

RSA No. 1166 of 2018 (O&M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 1166 of 2018 (O&M)
Date of Decision: March 18, 2019

Samin Kumar APPELLANT(s)
Versus

Smt. Dhano Devi and others RESPONDENT(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Mukesh Yadav, Advocate for the appellant.

LISA GILL, J.

Appellant-defendant is aggrieved of judgment and decree dated 19.10.2016, passed by the learned Additional District Judge, Narnaul as well as judgment and decree dated 11.12.2013, passed by the learned Civil Judge (Jr. Division), Mahendergarh.

Brief facts necessary for the adjudication of the case are that plaintiff-respondent no.1 in this appeal filed a suit for declaration against the defendants including the present appellant to the effect that she is the owner in possession of the property as detailed in the plaint to the extent of 1/4th share and that the mutation No.956 dated 23.11.1982 sanctioned in favour of the defendants is incorrect and liable to be set-aside.

Pedigree table as mentioned in the plaint is as under:-

Maru Ram			
I			
Murti	Surajbhan	Mewa	Dhanni Devi
I	I		I
I	Samin Kumar		
I	I		I
Santra	Kauli		Shriram

It is pleaded that Maru Ram, father of the plaintiff was the owner in possession of the suit land. Maru Ram passed away on 08.07.1978. Mutation of inheritance was sanctioned on 23.11.1982 in favour of Suraj Bhan, Murti and Mewa Devi to the exclusion of the plaintiff Dhano Devi despite the fact that she was the real daughter of Maru Ram. It is stated that mutation no.956 dated 23.11.1982 was sanctioned on account of collusion between the defendants with each other and in order to grab her share. Hence, the suit was filed.

A joint written statement was filed by defendants no.1 & 2, who resisted the suit. However, the pedigree table and the identity of the suit property was admitted. It is stated that the plaintiff was married in district Jhajjar. After incurring necessary expenses she herself, it is stated, gave an assurance that she did not need the property of her father, therefore, mutation no.956 dated 23.11.1982 was sanctioned in favour of other siblings.

Defendants no.3 to 5 filed a separate written statement in consonance with the stand taken by the other defendants.

Defendant no.1 – Suraj father of the present appellant was proceeded against *ex parte* vide order dated 30.07.2008.

Following issues were framed on the basis of the pleadings of the parties:-

1. Whether plaintiff as legal heir of Madu Ram has 1/4th share in the suit property? OPP.
2. Whether impugned mutation no. 956 and 1921 are illegal and void? OPD
3. Whether the suit is maintainable ? OPD
4. Relief, cost, special cost.

Evidence was led by the parties in support of their respective stands.

Learned trial Court on consideration of the evidence on record, facts and circumstances concluded that the plaintiff had proved her case successfully. It was proved that she was the daughter of Maru Ram and was wrongly not included in the mutation of inheritance sanctioned after the death of Maru Ram. Plaintiff was held entitled to 1/4th share in the suit property and mutation no. 956 dated 23.11.1982 was held to be null and void to the extent of plaintiff's share. Suit filed by the plaintiff-respondent no.1 was accordingly decreed vide impugned judgment dated 11.12.2013.

Appeal preferred by the present appellant/defendant no.1 - Samin Kumar son of Suraj Bhan was partly allowed by the learned Additional District Judge, Narnaul, vide judgment and decree dated 19.10.2016 to the extent that the plaintiff is held entitled to 1/5th share instead of 1/4th as held by the learned trial Court. Setting aside of mutation no.956 was upheld . Aggrieved therefrom, present appeal has been filed.

Learned Counsel for the appellant vehemently argues that both the learned Courts below have erred in law and on facts in decreeing the suit in favour of the plaintiff/respondent no.1. Plaintiff/respondent no.1, it is contended, was very well aware of mutation No.956 dated 23.11.1982. The said mutation was sanctioned after she had relinquished her share as she does not need the property of her father. She is thus not entitled to any share in the suit property much less 1/4th or 1/5th share. Therefore, the present suit for declaration, filed in January 2008, is not maintainable. It is thus prayed that suit be dismissed through out.

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

It is a matter of record as well as an admitted fact that the plaintiff - Dhano Devi is the real daughter of Maru Ram, who was the owner of the property in question.

Learned counsel for the appellant does not deny the relationship between the parties. At this stage, it is relevant to note that in the pedigree table mentioned at the time of mutation no. 956 dated 23.11.1982, it is mentioned that Maru Ram had three children – Surajbhan, Mewa and Murti whereas in mutation no. 1921 (Ex.PW2/A) sanctioned on 25.10.2007 whereby property of the plaintiff's mother Sarti widow of Maru Ram was sanctioned, all the four children are specifically mentioned. DW1 Samin Kumar - the present appellant has admitted the relationship between the parties. He has stated that mutation of inheritance of Sarti Devi is incorrect though admittedly no effort was made to have the same corrected. It is admitted that the land has not been partitioned by any of the co-sharers till the time he testified. DW-2 Om Parkash also admitted the plaintiff to be the daughter of Maru Ram and that the land be mutated in the name of the son and three daughters of Maru Ram.

Learned counsel for the appellant cannot derive benefit from the testimony of DW-3 Mewa Devi, who deposed that she is an illiterate lady and knows nothing about affidavit which was prepared by her relative. DW3 has admitted the relationship between the parties. There is indeed no evidence on record to indicate the reason for exclusion of the plaintiff

Dhano Devi at the time of sanction of mutation of inheritance of Maru Ram. There is nothing on record to show that she had ever relinquished her right in the property as has been vehemently argued.

Learned Additional District Judge, Narnaul vide impugned judgment dated 19.10.2016 has rightly held that the plaintiff is entitled to 1/5th share of the property in question, as Maru Ram at the time of his death was survived by five legal heirs i.e. his four children and his wife Sarti Devi.

Learned counsel for the appellant has raised another argument that the claim of the plaintiff is time barred. However, this argument is devoid of merit keeping in view the fact that claim of the plaintiff is based on title and she has clearly explained that she came to know about the mutation only when the defendants asserted their ownership over the suit property about a month prior to filing of the suit. Moreover, reliance has rightly been placed by the learned Trial Court on the judgment of this Court in Gurcharan Singh and others Vs. Surjit Kaur and others 2005 (3) RCR (Civil) 628.

Keeping in view the facts and circumstances as discussed above, there is no question of law much less a substantial question of law, which is involved for consideration in this regular second appeal.

No other argument has been addressed.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 19.10.2016, passed by the learned Additional District Judge, Narnaul, as well as judgment and decree dated 11.12.2013 (as modified), passed by the

learned Civil Judge (Junior Division), Mahendergarh, which calls for any interference by this Court in second appeal.

There is a delay of 70 days in refiling and 285 days in filing of the present appeal. Keeping in view the fact that the matter has been decided on merits, the question of delay in filing and refiling of this appeal has been rendered academic. Applications are, accordingly, disposed of.

Accordingly, this appeal is dismissed with no order as to costs. Judgment and decree dated 19.10.2016, passed by the learned Additional District Judge, Narnaul as well as judgment and decree dated 11.12.2013, passed by the learned Civil Judge (Junior Division), Mahendergarh to the extent it stands modified by the learned Additional District Judge, Narnaul are upheld.

March 18, 2019.
Sunil

(**LISA GILL**)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No