

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

**RSA No.4810 of 2017 (O&M)
Date of Decision.14.01.2019**

Sukhbir and others

...Appellants

Vs

Ram Kishan (since deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rishab Lohan, Advocate
for the appellants.

-:-

AMIT RAWAL J. (ORAL)

C.M. No.12781-C of 2017

For the reasons stated in the application, delay of 26 days
in filing of the appeal is condoned.

Application is allowed.

RSA No.4810 of 2017

The appellants-plaintiffs have not been successful in seeking declaration claiming ownership and possession in equal shares each of 1/12 share out of land/share of deceased Baru, stated to have died issueless having 1/4th share out of land measuring 220 kanals 8 marla. It was alleged that Chandgi had four sons namely Phool Singh, Deep Chand @ Talu, Baru and Ram Kishan. Baru on 25.09.1995 died issueless and unmarried. On demise, his share devolved upon Ram Kishan. All the four sons had 1/4th share on demise of Chandgi. Phool Singh and Deep Chand had pre-deceased Baru and it is in these circumstances, suit aforementioned was filed. It was alleged that Baru had entered into a family settlement and had agreed to transfer his share in favour of plaintiffs No.1 and 2 and

defendant No.1 in equal share.

Defendant No.1 opposed the suit and alleged himself to be owner in possession to the extent of half share out of agricultural land measuring 221 kanals 1 marla and denied the right of the plaintiff and defendant No.2. He claimed himself to be first legal heir alive on the death of Baru and its devolution.

Since the parties were at variance, the trial Court framed the following issues:-

- “1. Whether the plaintiffs are entitled to decree for declaration as prayed for?*
- 2. Whether mutation No.2011 sanctioned on 30.06.2006 is null and void and not binding on the right of the plaintiffs and is liable to be set aside? OPP*
- 3. Whether the plaintiffs have no cause of action and locus standi to file the present suit? OPD*
- 4. Whether the suit is not maintainable in the present form? OPD*
- 5. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 6. Whether the suit is time barred? OPD*
- 7. Whether the plaintiffs have not challenged the mortgage deed No.452 dated 16.7.2009 and DDR No.428 dated 16.7.2009? OPD*
- 8. Whether the civil court has no jurisdiction to try and entertain the present suit? OPD*
- 9. Whether the suit is false and frivolous and is liable to be dismissed with compensatory costs? OPD*
- 10. Relief.”*

Plaintiffs examined five witnesses and brought on record documents Ex.P1 to P5 whereas the defendants examined two witnesses and brought on record Ex.D1 and D2 i.e. copy of mortgage

deed and letter regarding mutation of agricultural land.

Mr. Lohan, learned counsel appearing on behalf of the appellants submitted that both witnesses of the oral family settlement had been examined. In these circumstances, share of Baru could not have exclusively been devolved upon Ram Kishan, the surviving brother. Plaintiffs are none else but children of Phool Singh and Deep Chand. They had also right in share of Baru. Mutation was not entered as per the provisions of Section 8 of the Hindu Succession Act.

I am afraid aforementioned argument of Mr. Lohan is not sustainable as succession upon death of Baru rightly devolved upon Ram Kishan, the surviving brother being Class II heir, as Phool Singh and Deep Chand pre-deceased him. Plaintiffs do not fall within the category as referred to above. It is in these circumstances, suit had rightly been dismissed.

In view of the aforementioned circumstances, I do not find any illegality and perversity in the judgments and decrees 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.

(AMIT RAWAL)
JUDGE

January 14, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No