

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

**RSA No. 419 of 2021 (O&M)
Date of Decision: July 20, 2021**

Mani Ram (deceased) through LR Subhash Appellant(s)

Versus

Smt. Sumitra and others Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Ajay Jain, Advocate
for the appellant.

LISA GILL, J.

This appeal has been filed by the appellant, who is one of the four plaintiffs, who had filed the suit for declaration to the effect that they are owners in possession in equal shares of land situated in village Nathore, Tehsil Rania, District Sirsa as detailed in the plaint, by way of inheritance. Mutation reflecting defendant no.1 Sumitra to be the owner in possession of the suit land was also sought to be declared null and void. Suit filed by the plaintiffs was dismissed by the learned Civil Judge (Jr. Division), Ellenabad, vide judgment and decree dated 01.02.2017. Appeal was filed by the present appellant only. Same was dismissed by learned Additional District Judge, Sirsa, vide judgment and decree dated 20.04.2021, leading to filing of the present appeal.

Relationship between the parties is admitted. Property in question belonged to Ram Karan. Plaintiffs and defendant no.2 are brothers of the deceased Ram Karan. Suit was instituted by Mani Ram, Kanchi Ram, Raja Ram and Raghubir sons of Surjan @ Sarjan, i.e. brothers of deceased Ram Karan and defendant no.2 Ram Sarup. Plaintiff/appellant Mani Ram was

represented before the learned trial Court through his legal heirs i.e. his two sons. Present appeal has been filed by one of the sons of Mani Ram i.e. Subhash.

Defendant no.1 was the wife of Ram Karan, who passed away on 07.01.1983. He was survived by his wife, Sumitra (defendant no.1) and his mother Kesar as Class 1 legal heirs. Property of Ram Karan was situated in village Bani as well as village Nathore. Property situated at village Bani was inherited by Sumitra and Smt. Kesar in equal shares and mutation No.4352 was sanctioned on 12.06.1993. Property of Ram Karan situated in village Nathore was mutated solely in favour of Smt. Sumitra in 1993 itself. Smt. Kesar died on 25.11.1998. Defendant no.1 Sumitra performed Kareva marriage with Ram Sarup, brother of Ram Karan, after 10 years of the death of Ram Karan. Present suit was filed years later, challenging mutation of the property in village Nathore wholly in favour of Sumitra. Plaintiffs i.e. the four brothers of Ram Karan staked their claim to half of the property which had been mutated in favour of Sumitra in 1993 along with defendant Ram Sarup in equal shares, alleging that half of said property should have been mutated in favour of their mother Smt. Kesar in 1993 as she was admittedly a Class I legal heir of Ram Karan. It is averred that mutation was wrongly and illegally entered and sanctioned in favour of defendant no.1 solely. Thus they claimed to be entitled to half share of said property in equal shares. Hence, this suit was filed.

Suit was contested by the defendants with averments that Smt. Kesar used to live with Sumitra at village Nathore, at the time of death of Ram Karan, who died very young. All family members had sympathy with Smt. Sumitra, who was approximately 18 years of age at that time. Smt. Kesar relinquished her share in the property left behind by the deceased Ram Karan at

village Nathore. Accordingly with consent of all the plaintiffs, impugned mutation was sanctioned in favour of Sumitra. It is further stated that in the year 1988 during the life time of Smt. Kesar, all family members including the plaintiffs and defendants got partitioned their joint holdings mutually with some other co-sharers. Physical possession in terms of mutual partition was taken after accepting and verifying the contents of Rapat No. 184. No objection was ever raised by the plaintiffs or Smt. Kesar at any point of time. Dismissal of the suit was sought.

Following issues were framed by the learned trial Court on the basis of the pleadings:-

- i. Whether plaintiffs are entitled to the relief of the declaration as prayed? OPP.
- ii. Whether the plaintiffs are entitled to the consequential relief of permanent injunction as prayed for? OPP
- iii. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
- iv. Whether the suit of the plaintiff is time barred? OPD
- v. Whether the plaintiffs have no cause of action to file the present suit? OPD
- vi. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties? OPD
- vii. Relief.

Evidence was led by both the parties in support of their respective claims/stands.

Learned trial Court on considering the evidence on record, facts and circumstances of the case did not find any merit in the case set up by the plaintiffs and dismissed the suit vide order dated 01.02.2017, inter alia holding the suit to be hopelessly time barred. It is also observed that Smt. Kesar during her life time never impugned the mutation in question. Reference has also been made to the evidence of the Handwriting Expert, who has compared the signatures of plaintiff Raja Ram on Rapat No. 364 and 184.

Appeal against this decision was preferred only by Subhash son of Mani Ram i.e. the present appellant. Appeal was dismissed by the learned Additional District Judge, Sirsa, vide impugned judgment and decree dated 20.04.2021. Aggrieved therefrom, present appeal has been filed.

Learned counsel for the appellant vehemently argues that both the learned Courts below have grossly erred in law and on facts in dismissing the suit filed by the present appellant and other plaintiffs. Learned counsel submits that there is no question of the suit being barred by limitation. Learned Courts below have incorrectly non-suited the appellant merely on the ground of limitation. Learned counsel further submits that cause of action does not arise on sanction of mutation No.1759 dated 17.05.1984 but it is only when there is a threat to possession of the land that cause of action arises. Learned counsel further submits that learned Courts below have wrongly relied upon Rapat No. 364, which is a marked document. Furthermore, learned Courts below have clearly erred in holding that Kesar Devi had knowledge about mutation of the land in village Nathor in favour of Smt. Sumitra only. Partition of land apart from that suit land has also been wrongly relied upon, once it has come on record that the suit land was never the subject matter of partition. It is thus prayed that this appeal be allowed. Judgments passed by both the Courts below be set aside and the suit be decreed throughout.

I have heard learned counsel for the appellant and have gone through the file with his assistance.

Appellant alongwith other plaintiffs were aggrieved of mutation No.1579 dated 17.05.1984 (Ex.D2), whereby property of their brother Ram Karan was mutated solely in favour of his wife Sumtra while ignoring their mother Kesar Devi, who was the only other Class 1 legal heir of Ram Karan. It

is a matter of record that Ram Karan died in the year 1983 and Smt. Kesar Devi in 1988. For long years, no objection was raised to mutation Ex.P2/D2 by Smt. Kesar or the plaintiffs. There is no quarrel with the proposition raised by learned counsel for the appellant that mutation by itself may not be a cause of action but present is not a case where it can be said that sanction of mutation was not in the knowledge of Smt. Kesar or the plaintiffs. Learned Additional District Judge, Sirsa has made a copious reference to the statement of PW1 Mani Ram as well as that of Ram Sarup DW1. It is apparent from the record and rightly held by learned Courts below that mutation in question was entered and sanctioned with the consent of plaintiffs and at the instance of Smt. Kesar (since deceased). It is not denied that Smt. Kesar during her life time never challenged mutation No. 1579 (Ex.D2). It has also come on record that Sumitra was residing in village Nathore at the time of death of Ram Karan. Land of Ram Karan in village Bani was inherited by Sumitra and Kesar in equal shares whereas Kesar relinquished her share in favour of Sumtira qua the land situated in village Nathore and consequent thereto mutation of land of Ram Karan in village Nathore was entered and sanctioned in favour of Sumitra in 1993.

Both the learned Courts below have referred to Rapat No.364, on the basis of which mutation no. 1579 was sanctioned and Rapat No.184, on the basis of which the subsequent mutation was sanctioned. As per evidence of the Handwriting and Fingerprint Expert, signatures of the plaintiff Raja Ram were found to be similar. Signatures and thumb impressions of the plaintiff Raghubir and Kanshi Ram on Rapat No.184 were found to be matching with their standard signatures and thumb impressions on the file. It is a matter of record that Raja Ram himself did not step into the witness box. It has, thus, been rightly held that no fraud had been played by defendant no.1 and neither was there any misrepresentation by her at the time of recording of Rapat No. 364 and sanctioning

of mutation no.1579. It is further apparent from the record that the parties in question had been regularly availing loans from the bank in the years 1999 to 2002 and 2006 on their respective shares. Therefore, there is no infirmity or illegality in the findings returned against the plaintiffs, out of which only the present appellant has chosen to impugn the decisions in question, though that by itself is not a relevant factor.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in impugned judgment and decree dated 01.02.2017, passed by the learned Civil Judge (Jr. Division), Ellenabad as well as 20.04.2021, passed by the learned additional District Judge, Sirsa, which calls for any interference by this Court in second appeal.

In my considered opinion, no question of law, much less a substantial question of law arises for adjudication in this appeal. Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record, which brooks no interference.

No other argument has been raised.

Accordingly, appeal is dismissed with no order as to cost. Judgments and decrees dated 01.02.2017 and 20.04.2021, passed by the learned Civil Judge (Jr. Division), Ellenabad and learned Additional District Judge, Sirsa respectively are upheld.

Pending application, if any, is decided accordingly.

July 20, 2021
Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No