

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

RSA No.5133 of 2018(O&M)

Decided on: 01.03.2019.

Hawa Singh

.....Appellant

versus

Ram Kumar and others

....Respondents

CORAM : HON'BLE MR.JUSTICE DR.RAVI RANJAN

Present: Mr.G.S.Sawhney, Advocate,
for the appellant.

DR.RAVI RANJAN, J. (Oral)

I have heard learned counsel for the appellant.

1. This appeal is directed against the judgment and decree dated 02.08.2018 passed by the Additional District Judge at Rewari in Case no.CA/268/2015 by which the appeal filed by the plaintiff/appellant was dismissed and the judgement and decree passed by the Civil Judge (Junior Division), Kosli, dated 01.05.2015 passed in Civil Suit No.RT-4 of 2012 was affirmed. By the aforesaid judgment, the trial Court had dismissed the suit filed by the plaintiff/appellant. The plaintiff/appellant has filed the suit for grant of following reliefs.:

I. A decree of declaration against defendants to the effect that plaintiff is joint owner in possession of property mentioned in para 3 of the plaint (for short suit property) to the extent of 1/4th share and the impugned mutation No.334 dated 13.03.1969 (mutation of inheritance of Sh.Chandagi Ram), mutation No.434 (Mutation of inheritance of Jugti alias Teja), mutation No.447 (mutation of inheritance of Shish Ram) and mutation No.568 (in view of decree of Civil Court dated

01.06.1987) be set aside as same are not null, void and illegal to the extent of 1/4th share of plaintiff and not binding on his rights.

II. A decree of permanent injunction against the contesting defendants is also sought to the effect that they be restrained from interfering in peaceful possession and use of plaintiff and from dispossessing him from suit property or from alienating or creating any charge or interest over this property in any manner.

III. A decree of mandatory injunction is also sought if during pendency of the suit, defendants succeed in their illegal act.

2. According to the plaintiff/appellant, one Natia alias Nanhar had five sons-Har Lal, Chandgi, Jubti alias Teja, Shish Ram and Jai Lal. The plaintiff is son of Jai Lal. The contesting defendants-respondents are the daughter and sons of Jubti and Sish Ram. The dispute is with respect to the share of Chandgi son of Nathia alias Nanhar, who admittedly died issueless on 13.03.1969. The claim of the plaintiff/appellant-Hawa Singh is that he was in joint cultivating possession with Chandgi with respect to his share of lands and as such after his death he was entitled for the 1/4 share which is share of Chandgi out of the suit property. He claimed that the mutation order dated 13.03.1969 opening mutation no.434 in favour of Jugti alias Teja, mutation No.417 with respect to inheritance of Sish Ram and Mutation No.568, are void, illegal and have been obtained fraudulently and, thus, they are required to be set aside to the extent of 1/4th share of the plaintiff as mentioned above. The plaintiff/appellant also sought that the defendants may be restrained from interfering into peaceful possession of the plaintiff and from dispossessing him from the suit property or alienating or incumbering in any manner to the extent of 1/4th share of the plaintiff/appellant.

3. The defendant no.1, 6 and 7 appeared and filed their joint

written statement taking stand that the father of plaintiff has already died way back in 1956, i.e. even prior to the death of Chandgi and as such he did not have any right to get a share in the property. Accordingly, the order of mutation of inheritance was sanctioned in accordance with law and does not require any interference.

4. Upon consideration of rival pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled for a decree of declaration against the defendants as prayed for?OPP
2. Whether the plaintiff is entitled for a decree of permanent injunction against the defendants as prayed for?OPP
3. Whether the plaintiff is entitled for a decree of mandatory injunction against the defendants as prayed for?OPP
4. Whether the suit is not maintainable in the present form?OPD
5. Whether the plaintiff has no *locus standi* to file this suit?OPD
6. Whether the suit of plaintiff is time barred?OPD
7. Whether the plaintiff has no cause of action to file the present suit?OPD
8. Whether the plaintiff has approached the Court with dirty hands?OPD
9. Whether the plaintiff has not affixed of proper Court fee?OPD
10. Relief.

5. The plaintiff examined one Umed Singh as PW1, Zile Singh PW2 and himself as PW3. He has also brought on record copies of mutation orders, *jamabandis* of several years.

The defendants examined DW1 Ram Kumar who has admitted that the suit land has not been partitioned till date.

6. The issue no.1 to 3 being inter-connected were taken up

together by the trial Court which has come to the conclusion that the plaintiff's case would fail on three counts. First is, since PW1 admitted that at the time of death of Chandgi in the year 1969, Jai Lal had already died, thus, the right of inheritance would be on Class-II heirs of Chandgi, v.i.z., Jugti and Sish Ram being two brothers of the deceased and the plaintiff/appellant being nephew of the deceased would not fall under such category as he would be covered under Entry IV of Class-II heirs, being brother's son. Accordingly, Entry-II of the Class-II heirs, i.e., the brothers of Chandgi, would have a preferential rights over the heirs of Entry-IV of Class-II.

Secondly, it is held that the plaintiff/appellant was not able to demonstrate by leading any cogent evidence that any fraud was committed in getting the mutation sanctioned. It is well settled that if a party pleads fraud then that has be pleaded specifically and proved like a criminal case beyond all reasonable doubts but in the present case, the plaintiff/appellant absolutely failed to produce any evidence in support of such pleading.

Thirdly, it is further held from the scrutiny of evidence that the plaintiff could not establish even his possession over the land as none of his witnesses could depose about his possession and even the plaintiff also could not tell the detail description of the suit land.

7. The judgment and decree was put to challenge in the appeal bearing No.CA/268/2015 of 2015, however, the First Appellate Court affirmed the findings and dismissed the appeal.

8. In the aforesaid background of factual matrix, I have heard learned counsel for the appellant.

Learned counsel has vehemently argued before this Court that

he was in joint possession of the land alongwith Chandgi even in his life time and, thus, after his death, he was entitled for 1/4th share of the suit property as entire share of Chandgi would fall upon him as he is in cultivating possession thereof. However, to establish that, the plaintiff/appellant would first have to establish his legal right to inherit the share of Chandgi as this is not the case of the plaintiff that he is in cultivating possession of the land adverse to the interest of the said Chandgi Ram or Jugti or Sish Ram. He is not claiming his title on account of adverse possession rather he is claiming that he was in joint possession with Chandgi and even thereafter he continued in possession but the mutation records one showing otherwise and there is no cogent evidence led on behalf of the plaintiff/appellant to rebut that or to show that those entries were wrong or fraudulent.

9. Admittedly, Jai Lal, i.e., father of Hawa Singh and the plaintiff/appellant died on 21.12.1956, which would mean that he pre-deceased Chandgi who died issueless on 13.03.1959. That being the situation, according to the provisions of Section 8 of the Hindu Succession Act, 1956, laying down the general rule of succession in case of death of male Hindu dying intestate, his property will firstly devolve upon the heirs specified in Class-I of the Schedule. In the absence of heirs of Class-I, it will devolve upon Class-II heirs of the deceased. According to the Schedule, further preference has been accorded within Class-II also as the first holder would be the father, in his absence Class-II (Entry-II) heirs would be sons' daughter's son, son's daughter's daughter, brother and sister. So, Jugti and Sish Ram being sister and brother of the deceased Chandgi would be covered under Class-II (Entry-II), whereas brother's son (the appellant)

would be in Class-II(Entry-IV). Section 9 of the Act lays down order of succession amongst the heirs prescribed in a particular Schedule, e.g. Class-II, laying down that the Ist Entry shall be preferred to those in the IInd entry. For better appreciation the aforesaid provisions are extracted as under:

“8. General rules of succession in the case of males- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule- Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in class I of the Schedule- The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:-

Rule 1- The intestate’s widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2- The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3- The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.

Rule 4- The distribution of the share referred to in Rule 3-

(i) among the heirs in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;

(ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.”

In the case in hand, admittedly no Class-I being available after the death of Chandgi, as per Section 9 of the Act, those in the Ist entry in Class-II heirs shall have preference over the subsequent entries. The brother being described in Entry-II of Class-II heirs would, thus, have preference over those described in the IIIrd or the IVth entries thereof.

10. Thus, in view of the aforesaid discussion it is clear that in the

presence of Jugti and Sish Ram being sister and brother of the deceased Chandgi, the nephew, i.e. son of the brother's son would not have any legal authority to inherit the property of Chandgi.

11. Once it is held as above, even if it is assumed that he was in possession alongwith Chandgi, that would be merely a permissive possession and not a possession under certain legal rights. Both the Courts have concurrently held and recorded a finding that the plaintiff/appellant has miserably failed even to establish that he was in possession. In such a situation this Court is left with no other option except to hold that this appeal does not have any merit and, as such, the impugned Judgments and decrees do not warrant any interference.

In the result, the appeal fails and, is, accordingly, dismissed, however, there would be no order as to cost.

March 01, 2019

dharamvir

**(DR. RAVI RANJAN)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes
Yes