

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

RSA No.5572 of 2018(O&M)

Date of decision: 15.7.2019

Mayo and others

.....Appellants

VERSUS

Kanwaljit Kaur and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gopal Singh Nahel, Advocate for the appellants.

REKHA MITTAL, J.

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby respondent/plaintiff Kanwaljit Kaur has been declared to be owner of land previously owned by Sh. Khem Singh @ Tarsem Singh.

Indisputably, suit land was previously owned by Sh. Khem Singh @ Tarsem Singh who died in the year 1982. The mutation with regard to inheritance to Khem Singh was sanctioned in favour of his two sisters namely Mayo and Puro and brother Puran Singh. Puro has died and her son Kewal Singh has also passed away. Kulwinder Kaur – defendant No.6 is the daughter in law of said Puro mentioned as Puran Kaur.

The case set up by the respondent/plaintiff is that she is the daughter of Khem Singh @ Tarsem Singh and is the only legal heir entitle to inherit land left behind by said Khem Singh. A year back, she came to village Nangal Tehsil Batala and came to know that mutation of

inheritance of Khem Singh has been got sanctioned by Puran Singh, Puro and Mayo by showing that said Khem Singh had no issue. Mutation with regard to inheritance to Khem Singh and subsequent mutation regarding estate of Puran Singh sanctioned in favour of defendants No.1 to 4 and of Puro in favour of defendants No.6 to 9 qua suit land are illegal, null and void. The mutation sanctioned in favour of defendant No.10 and Diwan Singh son of Gujjar Singh on the basis of alleged exchange is also illegal and result of collusion and conspiracy of defendants.

The suit was contested by defendants No.1, 4, 5, 8 and 9. Defendant No.6 filed the written statement admitting claim of the plaintiff. Other defendants did not appear despite service and were proceeded against ex parte.

The plaintiff filed replications to the written statements filed by different sets of defendants and re-asserted her plea raised in the plaint.

The trial Court framed following issues for determination:-

1. Whether the plaintiff is entitled the relief for declaration as prayed for? OPP
2. Whether plaintiff is entitled the relief of permanent injunction as prayed for? OPP
3. Whether mutations sanctioned in favour of defendant No.1 to 4 and in favour of defendants No.6 to 9 are illegal, ultravires, null and void? OPD
4. Whether suit of plaintiff is time barred? OPD-1, 4, 5, 8, 9.
5. Whether plaintiff is daughter of Khem Singh? OPD- 1, 4, 5.

6. Whether no cause of action with the plaintiff for filing the present suit? OPD-1, 4, 5.
7. Relief.

The trial Court, in view of findings on various issues, decreed the suit with costs by declaring the respondent/plaintiff as owner of land, detailed in head-note of the plaint and defendants were restrained from alienating the land in dispute. As has been noticed hereinbefore, challenge to the judgment and decree passed by trial Court at the behest of defendants No.1 to 5 was rejected by the Additional District Judge, Gurdaspur and the Court affirmed findings of the trial Court without any variance.

Counsel for the appellants would argue that the entire controversy in the present litigation revolves around a disputed question of fact, whether the respondent/plaintiff is daughter of Khem Singh @ Tarsem Singh, thus, entitle to inherit the suit land on the basis of natural succession. It is vehemently argued that evidence led by the respondent/plaintiff to establish her plea in this regard is not sufficient much less cogent and convincing. It is further argued that the Courts have mainly relied upon testimony of Daljit Kaur PW-2 daughter of Puro to uphold plea of the respondent that she is the daughter of Khem Singh having born out of wedlock of Khem Singh and Rajwant Kaur. It is further argued that Daljit Kaur is an interested witness with whom the respondent was purportedly residing till her marriage in the year 1999. It is argued that Daljit Kaur PW-2 and Kanwaljit Kaur- respondent/plaintiff have admitted that said Rajwant Kaur who performed marriage with Khem

Singh and gave birth to Kanwaljit Kaur out of marital relationship with Khem Singh is alive but Rajwant Kaur has not been examined before the Court to corroborate plea of the respondent that said Rajwant Kaur was married to Khem Singh and Kanwaljit Kaur was born out of their conjugal relationship.

Another submission made by counsel is that indisputably, Khem Singh died in the year 1982. The respondent/plaintiff did not stake her claim to the suit land till filing of the suit in June 2006. It is argued that had it been true that the respondent/plaintiff is daughter of Khem Singh @ Tarsem Singh, she would not have remained silent for large number of years to assert her right to the suit land.

I have heard counsel for the appellants, perused the paper-book and copies of documents supplied during course of hearing particularly testimonies of the witnesses examined by the respondent/plaintiff.

Before adverting to the submissions made by counsel for the appellants, it is appropriate to recapitulate that in the second appeal, it is not open for the Court to re-appreciate evidence and interfere in concurrent findings merely because another view is possible. Equally true is that second appeal can be admitted for hearing if it raises a question of law for determination.

In the case at hand, counsel for the appellants has not raised any question of law. Kanwaljit Kaur – respondent/plaintiff appeared in the witness box and reiterated her version that she is daughter of Khem Singh @ Tarsem Singh and entitle to inherit suit land, admittedly, left behind by said Khem Singh who died in the year 1982. The testimony of Kanwaljit

Kaur is duly corroborated by Daljit Kaur, one of the close relatives of said Khem Singh @ Tarsem Singh. Daljit Kaur is none else but daughter of Puro, real sister of Khem Singh @ Tarsem Singh and as such Khem Singh @ Tarsem Singh was the maternal uncle (Mama) of Daljit Kaur. Daljit Kaur had stated that after death of Khem Singh @ Tarsem Singh, Rajwant Kaur wife of Khem Singh performed second marriage and Kanwaljit Kaur who was barely one year old at that time started residing with them. The witness was cross examined at length but nothing tangible and fruitful has been elicited in her cross examination to discard or disbelieve her testimony. She cannot be branded as an interested witness merely because Kanwaljit Kaur had been residing in the house of her Bua namely Puro after unfortunate demise of Khem Singh in August 1982 and Rajwant Kaur having performed second marriage. Daljit Kaur has candidly stated that Kanwaljit Kaur was born on 22.08.1981. She would depose that Kanwaljit Kaur was studying in S.M.G. Girls Senior Secondary School, Baba Bakala, District Amritsar. Perusal of cross examination of Daljit Kaur would reveal that there is no challenge to her testimony that Kanwaljit Kaur had been studying in aforesaid school at Baba Bakala. The testimony of Daljit Kaur with regard to date of birth and education of Kanwaljit Kaur from the aforesaid school gets corroborated from documentary evidence maintained in the said school, produced and proved by Sandeep Kaur PW-1.

A part of suit land was mutated in the name of Puro, sister of Khem Singh @ Tarsem Singh. Daljit Kaur is the daughter of said Puro and she has supported cause of the respondent/plaintiff. Smt. Kulwinder Kaur widow of Kewal Singh son of Puro filed written statement admitting claim of the respondent/plaintiff, meaning thereby that heirs of Puro have

admitted plea of the respondent/plaintiff that she is daughter of Khem Singh @ Tarsem Singh and the same is prejudicial to their interest as suit land to the extent of 1/3rd was mutated in favour of Puro, their predecessor in interest. There is nothing on record suggestive of the fact that heirs of Puro would be the beneficiary in case plea of the respondent/plaintiff is accepted. Keeping in view the above, it can safely be held that testimony of Daljit Kaur is more than sufficient to corroborate plea of the respondent/plaintiff that she is the daughter of Khem Singh @ Tarsem Singh. As has been rightly noticed by the Court in appeal, the respondent/defendant have failed to set up a defence that the respondent is the daughter of a particular person while denying her to be daughter of Khem Singh @ Tarsem Singh. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the Courts.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

JULY 15, 2019

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no