

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 14.5.2019

RSA No. 834 of 2018 (O&M)

Imrat and others

versus

---Appellants

Smt. Huriya and others

---Respondents

RSA No. 1500 of 2018 (O&M)

Imrat and others

versus

---Appellants

Smt.Jamshida and others

---Respondents

RSA No. 1502 of 2018 (O&M)

Imrat and others

versus

---Appellants

Smt. Huriya and others

---Respondents

RSA No. 1508 of 2018 (O&M)

Imrat and others

versus

---Appellants

Smt. Huriya and others

---Respondents

RSA No. 1581 of 2018 (O&M)

Imrat and others

---Appellants

versus

Smt.Jamila and others

---Respondents

RSA No. 1619 of 2018 (O&M)

Imrat and others

---Appellants

versus

Smt. Hafijan and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mohd. Arshad, Advocate
for the appellants**

Rekha Mittal, J.

CM No. 2048-C of 2018 in RSA-834 of 2018

Prayer in this application is for condoning delay of 26 days in filing the appeal.

In view of averments made in the application and arguments advanced by counsel for the applicants, application is allowed and delay of 26 days in filing the appeal stands condoned.

Disposed of accordingly.

CM No.2049-C of 2018 in RSA-834 of 2018

Prayer in this application is for impleading legal representatives of Sher Mohammad-appellant No. 3(since deceased).

In view of averments made in the application supported by an affidavit of Ali Mohammad and arguments advanced by counsel for the applicants, the application is allowed and persons mentioned in para No. 2

of the application are allowed to be brought on record as legal representatives of Sher Mohammad-appellant No. 3(since deceased) for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

Main case

This order will dispose of RSA Nos. 834, 1500, 1502, 1508, 1581 and 1619 of 2018 as common questions of law and fact are involved for adjudication. For facility of reference, facts are taken from RSA No. 834 of 2018.

Challenge in the present appeal has been directed against concurrent findings of fact recorded by the courts whereby challenge to Wasika No. 256 dated 4.6.2014 executed by respondent No. 1 in favour of respondent No. 2 on the grounds that the same is without consideration, legal necessity and without consent of the appellants and proforma-defendant being illegal and in contravention to existing custom of the parties, was dismissed by the trial court vide judgment and decree dated 30.11.2016 that came to be affirmed in appeal by the District Judge, Mewat on 9.10.2017.

Counsel for the appellants-plaintiffs would fairly inform that the plaintiffs have challenged the impugned sale deed by staking their claim to the suit property being nearest collaterals of Chhajju (since deceased) husband of Smt. Huriya-respondent No. 1. He has also not disputed that right of the appellants to challenge the impugned sale deed would be sustainable only if the suit property is held to be ancestral property in the hands of Sh. Chhajju son of Deenu. Counsel would inform that under Muslim law, property in question would become ancestral in the hands of

Chhajju only if the same was inherited by him from his father or grand father or so on.

The courts have consistently held that the appellants-plaintiffs failed to prove that suit land was ancestral property in the hands of Sh. Chhajju, therefore, the appellants-plaintiffs have got no right to challenge the sale deed executed by Smt. Huriya widow of Chhajju in favour of Smt. Munni wife of Noordin. The Appellate court, in para 16 of the judgment, has held, reads thus:-

“Appellants have alleged in para No. D of grounds of appeal that the property in the hands of Chhajju descended from common ancestor Munsab but the appellants have failed to plead that Munsab was ancestor of plaintiffs, proforma defendants and Chhajju rather pedigree table given in para No. 2 of the plaint shows that their common ancestor was Kallu and Kallu had one son Chhittar and Chittar had four sons Jangi, Deenu, Dhupu and Balli and Balli had four sons including one Subhan Khan and Dhupu had one son Imrat, Deenu had one son Chhajju who died issueless and whose property is under challenge and Jangi had one son Noor Mohammed. So, name of Munsab does not find figure in the pedigree table. Even the pedigree table Ex. P6 does not show Munsab to be common ancestor of plaintiffs, proforma defendants and Chhajju and it is settled law that evidence beyond pleadings cannot be looked into.”

Counsel for the appellants would submit that in view of revenue documents produced on record particularly documents Ex. P6 to

P10, findings of the courts with regard to non-ancestral nature of the land cannot be allowed to sustain and liable to be set aside.

I have heard counsel for the appellants, perused the paper book and records pertaining to Civil Suit No. 271 of 2014, subject matter of appeal No. 834 of 2018.

The appellants produced jamabandi for the year 2009-2010 Ex. P2 wherein Chhajju son of Deenu is recorded to be owner of khasra numbers in question. EX. P3 pertains to mutation sanctioned in favour of Smt. Munni on the basis of sale deed dated 4.6.2014 (sale deed in question). Ex. P4 is copy of mutation of 1901 whereby mutation was sanctioned in favour of Chhittar, Gariba sons of Kallu in regard to estate left behind by Sagru. In column No. 8 of Ex. P4, there is reference to khasra numbers in respect whereof mutation was sanctioned. Appellants have not staked their claim to the suit land on the basis of inheritance by Chhittar from Sagru and even name of said Sagru does not appear in the pedigree table, reproduced in para 2 of the plaint. This apart, the appellants have failed to adduce any evidence to connect khasra numbers referred to in Ex. P4 with the land in dispute. In the given circumstances, the appellants cannot derive any advantage to their contention from document Ex. P4.

Ex. P5 is another mutation sanctioned on the death of Najbu son of Bazir. Again the appellants are not claiming any right on the basis of inheritance to the estate of Najbu. Ex. P6 is the pedigree table which has been reproduced in para 2 of the plaint. Ex. P7 is the jamabandi for the year 1944-45 wherein Chhajju son of Deenu is recorded to be co-owner to the extent of 1/4th share in land measuring 2 bighas 7 biswas of khasra Nos. 29, 293 and 526. In jamabandi for the year 1952-53 Ex. P8, Chhajju son of

Deenu is recorded to be co-owner to the extent of 1/4th share in land measuring 1 bigha 8 biswas comprising khasra Nos. 29, 233, and 293. Ex. P9 is the mutation qua death of Deenu in favour of Chhajju son of Deenu. Mutation was sanctioned in July 1942 and column No. 8 makes reference to khasra numbers whereas extent of share inherited by Chhajju son of Deenu is mentioned in column No. 9 thereof. Ex. P10 is copy of jamabandi for the year 1960-61 that records previous khasra numbers in column No. 6 and present khasra numbers in column No. 7.

On careful perusal of the documents Ex. P7, P8 and P9 viz-a-viz Ex. P10, there remains no dispute that khasra numbers mentioned in the three documents Ex. P7 to P9 are not referred to in column No. 6 of Ex. P10 in order to prove that khasra numbers in dispute were allotted in lieu of khasra numbers which were previously owned by Deenu, father of Chhajju (Since deceased). In this view of the matter, I find myself unable to accept contention of the appellants that suit land was ancestral property in the hands of Chhajju thus, Smt. Huriya did not have legal competence to alienate the said land without consent of the appellants being collaterals of Sh. Chhajju. In this view of the matter, I do not find an error much less perversity in consistent findings recorded by the courts that would call for intervention.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeals fail and accordingly dismissed in limine.

(Rekha Mittal)
Judge

14.5.2019
PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No