

**RSA-5452-2015(O&M)
and connected case**

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

1. RSA-5452-2015(O&M)

Shadi Devi (deceased) and others

.....Appellants

Versus

Mansa Ram and others

.....Respondents

2. RSA-4011-2016(O&M)

Shadi Devi (deceased) and others

.....Appellants

Versus

Mansa Ram and others

.....Respondents

Date of decision:12.03.2020

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Man Mohan, Advocate for the appellants

**Mr. Rakesh Dhiman, Advocate for
respondent Nos. 1 to 8 (in RSA No.5452-2015)**

ANIL KSHETARPAL, J.

By this judgment, two RSA Nos. i.e 5452 of 2015 and 4011 of 2016 shall stand disposed of. Both the appeals are arising from a common judgment passed by the learned Trial Court as well as learned First Appellate Court. In fact, only one suit was filed which was partly decreed by the learned Trial Court resulting in filing of two first appeals before the learned First Appellate Court. Hence, two second appeals have been filed.

The plaintiffs are claiming property of Sh. Chetu who died on 19.6.1978. On the death of Chetu, property left behind by him was mutated in favour of Bhullu, his brother. The suit was filed after a period of 28 years i.e in the year 2006.

The plaintiffs claim that Sh. Chetu had left behind his two daughters Shadi Devi and Gaindi Devi. Gaindi Devi had also died before filing of the suit and therefore, the suit was filed by her children.

The defendants contested the suit and submitted that Chetu died issueless. It was pleaded that Chetu had contracted two marriages but Gaindi and Shadi Devi were not born out of the lions of Chetu. Learned Trial Court partly decreed the suit by shifting entire onus on the defendants.

Learned First Appellate Court after re-appreciating the evidence found that the suit filed by the plaintiffs is time barred as well as no concrete evidence has been produced by the plaintiffs to prove that Shadi Devi and Gaindi Devi were daughters of Chetu. Thus, Ist appeal was allowed.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below. It may be noted here that there is no documentary evidence to prove that Shadi Devi and Gaindi Devi were born from the lions of late Sh. Chetu. No voter identity card, school leaving certificate, ration card or any other document has been produced to prove that Chetu had left behind two daughters. The plaintiffs have also failed to examine any witness who may be having special means of knowledge to prove

relationship of the plaintiffs with Late Sh.Chetu as required under Section 50 of the Evidence Act. Saroopi Devi appeared as PW2 and tendered her affidavit by way of examination-in-chief but she never came forward to face cross-examination. Thus, the Appellate Court has correctly ignored her evidence. Still further, inaction on the part of the plaintiffs for a period of 28 years also goes against the plaintiffs.

The jurisdiction of the High Court while hearing Regular Second Appeal is regulated by Section 41 of the Punjab Courts Act which is extracted as under:-

“41. (1) An appeal shall lie to the High Court every decree in appeal by any Court subordinate to the High Court on any of the following grounds, namely :-

(a) the decision being contrary to law or to some custom or usage having the force of law ;

(b) the decision having failed to determine some material issue of law or custom or usage having the force of law ;

(c) a substantial error or defect in the procedure provided by the Code of Civil Procedure, 1908, or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.

Explanation -A question relating to the existence or validity.

of a custom or usage shall be deemed to be a question of law within the meaning of this section.

(2) An appeal may lie under this section from an appellate decree passed exparte.”

Learned counsel for the appellants, although, made sincere attempt, however, failed to draw attention of the Court to any substantive error in non-reading or mis-reading of the evidence. Learned counsel for the appellants further failed to draw attention of the Court to any error of law or procedure.

Keeping in view the aforesaid facts, there is no ground to interfere. Hence, both the appeals are dismissed.

12.03.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No