

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

RSA No.2176 of 2013(O&M)

Date of decision: 27.2.2020

Ram Niwas (deceased) through LRs and othersAppellants

VERSUS

Rajender and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Pawan Singh, Advocate for appellants No.1 and 3.

Mr. Sandeep Kotla, Advocate for respondents No.1 to 5.

REKHA MITTAL, J.

CM No.11943-C of 2018

Prayer in this application is for impleading legal representatives (in short 'LRs') of Ram Niwas– appellant No.1 (since deceased).

In view of averments made in the application supported by an affidavit of Rajinder, appellant No.2, the application is allowed and persons mentioned in para 2 of the application are allowed to be impleaded as LRs of deceased Ram Niwas subject to just exceptions and for the purpose of present lis.

Amended memo of parties is taken on record.

Disposed of accordingly.

RSA No.2176 of 2013

The present litigation pertains to right of respondents/plaintiffs in property left behind by Sh. Pirthi, maternal grandfather and Smt. Kalawati, their maternal grandmother respectively.

The respondents/plaintiffs claimed that Sh. Pirthi was owner of land measuring 67 kanal 2 marlas and they are entitle to 1/5th share in the suit land. It is averred that Pirthi died on 02.08.1975 leaving behind Ram Niwas, Ram Saran (sons) Smt. Ratno, Smt. Channo and Smt. Ram Pyari, daughters and Smt. Kalawati wife. Smt. Ram Piari died on 22.12.1975. The defendants in collusion with revenue officials managed mutation of inheritance in favour of defendants and Smt. Kalawati vide mutation No.629 dated 20.04.1976 qua inheritance to Sh. Pirthi and accordingly, Smt. Kalawati and defendants were recorded to be owner in possession to the extent of 1/5th share each. They challenged mutation No.629 and 954, decree and judgment dated 10.09.1992 and subsequent mutations being illegal by asserting their claim to 1/5th share as joint owners in possession of the suit land.

The trial Court decreed the suit to the effect that plaintiffs are joint owners in possession of land in question to the extent of 1/5th share i.e. 13 kanal 8 marlas out of land measuring 67 kanal 2 marlas. Mutation No.629 dated 20.04.1976 and subsequent entries are held to be illegal, null and void. The defendants were restrained from alienating share of plaintiffs out of the disputed land. The appeal preferred by unsuccessful defendants was decided by the District Judge, Gurugram.

Counsel for the appellants/defendants has challenged the impugned judgments and decrees primarily on three counts. The first submission made by counsel is that as the respondents/plaintiffs did not claim consequential relief of possession, simplicitor suit for declaration is barred by the provisions of Section 34 of the Specific Relief Act, 1963 (in short 'the Act'). In support of his contention, he has relied upon judgment

of Hon'ble the Supreme Court **Union of India Vs. Ibrahim Uddin and another, (2012) 8 SCC 148.**

Another submission made by counsel is that by way of present suit instituted in the year 2004, the respondents/plaintiffs sought to challenge mutation No.629 dated 20.04.1976, mutation No.954 as well as judgment and decree dated 10.09.1992, therefore, the suit is clearly barred by law of limitation having been filed beyond three years from the date of aforesaid events/transactions. In addition, it is argued that the Appellate Court has gone totally astray by holding in paras 25 and 26 of the judgment that the present is a case of clear fraud upon Smt. Ram Pyari and there is no time limit prescribed for challenging any transaction laced with fraud or to say that limitation would start when fraud for the first time is detected. It is argued with vehemence that no such plea of appellants being guilty of playing fraud upon Smt. Ram Pyari has been raised much less proved akin to a criminal charge.

The last submission made by counsel is that even if plea of the respondents/plaintiffs is accepted that they are entitle to inherit to land left behind by Sh. Pirthi and Smt. Kalawati being the children of Smt. Ram Pyari, they, at best, can be entitle to 1/6th share out of land left behind by Sh. Pirthi and 1/30th share out of 1/6th share of Smt. Kalawati, widow of deceased Pirthi. It is argued that the Appellate Court despite noticing this fact committed an error in respect of its conclusion that respondents/plaintiffs are entitle to 1/5th share i.e. 13 kanal 8 marlas out of land measuring 67 kanal 2 marlas, subject matter of the suit.

Counsel representing the respondents/plaintiffs, on the contrary, has supported concurrent findings recorded by the Courts whereby claim of the respondents/plaintiffs to inherit to Sh. Pirthi and Ms.

Kalawati being children of Smt. Ram Pyari daughter of Sh. Pirthi and Kalawati has rightly been allowed.

Counsel for the appellants would fairly inform that he does not dispute findings of the Courts that Smt. Ram Pyari was the daughter of Sh. Pirthi and Kalawati and respondents/plaintiffs are the sons and daughters of Smt. Ram Pyari. Sh. Pirthi died on 02.08.1975 whereas Ram Pyari died on 22.12.1975. There is no denial that Sh. Pirthi left behind six class I heirs i.e. 2 sons, 3 daughters and a widow and as such all of them became entitle to $1/6^{\text{th}}$ share each in land measuring 67 kanal 2 marlas owned by Sh. Pirthi. However, the appellants were able to get the mutation No.629 dated 20.04.1976 sanctioned in favour of 5 class I heirs to the extent of $1/5^{\text{th}}$ share each, thus, deprived Smt. Ram Pyari to inherit to her father without any legal and valid reason. On death of Smt. Kalawati, land to the extent of her share i.e. $1/6^{\text{th}}$ would be inherited by her five children or children of her pre-deceased son or daughter as the case may be. That being so, the respondents/plaintiffs became entitle to inherit to the suit property to the extent of $1/6^{\text{th}}$ share on the death of Sh. Pirthi and $1/30^{\text{th}}$ share on death of Smt. Kalawati out of her (Kalawati's) $1/6^{\text{th}}$ share and the total comes to $1/5^{\text{th}}$ share.

The respondents/plaintiffs claimed declaration to be joint owners in possession of suit land to the extent of $1/5^{\text{th}}$ shares. There is no dispute that neither Smt. Ram Pyari nor her successors in interest ever remained in possession of suit land to any extent whatever. Since the respondents have claimed a share out of total land measuring 67 kanal 2 marlas, they possibly cannot claim any relief for recovery of possession. On the contrary, once they are declared to be co-sharers in the suit land, they would automatically become entitle to joint possession in their

capacity as co-sharers. This apart, every co-sharer is deemed to be in possession of every inch of joint land. However, a co-sharer in exclusive possession can protect his possession except in due course of law. Taking into consideration the nature of declaration sought by the respondents coupled with the status of a co-sharer regarding possession of joint land, contention raised by the appellants with regard to the suit being hit by proviso to Section 34 of the Act is patently misconceived and accordingly rejected. That being so, the appellants cannot derive any advantage to their contention from the judgment in **Ibrahim Uddin and another case (supra)** wherein the Court was not dealing with the right of joint possession of a co-sharer or to say that it was dealing with the right of a litigant who had only sought declaration without claiming consequential relief of possession available to him in law.

The respondents/plaintiffs raised a specific plea that they came to know about the impugned mutations and decree of the year 1992 when they approached the Patwari for obtaining copy of jamabandi on 14.10.2004 for the purpose of filing an application for partition of joint land. Counsel for the appellants has failed to point out any materials on record that this statement of fact made by the respondents/plaintiffs and reiterated by Rajinder, one of the plaintiffs examined in the case is factually incorrect in view of materials on record. In this view of the matter, cause of action to file the suit accrued to the respondents/plaintiffs when for the first time they learnt about wrong entries in the revenue record whereby Smt. Ram Pyari was excluded from inheritance to her father and children of Smt. Ram Pyari from inheriting to estate of maternal grandmother Smt.Kalawati. In absence of any cause of action having accrued to the respondents/plaintiffs, at any point of time, three years prior

to institution of the suit, conclusion drawn by the Courts on the question of limitation cannot be faulted with, even if findings of the Appellate Court with regard to fraud having been committed against Smt. Ram Pyari are taken out of consideration or set aside.

The last contention raised by counsel for the appellants with regard to share of the respondents/plaintiffs has already been examined in view of the discussion made hereinbefore. At the cost of repetition, it is held that respondents/plaintiffs shall be entitle to $1/6^{\text{th}}$ share on the basis of inheritance by Smt. Ram Pyari to her father Sh. Pirthi plus $1/30^{\text{th}}$ share out of $1/6^{\text{th}}$ share of Smt. Kalawati being the sons and daughters of pre-deceased daughter of Smt. Kalawati. The total share of the respondents/plaintiffs is $1/5^{\text{th}}$.

In view of what has been discussed hereinbefore, the appeal stands disposed of in the aforesaid terms leaving the parties to bear their own cost.

FEBRUARY 27, 2020

‘D. Gulati’

Whether speaking/reasoned :

Whether reportable :

(REKHA MITTAL)

JUDGE

yes/no

yes/no