by both the Courts were either contrary to the record or suffered from any material illegality.

No question of law, much less any substantial question of law, arises for consideration in this appeal. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

September 24, 2019

Pkapoor

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO