

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

**RSA No. 5191 of 2018 (O&M)
Date of Decision:09.01.2019**

Bijender through legal representatives and othersAppellants

Versus

Chatarbhuj and others Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Vishwajeet Singh, Advocate
for the applicant-appellants.

LISA GILL, J.

Appellant-plaintiffs are aggrieved of judgment and decree dated 15.02.2016, passed by the learned Civil Judge (Jr. Division), Hathin, as well as judgment and decree dated 18.08.2017, passed by the learned District Judge, Palwal, whereby their suit seeking a decree of declaration to the extent that they are owners in possession of the suit property as detailed therein besides relief of permanent injunction has been declined.

Brief facts necessary for the adjudication of the case are that appellant-plaintiffs filed the abovesaid suit while pleading that they alongwith defendant-respondents no.1 to 7 were the owners in possession of the property/plot as detailed in the plaint. It was pleaded that the plaintiffs and defendants no.1 to 7 had a common ancestor namely Sultan Singh from whom the property had devolved. Mutual partition between the parties was stated to have been effected about 15 years prior to the filing of the suit and two portions as described in the plaint came to the share of the plaintiffs. Defendant no.1 was stated to have 1/ 8th share and defendants no.2 to 7 were

stated to have 1/ 8th share in the plot, but they alienated more than their share by way of sale deeds no. 1411 and 1252 dated 08.07.2013 and 19.07.2013, Ex.P2 and Ex.P-3, in favour of defendant-respondents no.8 and 9. Defendants no.8 and 9, on the basis of the said sale deeds threatened to dispossess them and did not desist from their actions despite requests due to which the suit was filed.

Written statement was filed by defendants no.,2 to 7 while resisting the suit. Various preliminary objections were raised. It was denied that Sultan Singh was the common ancestor of the plaintiffs and defendants no.1 to 7. It was claimed that defendants no.1 to 7 were owners in possession of the disputed property which they had sold for a valuable consideration vide two sale deeds i.e. Ex.P2 and Ex.P-3. Any kind of right of the plaintiffs over the suit property was denied.

Separate written statement was filed by defendants no.8 and 9 stating that the plaintiffs had filed the suit only with a view to blackmail the defendants and to extract money. Concealment of true and material facts was pleaded. Averments on merits were also denied. It was further pleaded that the plaintiffs were strangers to the suit property while defendants no.8 and 9 were owners thereof, having purchased the same for valuable consideration vide valid registered sale deeds. Dismissal of the suit was prayed for.

Defendant no.1 did not join the proceedings and was proceeded against *ex parte* before the learned trial Court.

Replication was not filed. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is entitled to a decree for declaration to the effect that the plaintiffs are owners and in possession of the property in suit as detailed in para no.3 of the plaint and that vasika no. 1411 dated 19.07.2013 and 1252 dated 08.07.2013 regarding the property in suit as detailed in para no.1 of the plaint are illegal, null and void and are liable to be set aside?OPP
2. Whether the plaintiffs are entitled to a decree for permanent injunction thereby restraining the defendants no.8 and 9 from interfering into the peaceful possession of the plaintiffs over the plot in question as detailed in para no.3 of the plaint and also from alienating/selling the suit property?OPP
3. Whether the plaintiffs have no locus standi and cause of action to file the present suit?OPD
4. Whether the plaintiffs are estopped by their own acts and conduct from filing the instant suit?OPD
5. Relief.

Both the parties led evidence in support of their respective claims/stands.

Learned trial Court on considering the facts and circumstances as well as the evidence on record concluded that the plaintiff-appellants failed to substantiate their case. They were unable to prove that they had any right over the suit property derived from a common ancestor of the plaintiffs and defendants no.1 to 7. No pedigree table was produced neither was any evidence led to prove the same. Suit was accordingly dismissed.

Appeal preferred by the present appellant-plaintiffs was also dismissed by the learned District Judge, Palwal, vide judgment and decree dated 18.08.2017.

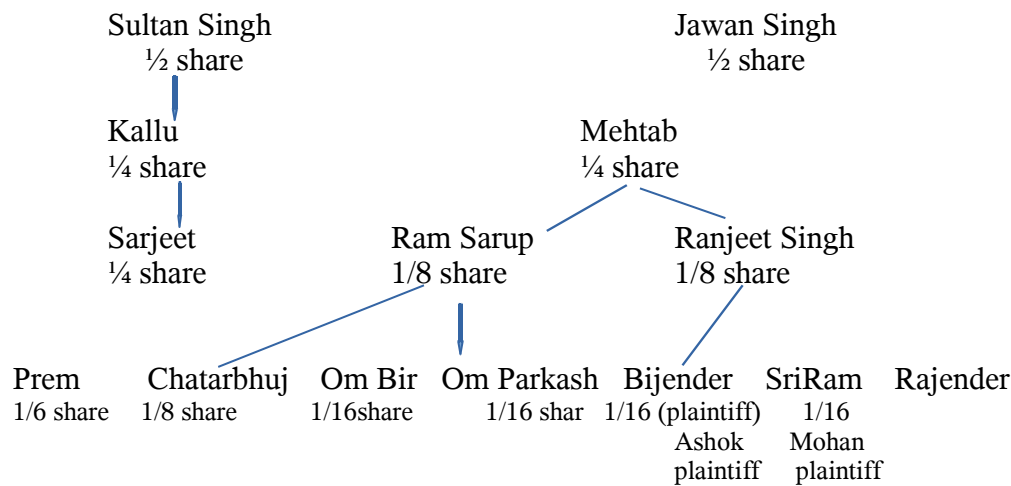
Aggrieved therefrom, present appeal has been filed by the appellant-plaintiffs.

Learned counsel for the appellants vehemently argues that the plaintiff-appellants have succeeded in proving their ownership and title over

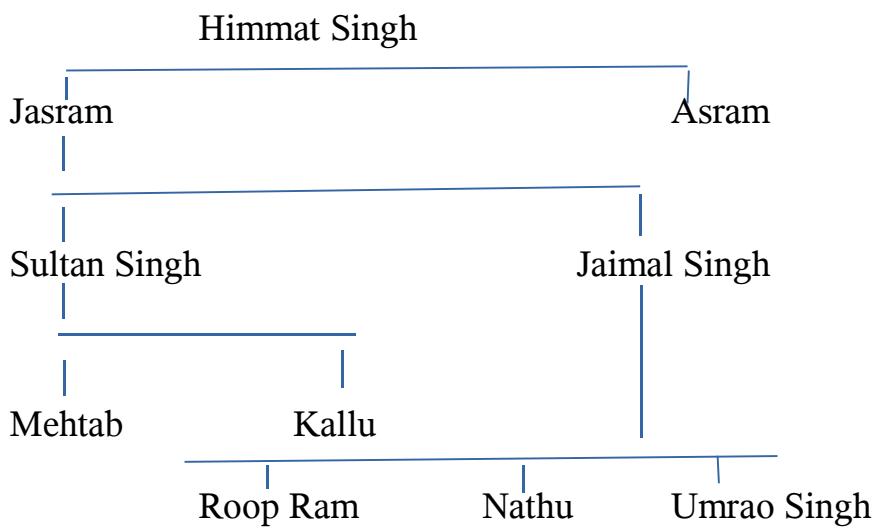
the property in question. Appellant-plaintiffs as well as defendants no.1 to 7 had a common ancestor, Sultan Singh, who was the original owner of the property. Pedigree table was mentioned in the plaint. Moreover, PW-3, Jeetan son of defendant no.1 deposed in their favour. Defendant no.1 did not even file a written statement and he was proceeded against ex parte. Therefore, sale deeds in favour of defendants no.8 and 9 are liable to be set aside. It is further submitted that the appellants should be permitted to produce the pedigree table and some of the jamabandies by way of additional evidence while allowing the application filed along with this regular second appeal. It is thus prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside. Consequently, suit filed by the appellant-plaintiffs be decreed throughout.

I have heard learned counsel for the appellant-plaintiffs and have gone through the photocopy of the record furnished in Court today by him.

The case set up by the plaintiffs is that they are owners in possession of the suit property along with defendants no.1 to 7. They claim to be co-sharers of the suit land along with defendants no.1 to 7, having inherited the same from their common ancestor, Sultan Singh. At the outset, it is relevant to note that the plaintiffs were required to prove that the property in question was firstly owned by Sultan Singh at a particular point of time and furthermore they along with defendants no.1 to 7 are the successors-in-interest of Sultan Singh. A perusal of the plaint reveals that in para no.2 thereof, following is the so called pedigree table mentioned:-



So called pedigree table which the plaintiffs seek to produce by way of leading additional evidence before this Court in second appeal is produced as under:-



Learned Courts below have rightly concluded that the pedigree table reflecting Sultan Singh to be the common ancestor of the parties, is not proved on record. Learned counsel for the appellants is unable to point out any evidence whatsoever to prove the said relationship. The so-called pedigree table mentioned in the plaint or even the one sought to be relied on by learned counsel for the appellants does not substantiate the plaintiff's case in any manner.

Furthermore, reliance by learned counsel for the appellant on the statement of PW-3-Jeetan son of defendant no.1-Chatar is clearly

misplaced. It is pertinent to note that defendant no.1-Chatarbhuji was proceeded against *ex parte* before the learned trial Court (defendants no.2 to 7 were proceeded against *ex parte* before the learned First Appellate Court). I have perused the testimony of PW-3-Jeetan @ Jitender. His testimony has been rightly discarded. It is apparent that PW-3-Jeetan is a tutored witness, having colluded with the plaintiffs. Doubtlessly, he has deposed along the lines of the plaintiffs case, but his testimony is not found to be trustworthy. Oral testimony of PW-3, is not substantiated by any evidence on record. It was incumbent upon the plaintiffs to have led some evidence in support of their claim of ownership of the disputed property. Reference to the so called earlier litigation regarding the property without producing the relevant documents or even the judgments and decrees passed in those matters can be of no avail to the plaintiffs. Documentary evidence relied upon by the plaintiffs in support of their claim is Ex.P-4, a certified copy of order dated 03.03.2008 passed by this Court in RSA No. 138 of 2003. The said appeal was dismissed as withdrawn, however copy of judgement dated 19.11.2001 passed by the learned trial Court or judgment dated 20.07.2002 passed by the learned First Appellate Court in the said matter has not been produced on record to indicate the import and purport of the said judgments and as to whether they shed any light qua the ownership of the plaintiffs over the disputed property.

Learned counsel for the appellant while referring to Ex.D-4 and Ex.D-5 i.e. copies of judgment and decree dated 29.08.1983 passed by the learned trial Court in Civil Suit No. 302/492, titled as 'Rajbir Singh and others Vs. Randhir Singh and others', made a valiant attempt to suggest that

appellant no.1-Bijender is mentioned as defendant no.12 in the memo of parties and a perusal of the memo of parties reveals that Sultan Singh is the common ancestor.

I have perused the said document Ex.D-4. First and foremost, defendant no.12 therein is mentioned as Birander and not Bijender. Defendant no.13 is Mahinder Singh. Father's name of Birander Singh and Mahinder Singh is conspicuous by its absence in the array of parties. Ex.D-4 relates to a suit for possession by way of partition of 1/ 3rd of their share filed by successors-in-interest of Jawan Singh. They claimed to be owners in possession along with defendants no.1 to 18 mentioned in the array of parties. Defendants no.1 to 18 in the said suit are the descendants of Jawan Singh and defendants no.19 and 20 stated to be descendants of Sultan Singh, are claimed to have no concern with the property in question being strangers thereto. A perusal of Ex.D-4 reveals that the said decision does not advance the case of the appellants in any manner. There is not an iota of evidence on record to prove and substantiate the case of the plaintiff-appellants.

Learned counsel for the appellant-defendant is unable to point out any question of law much less substantial question of law which may be involved for consideration in this regular second appeal. Both the impugned judgements are well reasoned judgements rendered after proper appreciation and consideration of the evidence on record.

No other argument has been raised.

There is a delay of 05 days in filing and 206 days in re-filing of this appeal. Keeping in view the fact that the matter has been adjudicated on merits, question of delay filing or re-filing this appeal has been rendered

academic. Applications are accordingly disposed of.

Application under Order 41 Rule 27 read with Section 151 CPC for production of additional evidence by placing on record the pedigree table and the jamabandies is completely devoid of any merit.

Learned counsel for the applicant-appellants is unable to deny that the said pedigree table does not reflect the complete or the latest position. Jamabandies sought to be produced are not in respect to the suit property and neither are they necessary for the just adjudication of the case. Said jamabandies and the mutations pertain to the year 1960. There is neither any averment in the application or anything on record to show that despite due diligence, the said documents could not brought on record or that they were not in the knowledge of the applicant-appellants. No ground is made out for leading any additional evidence. Application is accordingly dismissed.

Keeping in view the facts and circumstances as discussed above, the impugned judgments and decree dated 15.02.2016 and 18.08.2017 passed by the learned Civil Judge (Jr. Division) Hathin and learned District Judge, Palwal, respectively, are upheld.

Present appeal is, consequently, dismissed with no order as to cost.

09.01.2019
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.