

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

CM-22-23-C-2019 in/and
RSA No.06 of 2019 (O&M)
Date of Decision: January 08, 2019

Mohinder Singh

...Appellant

Versus

Gitto and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. D.K. Gupta, Advocate
for the applicant-appellant.

JAISHREE THAKUR, J. (Oral)

CM-22-23-C-2019

1. There is delay of 133 days in filing and 1624 days in re-filing the appeal.
2. The applications are duly supported by affidavit.
3. For the reasons mentioned in the applications, the same are allowed and the delay of 133 days in filing and 1624 days in re-filing the appeal is condoned.

Main case

1. The appellant-plaintiff herein seeks to challenge the judgment and decree dated 19.07.2008 passed by the Civil Judge (Junior

Division) Pathankot as well as judgment and decree dated 19.10.2013 passed by the Addl. District Judge, Pathankot whereby the suit of the plaintiff for declaration to the effect that he is owner in possession of 1/6th share of Kalu measuring 11 kanals 5 marlas in the land measuring 67 kanals 11 marlas situated in Village Barooji, HB No.369, Tehsil Pathankot and as entered in the jamabandi for the year 1988-89, has been dismissed.

2. In brief, the appellant-plaintiff herein filed the aforesaid suit claiming to be the person entitled to inherit the land of Kalu. It was alleged that Rijha, who was his parental great grand-father, had three sons namely Tottu, Santu and Kalu. Santu died first and his estate was inherited by his brothers namely Tottu and Kalu in equal shares. Kalu was unmarried and issueless and died in the year 1945 whereupon his estate was inherited by his surviving brother namely Tottu, who died in the year 1951. Tottu was survived by his sons namely Charan Singh and Ram Singh. Charan Singh died in the year 1987 and his brother Ram Singh, who was unmarried and issueless died a month after the death of Charan Singh. Thereafter, the estate of both Charan Singh and Ram Singh was inherited by the appellant-plaintiff, who became owner in possession of the suit land. The respondents-defendants who are daughters of Santu and their mother Gango, being widow of Santu, have no right, title or interest in the land belonging to Kalu son of Rijha, and therefore, mutation of inheritance sanctioned in their favour on 15.06.1994 is not binding on him. It was alleged that the appellant-plaintiff would be sole male survivor, entitled to inherit the land of Kalu

and not the respondents-defendants.

3. Upon notice, respondents-defendants appeared and filed their joint written statement, in which the averments made in the plaint were denied, apart from raising the plea of limitation and that suit was bad for non-joinder of necessary parties.

4. Replication was also filed to the said written statement.

5. From the pleadings of the parties, the following issues were framed by the court below on 03.04.1999:-

(1) Whether mutation No.1226 regarding the estate of Kalu and mutation No.1227 regarding the estate of Gangu sanctioned in favour of defendants are illegal, null and void?OPP

(2) Whether the plaintiff is entitled to the relief of declaration as prayed for?OPP

(3) Whether the plaintiff is entitled to relief of permanent injunction as prayed for?OPP

(4) Whether the suit is barred by limitation?OPD

(5) Whether the suit is not maintainable?OPD

(6) Relief.

6. During the course of trial, the appellant-plaintiff has examined Karnail Singh as PW1 and himself stepped into the witness box as PW2 and closed his evidence whereas, the respondents-defendants did not produce any evidence and closed the same.

7. Both the courts below rejected the claim of the appellant-plaintiff, which are under challenge in this second appeal.

8. Learned counsel for the appellant-plaintiff argues that Rijha

was common ancestor of the parties, who left behind three sons namely Tottu i.e. grand father of the appellant-plaintiff, Santu and Kalu. It is contended that said Santu had no male lineal descendant and Kalu, who was unmarried and issueless, died in the year 1945 and since the entire land was joint, therefore, the share of Kalu stood devolved upon Tottu. It is submitted that Tottu had two sons namely Charan Singh and Ram Singh and the appellant-plaintiff is the son of Charan Singh whereas Ram Singh died unmarried and issueless, therefore, the appellant-plaintiff became owner of the entire land, which came to the hands of Tottu including the share of Kalu. It is argued that the courts below did not appreciate the fact that the appellant-plaintiff alone is entitled to inherit the estate of Kalu, and therefore, the mutation No.1226 and 1227 have been entered in favour of the respondents-defendants without any legal right.

9. I have heard learned counsel for the appellant-plaintiff and have also gone through the pleadings of the case.

10. All these arguments, which have been raised before this court, were also raised before the courts below. The lower court, while dismissing the suit of the appellant-plaintiff, has observed that the appellant-plaintiff has failed to produce on record any document to show his possession over the suit land. It is further observed that the appellant-plaintiff did not lead any evidence to show that he was preferential legal heir as compared to the respondents-defendants. The judgment and decree passed by the lower court was upheld in appeal by the lower Appellate Court.

11. Even before this court, there is nothing on record to

substantiate the plea of the appellant-plaintiff that he is in possession of the suit land. Further, there is nothing on record to prove the factum of date of death of Kalu. Onus was upon the appellant-plaintiff to prove that Kalu died prior to the coming into force of Hindu Succession Act, 1956, however, except oral assertion, no material witness has been examined to prove this fact. Moreover, mutation of Kalu was opened in the year 1994 and the impugned mutation No.1226 regarding the estate of Kalu was sanctioned on 15.06.1994. If the age of both the witnesses examined by the appellant-plaintiff is considered, they had no personal knowledge about the factum of death of Kalu in the year 1945, as such, their testimony cannot be looked into for this purpose. Under these circumstances, oral assertions of the appellant-plaintiff that Kalu died way back in the year 1945 cannot be accepted as gospel truth. The burden of proof was upon the appellant-plaintiff to prove his case, but he miserably failed to lead any cogent and convincing evidence in support of his case.

12. So far as question of inheritance is concerned, Kalu did not leave behind any first class legal heir, so his estate would devolve upon second class legal heirs. Section 9 of Hindu Succession Act, 1956 provides for order of succession among heirs in the schedule that *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.* The respondents-defendants being daughters of predeceased brother of Kalu, have preferential right than the appellant-plaintiff.

13. There are concurrent findings of the courts below against the

appellant-plaintiff. This court finds no legal or factual infirmity in the judgments of the courts below. No substantial question of law requiring determination arises in this appeal, which has no merit.

14. Dismissed.

January 08, 2019
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No