

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 1559 of 2017 (O&M)
Dated of decision: February 14, 2019

Anwar Singh and another

... Appellants

Versus

Mahinder Singh

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Jasuja, Advocate,
for the appellants.

Amit Rawal, J. (Oral)

CM-3765-C-2017

For the reasons stated in the application which is supported by an affidavit, same is allowed. Delay of 17 days in re-filing the appeal is condoned.

RSA-1559-2017 (O&M)

The appellants-plaintiffs are not successful before both the Courts below in claiming declaration to the effect that plaintiffs along with defendant are owner in equal share of land measuring 30 kanals 18 marlas i.e. 2/5th share of land measuring 77 kanals 06 marlas. Also by challenging the mutation no. 1950 of Village Hasta Kalan qua the estate of Smt. Indro Bai regarding land measuring 30 kanals 18 marks i.e. 2/5th share of land measuring 77 kanals 06 marlas with consequential relief for joint possession in equal share.

The plaintiffs claimed permanent injunction on the premises that Bakar Singh had four sons i.e. plaintiffs, defendant and Sohna Singh.

After the demise of Sohna Singh, his share was inherited in favour of the plaintiffs, defendant and Indro Bai mother. On demise of Indro Bai, mutation of inheritance had been effected in favour of the defendant – Mahinder Singh, whereas plaintiffs were also entitled to the share as they born out of a common father. It was also alleged that in fact, plaintiff no.1 was also born out of loins of Indro Bai and Bakar Singh.

Defendant opposed the suit stating that Indro Bai was mother of defendant Mahinder Singh whereas plaintiff no.1 was born from the womb of Akko Bai, the first wife of Bakar Singh and plaintiff no.2 was born from the womb of Smt. Maya Bai, the second wife of Bakar Singh. It was further alleged that Sohna Singh, brother of Bakar Singh adopted Anwar Singh as his son but out of illiteracy, no writing was made and after the death of Sohna Singh, the property devolved upon Smt. Krishna Rani daughter of Sohna Singh but plaintiff no.1 insisted that since he was adopted by Sohna Singh, therefore, entitled to the estate of Sohna Singh and for that reason, Smt. Krishna Rani vide sale deed dated 17.06.1992 transferred the land in the name of plaintiff no.1 admitting him to be the son of Sohna Singh, therefore, plaintiff no.1 was not entitled to succeed the estate of Smt. Indro Bai.

In order to prove the afore-mentioned case, the plaintiffs examined as many as two witnesses and brought on record Exh. P1 to P4, whereas defendant brought on record Exh.D1 to D9.

Mr. Sandeep Jasuja, learned counsel appearing on behalf of the appellants submitted that judgment and decree of both the Courts below are not sustainable as factum of plaintiffs having been born out of loins of Indro Bai and Bakar Singh, was denied by the defendant. Even plaintiff no.1

inherited the estate of Sohna Singh in view of sale deed executed by Krishna Rani. The mutation proceedings were challenged and the same are pending adjudication. PW2 Balwant Singh in clear term deposed that Bakar Singh married only once during his life time with Indro Bai and not with Akko Bai.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit.

The factum of the sale deed executed by Krishan Rani in favour of plaintiff no.1 has not been disputed. Plaintiffs failed to discharge the onus as to whether they were born out of loins of Indro Bai and Bakar Singh. No evidence in terms of provisions of section 50 of the Indian Evidence Act has been led. Whereas on the contrary, it has come on record that Mahinder Singh, defendant born out of the loins of Indro Bai and Bakar Singh. On the demise of Indro Bai, her share, in my view, has rightly been mutated in favour of the defendant – Mahinder Singh. Mutation proceedings qua the estate of Indro Bai in favour of defendant has attained finality.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

February 14, 2019
vkd

(Amit Rawal)
Judge

Whether speaking / reasoned : Yes

Whether reportable : No