

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No. 3639 of 2003(O&M)

Date of Decision: April 28,2023

Ram Lal

.....Appellant

Versus

Kaushalya

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. C.L.Sharma, Advocate
for the appellant.

Mr. Ranjit Saini, Advocate
for respondents no.2, 3 and LR's of respondent no.6.

LISA GILL, J(Oral).

1. This appeal has been filed by appellant-defendant no.1, challenging judgment and decree dated 09.04.2003 passed by the learned Additional District Judge, Hoshiarpur, whereby judgment and decree dated 10.04.2001, passed by the learned Civil Judge (Jr. Division), Hoshiarpur, has been set aside. Learned trial Court had dismissed the suit filed by the plaintiff-respondent vide judgment and decree dated 10.04.2001.

2. Brief facts necessary for adjudication of the matter are that plaintiff-Bhagwanti widow of Daulat Ram filed a suit for declaration to the effect that she is owner in possession of 7/24 share out of land measuring 34 Kanals 17 Marlas in village Chaggran, Tehsil and District Hoshiarpur as described and half share in the land measuring 19 Kanals 19 Marlas in village Mehatpur, Tehsil and District Hoshiarpur and in the alternate, decree for possession of the suit property was sought.

3. As per the plaintiff, suit property belonged to Daulat Ram husband of the plaintiff. Daulat Ram passed away on 05.09.1973 leaving behind his widow, four daughters namely Bimla , Kamla, Kaushalya and Parkasho, besides a son namely Ram lal and daughter-in-law Vidya widow of Paryag Singh (pre-deceased son). Plaintiff claims that parties constituted a Joint Hindu Family and suit property was coparcenary property with the plaintiff, being a Class-I heir, having a share in the same. She claimed that on the basis of notional partition before the death of Daulat Ram, she would be owner of $1/4^{\text{th}}$ share along with Daulat Ram and his two sons Paryag Singh and Ram Lal. She claimed to have inherited $1/4^{\text{th}}$ share of Daulat Ram and commensurate share from estate of Paryag Singh also. She thus claimed $7/24$ share out of the disputed land. She pleaded that her share in the property of Daulat Ram after his death is $1/4^{\text{th}}$ and after death of Paryag Singh, she had inherited half share in the suit land. Defendant no.1-Ram Lal, it is stated earlier used to pay the commensurate produce of the land in question to plaintiff and when, he stopped depositing the same, she procured the jamabandis and it is only then it came to her knowledge that mutation of the estate of her husband was not sanctioned in her favour after his death, but was sanctioned in favour of Ram Lal son of Daulat Ram and Vidya widow of Paryag Singh (pre-deceased son) in January 1974 qua land in village Chaggran and in February 1975 qua land of village Mehatpur, Tehsil and District Hoshiarpur. As the fraud came to her notice, she filed the suit in question.

4. Suit was contested by defendant no.1-Ram Lal, present appellant while stating that the plaintiff is estopped from filing the suit in question by her own act and conduct as after the death of Daulat Ram in the year 1973, plaintiff herself submitted an application before the revenue

officials for sanction of mutation of the land in village Chaggran, Tehsil and District Hoshiarpur on the basis of Will dated 01.09.1973 by Daulat Ram in his favour and in favour of Vidya widow of Paryag Singh (pre-deceased son of Daulat Ram) in equal shares. Plaintiff and all daughters of Daulat Ram duly recorded their statement to this effect before the A.C. Ist Grade, Hoshiarpur, on which mutation was sanctioned on 28.01.1974. It is further pleaded that mutation of land in village Mehatpur was also sanctioned on 27.02.1975 on the basis of the said Will. Suit, it is stated is barred by limitation. It was further denied that property in question was coparcenary or Joint Hindi Family property. Property was stated to be the self acquired property of Daulat Ram. Dismissal of the suit was sought.

5. All other defendants including the widow of Paryag Singh filed written statement, admitting the claim of the plaintiff.

6. From pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiff is owner in possession of 7/24 share out of the land measuring 34 K 17 M land ½ share from the land measuring 19 K 19 M?OPP
2. Whether the plaintiff is entitled for possession of the suit land in the alternative? OPP
3. Whether the property in dispute is joint property of the parties?OPP
4. Whether the plaintiff is stopped from filing the present suit by her own act and conduct?OPP
5. Whether the suit is barred by limitation?OPD
6. Whether the mutation of shop of Daulat Ram was sanctioned on the basis of Will dated 28.01.1974.
7. Relief.

7. Both the parties led evidence in support of their respective claims/stands.

8. Learned trial Court on considering the facts and circumstances as well as the evidence on record, vide judgment and decree dated 10.04.2001,

dismissed the suit while holding that ancestral nature of the suit property was not proved. Mutation of the property was found to have been entered/sanctioned in the year 1974/1975 in the absence of the defendant at the instance of plaintiff herself, who along with her daughters raised no objection and in-fact sought mutation of property in favour of Ram Lal and Vidya on the basis of oral Will of Daulat Ram. Reference was made to mutation Ex.D-1 and proceedings Ex.D-2 and Ex.D-3.

9. On appeal by Bhagwanti, learned Additional District Judge, Hoshiarpur, vide judgment and decree dated 03.12.2001, held that no finding had been returned as to whether the plaintiff was the owner of the suit property. On no objection being raised by either party, matter was remanded to the trial Court to submit a report on Issue no. 1 after affording opportunity to the parties to lead evidence. After remand, parties chose not to lead any additional evidence. Learned trial Court vide its report dated 02.02.2002 again returned the finding that defendant no.1 Ram Lal and Vidya, are owners in possession of the suit property since the year 1974-75, therefore, plaintiff cannot be held owner in possession of any part of the suit property. Judgment and decree by the learned trial Court was again subjected to challenge by Bhagwanti, plaintiff.

10. Learned Additional District Judge, Hoshiarpur, vide judgment and decree dated 09.04.2003, allowed the appeal while setting aside judgment and decree dated 10.4.2001. It was held that once title of defendant-Ram Lal to the property on the basis of the Will in question was not proved, there cannot be any question of estoppel qua the plaintiff by virtue of her appearance before the A.C. Ist Grade, Hoshiarpur, at the time of sanction of mutation in favour of Ram Lal and Vidya. It was held that mutation by itself cannot confer title and once title of Ram Lal and Vidya, is not proved, dismissal of suit filed by the plaintiff was found to be unjustified and incorrect. It was further noted that

Vidya widow of Paryag Singh supported the plaintiff's case.

11. Aggrieved therefrom, present appeal has been filed.

12. This appeal was admitted on 12.12.2006 while formulating following substantial question of law:-

1. Whether in the facts and circumstances of the case, the first appellate Court was right in reversing the judgment and decree of the trial Court and the judgment and decree of the first appellate Court is based on mis-reading of evidence?

13. Learned counsel for the appellant submitted that suit in question has been filed by the plaintiff i.e., mother of the appellant after 23 years of sanction of mutation on the basis of her assertion that she has no objection to the sanction of the same. The suit, it is submitted is clearly time barred. Still further, it was argued that though it is mentioned in the plaint that fraud has been committed in this case by defendant no.1, there are no details of forgery in the plaint and neither has it been proved on record. In-fact, even an issue in this regard has not been framed. Moreover, mutation sanctioned in favour of the appellant and Vidya widow of Paryag Singh, has not even been challenged. Learned counsel for the appellant also contends that there is no pleading to the effect that a Will in favour of the appellant was not executed. It is thus prayed that this appeal be allowed.

14. Learned counsel for respondent no.2, 3 and LR's of respondent no.6, while refuting the arguments raised on behalf of the appellant submits that judgment and decree dated 09.04.2003 passed by the learned Additional District Judge, Hoshiarpur, has been correctly passed after considering evidence on record, facts and circumstances of the case. It is submitted that there is no question of limitation arising in this case as claim of the plaintiff is based on title. Moreover, mutation admittedly cannot confer any title. Appellant, it is contended set up a case that title of the suit property has been transferred in his favour on the basis of a Will. However, said Will dated

01.09.1973 has not been proved on record. Moreover, an oral Will as has been stated to be executed at one point of time by Daulat Ram, cannot confer any title on the appellant as an oral Will is not admissible in law. Learned counsel for the respondents further submits that ownership and possession of the appellant cannot be presumed on the basis of mutation and the jamabandis as claimed. It is thus prayed that this appeal be dismissed.

15. Heard learned counsel for the parties and have gone through the file and record with their able assistance.

16. It is a matter of record that property in question belonged to Daulat Ram i.e., husband of Bhagwanti and father of defendant no.1-Ram Lal. Case set up by the plaintiff i.e., widow of Daulat Ram and mother of Ram Lal is that she is entitled to the share of property by way of natural succession and that mutation of land at village Chaggran and Mehatpur was wrongly sanctioned on 28.01.1974 and 27.02.1975, Ex.D-1 and Ex.D-2, respectively. Plaintiff came to know of these mutations a little prior to filing of the suit when she obtained copies of jamabadis. Appellant, on the other hand claims title to the property in question, on the basis of Will dated 01.09.1973. It is his specific stand in the written statement that mutation of land in village Chaggran as well as Mehatpur was sanctioned on the basis of the said oral Will and that plaintiff herself had submitted an application before the revenue officials for sanction of the said mutation. All his sisters had recorded that they had no objection to sanction of the mutation. Reference is made to mutation Ex.D-1.

17. Though, at first flush argument raised on behalf of appellant-Ram Lal is extremely attractive to the extent that once having relinquished her right, it was not open to the plaintiff to file the suit in question. However, vital issue in this matter undoubtedly is that claim to title by the appellant is on the basis of Will dated 01.09.1973. It is not denied that the Will in question is claimed to

be an oral Will. Reference to mutation proceedings dated 23.11.1973 Ex.D-1 and Ex.D-2, reveal that purported oral Will of Daulat Ram had been set-forth for sanction of the mutation in question. It is a settled position that as per the Indian Succession Act, 1925 (for short 'the Act'), Will by a Hindu can only be in writing. Section 63 of the Act reads as under:-

“63 Execution of unprivileged Wills. —Every testator, not being a soldier employed in an expedition or engaged in actual warfare, 12 or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

18. Section 65 of the Act deals with Privileged Wills and Section 66 of the Act provides for mode of making, and rules for executing, privileged Wills. Section 65 and 66 of the Act, read as under:-

“65. Privileged Wills.—Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a Will made in the manner provided in section 66. Such Wills are called privileged Wills. Illustrations

- (i) A, a medical officer attached to a regiment is actually employed in an expedition. He is a soldier actually employed in an expedition, and can make a privileged Will.
- (ii) A is at sea in a merchant-ship of which he is the purser. He is a mariner, and, being at sea, can make a privileged Will.
- (iii) A, a soldier service in the field against insurgents, is a soldier engaged in actual warfare, and as such can make a privileged Will.
- (iv) A, a mariner of a ship, in the course of a voyage, is temporarily on shore while she is lying in harbour. He is, for the purposes of this section, a mariner at sea, and can make a privileged Will.
- (v) A, an admiral who commands a naval force, but who lives on shore, and only occasionally goes on board his ship, is not considered as at sea, and cannot make a privileged Will.
- (vi) A, a mariner serving on a military expedition, but not being at sea, is considered as a soldier, and can make a privileged Will.

66. Mode of making, and rules for executing, privileged Wills.—

- (1) Privileged Wills may be in writing, or may be made by word of mouth.
- (2) The execution of privileged Wills shall be governed by the following rules:—
 - (a) The Will may be written wholly by the testator, with his own hand. In such case it need not be signed or attested.
 - (b) It may be written wholly or in part by another person, and signed by the testator. In such case it need not be attested.
 - (c) If the instrument purporting to be a Will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his Will, if it is shown that it was written by the testator's directions or that he recognised it as his Will.
 - (d) If it appears on the face of the instrument that the execution of it in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid,

provided that his non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.

(e) If the soldier, airman or mariner has written instructions for the preparation of his Will, but has died before it could be prepared and executed such instructions shall be considered to constitute his Will.

(f) If the soldier, airman or mariner has, in the presence of two witnesses, given verbal instructions for the preparation of his Will, and they have been reduced into writing in his lifetime, but he has died before the instrument could be prepared and executed, such instructions shall be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him.

(g) The soldier, airman or mariner may make a Will by word of mouth by declaring his intentions before two witnesses present at the same time.

(h) A Will made by word of mouth shall be null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged Will.”

19. Section 57 (c) of the Act provides that provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply to all Wills and codicils made by any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b). In view of Section 57 read with Schedule-III of the Act, requirements of Section 63 of the Act must be complied with and are mandatory for a Will executed by a Hindu. Section 63 of the Act, requires a Will to be in writing. Section 65 of the Act, relating to execution of privileged or oral Wills has not been included in Schedule III. Therefore, after 01.01.1927, there can be no question of an oral Will being executed by a Hindu except in the cases as detailed in the Act.

Reference in this regard can gainfully be made to a Division Bench judgment

of Delhi High Court in **Sunita Shivadasani Vs. Geeta Gidwani and another, 2008(1) R.C.R (Civil) 589**. It is a settled position that mutation by itself does not create or extinguish title and neither can it have any presumptive value on title. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in **Smt. Sawarni Vs. Smt. Inder Kaur, 1997 (1) R.C.R (Civil) 41**, wherein it has been held that mutation of property in the revenue record does not create or extinguish title nor has any presumptive value on title and it only enables the person in whose favour the mutation is ordered to pay land revenue in record. In similar circumstances, it has been held by this High Court in **Smt. Mam Kauri Vs. Smt. Lachmi Devi and others, 1992 (2) PLR 657**, that oral Will is unknown to law and was rightly ignored by the Courts in that case. Affidavits executed by some of the parties in **Smt. Mam Kauri's** case (supra), it was held cannot be considered to be relinquishment deeds. Hon'ble the Supreme Court in **Jitendra Singh Vs. The State of Madhya Pradesh and others, 2021 (4) R.C.R (Civil) 883**, held as under:-

“Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.”

20. Thus, in the present case, onus to prove his title to the property on the basis of the Will as propounded by the appellant was upon him. Reliance by learned counsel for the appellant on decision of this High Court in **Puran Singh and others Vs. Dalip Kaur, 2019 (4) R.C.R (Civil) 786**, is of no avail

as question of title based on oral Will was not involved and moreover, specific provisions of law have not been adverted to therein. Similarly, reliance by learned counsel for the appellant on decision of this High Court in **Mani Ram (deceased) through LR Subhash Vs. Smt. Sumitra and others, 2021 (3) PLR 507**, is also of no use to the appellant as the said was a case of clear relinquishment of share by the party in question with her never challenging or questioning the same in her lifetime. It was held that legal representatives of the said party, who had relinquished her share, could not question the same after her death. It is reiterated that in the present case, the so called joint statement of plaintiff along with others cannot be considered to be relinquishment of her rights.

21. Another important aspect in this matter is that Vidya, widow of Paryag Singh, pre-deceased son of Daulat Ram has admitted the case of the plaintiff. She is otherwise a beneficiary under the so called oral Will and there was no occasion for her to have accepted the claim of the plaintiff. In this situation, it has been correctly held by the learned Additional District Judge, Hoshiarpur, as under:-

“18. The respondent basically relied upon the mutation documents Ex.D-1 to Ex.D-3. The record shows that entry was made in the mutation, registered on 20.11.1973 about the death of Sh. Daulat Ram and entry was made for mutation on the basis of Will of Daulat Ram dated 01.09.1973 and date of death of Daulat Ram was 05.09.1973. The proceedings in the mutation Ex.D-2 dated 04.12.1973 shows that joint statement of appellant and her three daughters was recorded to the effect that they do not have any objection if the mutation is sanctioned in favour of respondent-defendants no.1 and 11 only. The learned counsel for respondent no.1 submits that this respondent was not present at the time of mutation and question of playing fraud on the revenue authorities does not arise. In the proceedings recorded by the revenue authorities on 07.01.1974 relied upon by respondent

himself, the presence of respondent no.1 has been recorded and similarly in the final order dated 28.01.1974 the presence of respondent no.1 has been recorded. These proceedings do not reflect the admission by appellant and her daughters about the Will of Shri Daulat Ram nor these proceedings carry any weight for this purpose because issue no. 6 has been decided against the respondent-defendant no.1. Therefore, the findings of learned, lower Court on issues no. 1 and 4 are also reversed and if in any event, the appellant is held to be out of possession of the property, she deserves to be granted the decree for joint possession in the disputed land.”

22. Learned counsel for the appellant was unable to refer to any provision of law to indicate that the appellant is entitled to property in question on the basis of oral Will as claimed. Accordingly, substantial question of law as framed, is answered against the appellant and in favour of the plaintiff.

23. Learned counsel for the appellant was unable to point out any illegality, infirmity or perversity in the impugned judgment and decree dated 09.04.2003, passed by the learned Additional District Judge, Hoshiarpur.

24. Keeping in view the facts and circumstances of the case, there is no ground whatsoever to interfere in the impugned judgement and decree dated 09.04.2003, passed by the learned Additional District Judge, Hoshiarpur, and the same is upheld.

25. No other argument has been raised.

26. Present appeal is, consequently, dismissed with no order as to cost. Pending application/s, if any stand disposed of.

April 28, 2023.
s.khan

(LISA GILL)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.