

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 133 of 2021 (O&M)

Date of Decision: 02.09.2022

Surja Devi and Others
... Appellant(s)
Versus
Bimla Devi and Others
... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Aman Pal, Advocate
for the appellant(s).
Mr. Aman Sharma and Mr. Sarvesh Malik, Advocates
for the respondent No.1.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.
2. The defendants in a suit have filed the regular second appeal while assailing the concurrent findings of facts arrived at by both the Courts below. The dispute is *inter se* the family members. Hence, it will be appropriate to draw a pedigree table.

Jodh Ram Sheo Lal (died in 1979) 					
Ram Partap (died in 1964)	Ram Narain (died in 1995)	Indraj (Defendant No.2)		Chando Devi (Daughter, died in the year 2002)	Pura Devi (Widow of Sheo Lal, died in the year 1998)
Sugna Devi (Widow, died in the year 1978)	Surja Devi (Defendant No.1)	Subhash (Son) (Defendant No.3)	Ashwani (Son) (died in 2011)	Subhash (son) (Defdt. No.3)	
Bimla Devi (Daughter) (Plaintiff)			Kavita (Widow- D -4) Kritika @ Monu (Daughter-D5) Rameshwari (Mother- D7)		

3. Smt. Bimla Devi is the plaintiff (respondent herein). She is the daughter of late Sh. Ram Partap, who pre-deceased her grandfather late Sh. Sheo Lal. Late Sh. Ram Partap was stated to be the owner in possession of the land measuring 185 kanals and 6 marlas and a residential house. He died intestate. As per Section 8 of the Hindu Succession Act, 1956 (hereinafter referred to as “the 1956 Act”) read with the Schedule attached thereto, the daughter of pre-deceased son being a Class-I heir, is entitled to share along with the other Class-I heirs. However, while entering mutation on account of inheritance from late Sh. Ram Partap, her name was omitted. Forced by the circumstances, she filed a suit for declaration that she is owner to the extent of 1/5th share in the joint agricultural land as well as of 1/3rd share in the residential house. She also sought declaration that *inter se* consent decrees suffered by various other family members do not affect her rights.

3. The suit was contested on various grounds. The trial Court, in the first round, decreed the suit. In first appeal, the First Appellate Court remitted the matter back to the trial Court while granting an opportunity to the plaintiff to implead all the necessary parties. The plaintiff filed an application for amendment of the plaint as well as impleading the necessary parties, which was allowed. The defendants’ revision petition assailing its correctness was dismissed on 18.07.2017. In the second round, again, both the Courts below have decreed the suit.

4. Heard the learned counsel representing the parties, at length and with their able assistance, perused the judgments passed by both the Courts below and the record, which was requisitioned.

there are various Civil Court judgments and decrees passed *inter se* the defendants and other persons, who are not parties to the suit. He submits that the aforesaid persons are necessary parties and in the absence thereof, the suit is liable to be dismissed. He further contends that the suit was filed on 08.06.2012, whereas, the mutation with respect to inheritance of the property left behind by late Sh.Sheo Lal was entered on 23.01.1981, therefore, the suit is barred by limitation.

6. Per contra, the learned counsel representing the respondent No.1 (the plaintiff) submits that the plaintiff is only entitled to 1/5th share in the joint agricultural land and 1/3rd share in the residential house and the remaining land is available with the defendants. He, hence, submits that the aforesaid consent judgments and decrees would not affect the rights of the plaintiff. He further contends that the entry of mutation does not necessarily give rise to a cause of action because the moment late Sh.Sheo Lal died, she, immediately, became the owner of 1/5th share in the joint agricultural land as well as 1/3rd share in the residential house by operation of law. Hence, she, being the owner, is entitled to maintain the suit for declaration. He further contends that the mutation, sanctioned in the year 1981, is the result of fraud as the defendants failed to disclose that late Sh.Ram Pratap has left behind a daughter (the plaintiff).

7. There is no dispute that as per Section 8 of the 1956 Act read with the Schedule attached thereto, a daughter of a pre-deceased son is a Class-I heir, therefore, she is entitled to inheritance of the property as Late Sh.Sheo Lal did not leave behind any testamentary disposition. Hence, she is entitled to her share in the suit properties. It is also not in dispute that the

share in the residential house.

8. There are certain consent judgments and decrees passed *inter se* the defendants and their family members. Such decrees are basically agreement arrived at between the parties with seal of the Court superimposed. Once the plaintiff becomes the owner to the extent of 1/5th share in the joint agricultural land as well as 1/3rd share in the residential house, such decrees would not affect her rights. In any case, the learned counsel representing the plaintiff has taken a specific stand that the land to the extent of 1/5th share in the joint agricultural land as well as 1/3rd share in the residential house, representing her share is still owned and possessed by the defendants despite its transfer by way of consent judgments and decrees. Hence, there is no substance in the first argument of the learned counsel representing the appellants.

9. With respect to the second argument of the learned counsel representing the appellants, it would be noted here that an entry in the revenue record (mutation) does not necessarily give rise to a cause of action. The revenue entry is only for updating the revenue record and a mere entry or non-entry does not affect the right, title or interest of the owners. The plaintiff inherited the property immediately when the succession opened i.e. on the death of late Sh.Ram Partap, who died intestate, to the extent of her share in the suit properties by virtue of Section 8 of the 1956 Act. Moreover, the suit for declaration that she is the owner to the extent of 1/5th share in the joint agricultural land as well as 1/3rd share in the residential house, cannot be said to have become barred particularly when the mutation was entered without disclosing her existence.

10. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present appeal is dismissed.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 02, 2022

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No