

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

RSA No.114 of 2021 (O&M)

Reserved on : 10.03.2021

Pronounced on : 24.03.2021

Mehtab

... Appellant

Versus

Thandu Ram (Died) through L.Rs and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Prashant Singh Chauhan, Advocate
for the appellant.

(The proceedings have been conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

In the present regular second appeal, the appellant-defendant No.3 is aggrieved against the judgment of reversal passed by the District Judge, Narnaul dated 23.06.2020, wherein the suit for declaration filed by the plaintiff, the deceased respondent was decreed. Resultantly, directions were issued to the revenue authorities to enter the name of the deceased plaintiff Thandu Ram in the revenue record by making correction in the *jamabandi* for the year 1963-1964 till his death in the year 2013 and proceed further as per law. The issue of inheritance of the suit land by the applicants, on the basis of the Will was left open, giving them opportunity to approach the revenue authority and also giving them opportunity to file a separate suit in this regard.

2. A perusal of the paper-book would go on to show that the deceased plaintiff had filed a suit against his brothers on the ground that he was owner of 1/6th share out of 42 kanal 19 marlas of land situated in village Chhitroli, as per *jamabandi* for the year 2003-2004. The case of

the plaintiff was that vide sale deed No.173 dated 28.06.1961, he had come in possession of 1/6th share in village Uchhat as per *jamabandi* for the year 1954-1955. Mutation No.599 dated 11.05.1963 was also entered in his favour and the other defendants. However, at the time of consolidation while preparing *jamabandi* for the year 1963-1964, his name was left out alone. He had come to know about the mistake, since he was in need of a loan and he had gone for obtaining copy of the *jamabandi* and resultantly the suit was filed on 29.07.2006.

3. Upon notice, only defendants No.1 to 3 had appeared and defendant No.2 filed his written statement admitting the said facts and, thereafter defendants No.1 and 2 had been proceeded against *ex parte*. Thereafter, an application was filed for setting aside the *ex parte* order, which was allowed and on 22.09.2009 a statement had been made by counsel for defendants No.1 & 3 that written statement filed on behalf of defendants No.1 & 2 be also read on his behalf. The compromise (Ex.CX) was also placed on record, whereby statement of defendants No.1 & 2 was also recorded and, thereafter, they were proceeded against *ex parte*. Eventually, an application for setting aside the *ex parte* order was filed by defendant No.3 and the suit thereafter proceeded against him only, who is none else but one of the brothers of the plaintiff.

4. While deciding the issue No.1, as to whether the plaintiff was entitled for declaration, the Trial Court came to the conclusion that the plaintiff-Thandu Ram was purchaser of the land in question alongwith his brothers and that after consolidation in the year 1963-1964, the entry

in the revenue record was entered only to the extent of 4 shares leaving behind the name of the plaintiff-Thandu Ram. However, only on account of death of Thandu Ram on 13.08.2013 and on account of Will dated 27.05.2013 (Ex.PW2/A) the Trial Court held that the same referred to the property which belonged to village Uchhat and the land was situated in village Chhitroli. The said Will had been executed in favour of nephews to the extent of 1/3rd share each and since the deceased had died issueless, the property had devolved upon all the children of defendants No.1 to 3 and not also upon the applicants impleaded as legal heirs of plaintiff. Resultantly, his suit was dismissed for want of impleading other parties as legal heirs and that applicants were not sole legal representatives of deceased Thandu Ram nor the Will had created any right in their favour regarding the property in question.

5. The error as such was corrected by the judgment of the lower Appellate Court, which is now impugned by noticing that three of the defendants as such had admitted the claim of the plaintiff regarding the issue of correction of revenue entry, on account of mistake committed by them. The suit should have been decreed on 22.09.2009 itself, when a statement had been made by counsel for defendant No.3 that the written statement already given on behalf of defendants No.1 & 2 be also read on his behalf. As noticed earlier, an admitted written statement was filed by respondent No.2. Similarly, compromise (Ex.CX) had also been placed on record on 16.11.2010, but no order had been passed at that point of

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time also and the case continued for one date or the other. It was also noticed that the suit had also been dismissed on 19.02.2013 under Order 9 Rule 8 CPC for want of prosecution and in the interim period the plaintiff had died in August, 2013. The Will had been then executed in favour of the sons of his two brothers alongwith sons of his brother Khushi Ram, who had moved the application for restoration which had been allowed on 03.04.2017. Sons of Khushi Ram were thus impleaded as legal heirs and had carried on the litigation. It was, thus, noticed that the appellant has not been given any share and thus was the only one who was contesting the litigation.

6. Keeping in view the fact that the only issue that was to be decided as to whether Thandu Ram name was required to be entered in the revenue record as one of the co-sharers and the fact that the admitted written statement had been filed and the parties had no longer any issue, the suit was liable to be decreed. Thus, the appeal has been rightly allowed and it has been discussed by the Appellate Court that the validity of the Will is not an issue in question. Once there was an admission as such of the defendants that all of them had purchased the suit land and had been enjoying it jointly, the mistake on the part of the revenue officials as such had to be corrected. The amendment made in the High Court Rules and Orders in Order 22 Rule 3 (2) that a suit will not abate after the death of a sole owner and proceedings will continue, was also kept in mind, while decreeing the suit and leaving the parties open to

approach the revenue authorities for the shares qua the estate of Thandu Ram arising out of the Will.

7. Once there was an admission made by counsel for defendant No.3 also that the written statement of defendant No.2 be read on his behalf on 22.09.2009, there was no further proof to be required, as the said admission would bind the parties. Reliance can be placed upon the judgment of the Three Judges Bench of the Apex court passed in '**Nagindas Ramdas vs Dalpatram Ichharam @ Brijram and others**', **1974 Current Law Journal, SC 57**, wherein it was held that compromise may be in the shape of either evidence recorded or produced in the Court or it may partly or wholly be in the shape of an express or an implied admission made in an agreement and admission is the best proof of the facts admitted.

8. Thus, in view of the conclusive admission as such made by the defendant himself at an earlier point of time, he cannot as such wriggle out and challenge the judgment of the Appellate Court by raising issues that the suit of the plaintiff was time barred or the legal heirs as such could not be brought on record, on the basis of the Will. No substantial question of law, thus, arises for consideration before this Court, which would warrant interference in the judgment which has corrected the error in a revenue record *inter se* the brothers regarding the property which had been jointly purchased by them at one point of time way back in 1961 and on account of consolidation taking place, the name

of the plaintiff had been left out.

9. Resultantly, finding no error in the judgment of the Appellate Court, the present appeal would not warrant any admission for consideration and the same is dismissed in limine.

24.03.2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes