

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

RSA No.258 of 2018(O&M)
Date of decision: 07.11.2019

Kailash

... Appellant

Versus

Savitri alias Savita and others

... Respondents

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

Present: Mr. Sumit Sangwan, Advocate, for the appellant.

ARUN PALLI, J. (Oral)

Suit filed by the respondent-plaintiff was decreed by the trial Court vide judgment and decree dated 13.02.2014, and as even the appeal preferred against the said decree failed and was dismissed on 07.09.2017, the defendants are before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

Plaintiff prayed for a declaration that she and proforma defendants were owners in possession of land measuring 9 kanals 0 marla i.e. 1/3rd share of total land measuring 27 kanals 1 marlas, comprised in specific khasra numbers as depicted in cause title of the plaint in equal shares being daughters of Ram Niwas son of Sheo Ram. And, thus, mutation No.3646, dated 19.09.2006, sanctioned on the basis of a decree dated 12.11.2002, passed by Civil Judge (Jr. Divn.), Siwani Camp at Charkhi Dadri in civil Suit No.554/14.08.1993, titled *Kailash and others v. Smt. Savitri and others*, was illegal, null and void, and was, thus, liable to be set aside.

In the written statement filed by the defendants, it was pleaded, *inter alia*, that grandfather of the plaintiff and proforma defendants, namely,

Sheo Ram had died on April, 30.1987. It was admitted that Sheo Ram was in possession of land measuring 27 kanals 1 marlas, situated at village Jhojhu Kalan. Vide judgment and decree dated 23.10.1986, rendered in Civil Suit No.904 of 1986, Sheo Ram had suffered a consent decree in their favour and since then they were owners in possession of the suit property. Thus, Sheo Ram was left with no right, title or interest in the land measuring 27 kanals 1 marla. It was denied that Kartar and Mahender were owners in possession of $\frac{2}{3}^{\text{rd}}$ share and Ram Niwas was entitled to $\frac{1}{3}^{\text{rd}}$ share in the estate of Sheo Ram. Thus, defendants were owners in possession of land measuring 27 kanals 1 marla and, therefore, the suit was liable to be dismissed.

Upon consideration of the matter in issue and the evidence on record both the Courts concurrently concluded that decree dated 12.11.2002 rendered in Civil Suit No.554 of 1993, filed by the defendants, revealed that defendants had set out a similar stand in those proceedings, however, a categorical finding was recorded that judgment and decree dated 23.10.1986 was wholly illegal and not binding upon the rights of the plaintiff and proforma defendants herein. Meaning thereby, rights of the parties had already been adjudicated upon pursuant to a decree dated 12.11.2002. Nothing was brought on record either to show if any appeal was preferred against the said decree. Therefore, the same had attained finality. Once the claim of the defendants had already been rejected, they had no locus to rake up the same controversy again. Once the civil Court in civil Suit No.554 of 1993 had concluded that total land was still joint, the suit property was rightly mutated post death of Sheo Ram in favour of the plaintiff and proforma defendants to the extent of $\frac{1}{3}^{\text{rd}}$ share and in favour of defendants qua the rest $\frac{2}{3}^{\text{rd}}$ share and the mutation No.2466 dated 10.06.1992 was

sanctioned accordingly. Thus, mutation No.3646 dated 19.09.2006, sanctioned on the basis of the decree passed in civil suit No.554 of 1993, was an abuse of process. Hence, defendants had $2/3^{\text{rd}}$ share in total land measuring 27 kanals 1 marla left by late Sheo Ram and plaintiff and proforma defendants had $1/3^{\text{rd}}$ share therein. The plea that as defendants have been in actual physical possession of the suit property and, thus, the suit for declaration without seeking possession was not maintainable, was also rejected, for, vide a decree passed in civil suit No.554 of 1993, it was categorically recorded that the defendants were not the exclusive owners in possession of land measuring 27 kanals 1 marla and the property was still joint. Therefore, plaintiff being a co-sharer, the position of law was settled that possession of one co-sharer is for and on behalf of all other co-sharers. Thus, if the plaintiff was not in physical possession of the suit property but she was still a co-sharer and, therefore, the suit was maintainable.

On being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions arrived at by both the Courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the findings recorded by both the Courts.

The appeal being devoid of merit is accordingly dismissed.

(Arun Palli)
Judge

07.11.2019
Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO