

CM-8532-C of 2023 in/and
RSA-2532 of 2023 (O&M)

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

CM-8532-C of 2023 in/and
RSA-2532 of 2023 (O&M)
Date of decision: 07.08.2023

Pappu @ Raghbir and another

.....Appellants

Versus

Smt. Santosh Devi

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Mukesh Yadav, Advocate,
for the applicant-appellants.

NAMIT KUMAR, J.

1. This Regular Second Appeal has been preferred by defendant-appellants against the judgment and decree dated 22.12.2021 passed by the Court of learned Additional District Judge, Narnaul, whereby appeal of the plaintiff-respondent against the judgment and decree dated 28.09.2016 passed by the Court of learned Civil Judge (Junior Division), Mohindergarh, dismissing her suit for declaration and permanent injunction, has been accepted and her suit stands decreed.

2. The Parties to the suit hereinafter would be referred as per their nomenclature before learned lower court. Plaintiff filed a suit for declaration and permanent injunction pleading therein that she is exclusive owner in possession of 1/5th share in agricultural land comprising in Khewat No. 12, Khatoni No. 17 & 18, field 51 measuring 305 Kanal 3 Marla, 19/1720 share out of land bearing

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Khewat No. 35, Khatoni No. 45, field 1 measuring 0 Kanal 12 Marla, 19/1720 share out of Khewat No. 37, Khatoni No. 47, field 3 measuring 1 Kanal 10 Marla, 19/1720 share out of Khewat No. 123, Khatoni No. 146, field 2 measuring 1 Kanal 2 Marla situated within the revenue estate of village Sisoth, Tehsil & District Mohindergarh vide jamabandi for the year 1974-75. Similarly, the plaintiff is exclusive owner in possession of 1/5th share in the estate of deceased Bhikha Ram in agricultural land comprising in Khewat No. 22, Khatoni No. 25 & 26, field 33 measuring 222 Kanal 8 Marla with other land in village Sisoth, Tehsil & District Mohindergarh as well as 1/5th share in Khewat No. 89, Khatoni No. 94 to 101, Khewat No. 255, Khatoni No. 262 situated within the revenue estate of village Sisoth, Tehsil & district Mohindergarh vide jamabandi for the year 2009-10 (hereinafter, the suit land). The suit land is ancestral coparcenary Hindu Joint Family property wherein the plaintiff has birth right being sole legal heir of deceased Bhikha Ram. The father of the plaintiff Bhikha died on 9.2.1967. The plaintiff at that time was in the womb of her mother Chalti Devi. She was born on 5.5.1967. Chalti Devi after 8 years of the death of Bhikha solemnized Kerawa marriage with Ranga Ram brother of deceased Bhikha. From aforesaid wedlock defendant no.1 Pappu was born. The date of birth of Pappu is recorded in school record as 4.4.1975. The defendants have no right title or interest in the suit land. The mutation of inheritance bearing no.577 dated 29.11.1979 is in contravention of law and actual state of affairs. The aforesaid mutation is null and void and not binding on the right of the plaintiff. The

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revenue record prepared on the basis of aforesaid mutation is also null and void. The defendants are bent upon to interfere in the peaceful possession of the plaintiff over the suit land. On the basis of foregoing pleadings plaintiff has prayed that plaintiff be declared exclusive owner in possession of suit land to the extent of his share. The mutation no.577 dated 29.11.1979 be declared null and void and subsequent revenue record prepared on the basis of mutation no.577 dated 29.11.1979 be also declared illegal null and void. Defendants were proceeded against *ex parte* by the trial court vide order dated 30.5.2012. 6 Plaintiff for proving her case examined three witnesses. The trial Court after hearing learned counsel for the plaintiff and considering the evidence on record dismissed the suit of the plaintiff vide judgment and decree dated 28.09.2016.

3. Aggrieved against the judgment and decree dated 28.09.2016 plaintiff preferred an appeal before the lower appellate Court, which has been accepted and suit of the plaintiff stands decreed vide impugned judgment and decree dated 22.12.2021.

4. Learned counsel for the appellants contended that judgment and decree passed by the lower appellate Court is wrong, illegal and is based on surmises and conjectures. He further contended that appellants were never summoned nor they were aware of the proceedings and the impugned judgment and decree has been passed in their absence. He further contended that appellants were not given an opportunity to produce evidence with regard to mutation sanctioned in their favour. He further contended that plaintiff-respondent failed to

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show that she is the daughter of Bhikha Ram. Her mother's name was not mentioned in the plaint nor in the Birth Certificate Ex.P-2. The trial Court has not touched the issue of maintainability of suit which was filed after huge delay of 35 years. The manner in which inheritance of land was done in her favour could not be proved. He further contended that judgment and decree passed by the lower appellate Court being illegal is liable to be set aside.

5. I have heard learned counsel for the appellants and perused the record.

6. Contention of learned counsel for the appellants that appellants were not summoned by the trial Court and lower appellate Court is not sustainable as trial Court judgment would clearly shows that appellants were duly served and lower appellate Court order dated 14.12.2016 regarding completion of service reads as under: -

*“Present: Shri R.K. Sanghi, Adv. for the appellant.
Shri Anant Yadav Adv. For the respondents
no.1 and 2.*

*Shri Anant Yadav Adv. has filed Vakalatnama
on behalf of the respondents no.1 and 2. Service
completed. Now to come up on 18.03.2017 for arguments.
LCR be also called for the date fixed.*

*(Fakhruddin),
ADJ, Narnaul. 14.12.2016.”*

7. Perusal of the zimni order dated 14.12.2016 shows that appellants were duly served and vakalatnama was filed on their behalf by Sh. Anant Yadav, Advocate. They chose not to appear and were ordered to be proceeded against *ex parte* by the lower appellate Court vide order dated 03.12.2021. Perusal of record shows that Bhikha Ram

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son of Mangtu died on 9.2.1967 during lifetime of Mangtu leaving behind plaintiff and plaintiff's mother Chalti Devi. The birth certificate of plaintiff Ex.P2 shows that a girl (plaintiff) was born to Bhikha on 5.5.1967. Mutation of inheritance of Mangtu bearing no.577 dated 29.11.1979 proves that girl (plaintiff/respondent) is daughter of Bhikha and Chalti Devi. Perusal of mutation no.577 dated 29.11.1979 further makes it clear that Mangtu's share in suit land devolved upon Santosh daughter, Chalti widow of deceased Bhikha. The share of Mangtu that devolved on Bhikha was inherited by wife Chalti and daughter Santosh. Lower appellate Court has rightly observed that mutation no.577 dated 29.11.1979 showing Pappu as son of Bhikha on the face is wrong and illegal because Pappu was born on 4.4.1975 out of wedlock of Chalti and Ranga Ram (brother of Bhikha Ram) almost after 8 years of death of Bhikha. Therefore, from no stretch of imagination it can be said that Pappu was the son of Bhikha. Pappu is son of Rangram and Chalti Devi. Therefore, he has no right title or interest to inherit the share of Bhikha that devolved after death of Mangtu father of Bhikha. The subsequent revenue record prepared by revenue authorities on the basis of mutation bearing no.577 that Pappu defendant no.1 is son of Bhikha has rightly been held to be illegal, null and void by the lower appellate Court as Pappu is not son of Bhikha but is son of Rangram. Therefore, the suit of the plaintiff-respondent has rightly been decreed by the lower appellate Court.

8. No question of law much less substantial question of law has been raised or arises for consideration in this appeal.

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9. Moreover, there is inordinate delay of 368 days in filing the present appeal for which no plausible explanation has been given by learned counsel for the appellants.

10. In view of the above, present appeal is dismissed on merits as well as on the ground of limitation.

07.08.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No