

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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RSA-1616-1993 (O&M).
Date of Decision: 03.04.2024.

GIAN CHAND AND OTHERS

... Appellants

Versus

RAM DAYAL

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Naveen Kumar, Advocate, for
Mr. A.P. Bhandari, Advocate,
for the appellants.

Respondent ex parte

VINOD S. BHARDWAJ, J (ORAL).

Appellants-defendants have preferred the present Regular
Second Appeal against the judgment and decree dated 22.05.1993 passed in
Civil Appeal No.169 of 1993 whereby the Additional District Judge,
Faridabad, has set aside the judgment and decree dated 16.05.1991 passed
by the Court of Sh. Ashok Bhardwaj, HCS, Sub Judge First Class, Palwal,
passed in Civil Suit No.963 of 27.09.1985 dismissing the suit.

2 Briefly summarized, the facts of the present case are that
respondent-plaintiff had filed a suit for declaration and for possession as a

consequential relief averring that Sh. Lohari son of Jugla son of Bhawani resident of Village Baghola was earlier owner in possession of the suit properties. The aforesaid Lohari died issueless and was succeeded by his widow Sompti. That Gunga father of the respondent-plaintiff and Lohari were the sons of Sh Jugla and were hence brothers. After the death of Sompti, respondent-plaintiff being the nearest heir of Lohari became owner of the suit properties left by Lohari and Sompti. It is further averred that one Mamraj father of appellants-defendant No. 1 and 2 was son of daughter of Jugla and sister of Gunga and Lohari. Mamraj was brought up by Lohari and Gunga and he also settled with his maternal uncle in the village. Appellants-defendants No.1 & 2 Gian Chand and Dubban, the sons of Mamraj were residing in village Baghola. The appellants-defendants No. 1 and 2 forcibly took the possession of the house described in the plaint after the death of Sompti despite having no right, title or interest in the suit property and they got the mutation sanctioned in their favour. The said suit was accordingly filed for seeking a declaration and the possession as a consequential relief claiming themselves to be the owners of the house.

3 On notice, the defendants entered appearance and filed written statement taking various preliminary objections regarding the locus standi, cause of action and maintainability amongst others. It was admitted that Lohari was owner in possession of the suit property and submitted after his death, the same was inherited by Sompti mother of defendant No.3 and after her death, defendant No. 3 became owner of the suit property by inheritance through mutation No. 3121 dated 18.3.1986. It was averred that defendant No. 3 Dhakali had been born out of the wedlock of Lohari and Sompti and

she was the only legal heir to succeed the properties left by deceased Sompti. It was denied that there was any relationship between Lohari and Gunga or that they were brothers as claimed by the respondent-plaintiff and stated that Lohari was the only son of Jugla. The claim of the respondent-plaintiff as nearest heir of Sompti was also denied. It was averred that defendant No. 3 being the daughter of Lohari and Sompti was the only legal heir to succeed to the estate left by Sompti and she became absolute owner of the suit property after her death. It was averred that the appellants-defendants No. 1 and 2 Gian Chand and Dibban were not brought up by Lohari and Gunga nor marriage of Mamraj was performed by Lohari and Gunga. It was thus denied that the respondent-plaintiff had any right title or interest in the suit property.

4 Replication controverting the stand taken by the appellants-defendants was filed and on completion of the pleadings, the following issue were framed:-

1. Whether the plaintiff is owner in possession of the plot as mentioned in para No. 1 of the plaint? OPP.
2. Whether the plaintiff is the owner of the house as described in para No. 2 of the plaint? OPP
3. Whether the defendant No. 3 is the daughter of Lohari and Sompti as alleged? OPP
4. Whether the plaintiff has no locus-standi to file the suit? OPP
5. Whether the plaintiff has no cause of action? OPP

6. Whether the suit is not maintainable as alleged?

7. Whether the defendants are entitled to special costs u/s 35A of CPC ? OPP

8. Relief.

5 Issue No.3 as to whether the defendant No. 3 is the daughter of Lohari and Sompti was taken up by the Sub Judge First Class, Palwal and upon consideration of the evidence, it was recorded that the plaintiff as well as defendants No.1 and 2 admitted that the appellants-defendants No.1 and 2, were sons of Mamraj and Mamraj was son of sisters of Gunga and Lohara. Appellants-defendants No.1 and 2 also stated that Dhakeli defendant No.3 was the daughter of Sompti and that she was born out of the wedlock of Lohara with Sompti. Hence, the said witness had special means to prove the relationship between Dhakeli defendant No.3 and Sompti deceased being in close relations. As against the testimony of the said witnesses, the respondent-plaintiff relied on the evidence of PW.3 Jairam and PW.4 Ram Chand who were the residents of the same village but had no special means to prove that the Dhakeli was not the daughter of Sompti. They had only come to depose in favour of the respondent-plaintiff. Their testimony was thus disbelieved and defendant No.3-Dhakeli was held to be the daughter of Sompti from the loins of Lohara. The said statements were further supported by sanction of a contested mutation EX.P-1 on 18.03.1986 in her favour. Further, the Shajra Nasab of the mutation clearly shows that Dhakeli was daughter of Sompti widow of Lohara whereas the respondent-plaintiff was son of Gunga. At the time of mutation, the respondent-plaintiff

were recorded to have not raised any objection to the same. On consideration of the said evidence, the issue was decided in favour of the defendants and against the respondent-plaintiff.

6 Thereafter, while taking up issues No.1 and 2 in relation as to whether the respondent-plaintiff was owner in possession of the plot/house as detailed in the plaint or not, the Sub Judge First Class, Palwal relied upon the testimony of defendant No.3 Dhakeli to the effect that she was absolute and sole owner of suit properties after the death of her mother Sompti and that being in possession of the said properties, she was entitled to deal with the same as an exclusive owner. It was also deposed that she had given the house to appellant-defendant Gian Chand and the plot i.e. *gair mumkin gait* was in her possession. Her version was also supported by DW.2 Dibban Lal (appellant-defendant No.2) and DW.3 Moti Ram. The substantive jamabandis were also exhibited on record apart from Shajra nasab of the family. The jamabandi EX.P4 pertaining to the year 1973-74 reflect that Sompti to be the owner in possession of the said properties and that the mutation of inheritance having been sanctioned in favour of Sompti after the death of Lohara vide Mutation No.240 dated 15.12.1970, the subsequent mutation No.3121 sanctioned in favour of Dhakeli on 18.03.1986 and that all chulla Tax/electricity bills were thereafter paid and brought on record by the defendant No.3 Dhakeli. Hence, the possession of the property in dispute was established to be with defendant No.3-Dhakeli. It was accordingly held that she was the owner and in possession of the properties. The suit of the respondent-plaintiff was accordingly dismissed with costs.

7 Aggrieved of the said judgment and decree of dismissal passed by the Sub Judge First Class, Palwal on 16.05.1991, the respondent-plaintiff preferred an appeal before the District Judge, Faridabad, bearing Civil Appeal No.169 of 1993. The said civil appeal was allowed by the Addl. District Judge, Faridabad, vide judgment and decree dated 22.05.1993 by holding that there were suspicious circumstances that would give rise to the credibility of the status of Dhakeli since at the time when mutation of Lohara, after his death, was sanctioned in favour of his wife Sompti, there was no reason as to why Dhakeli was excluded and why she was not recorded as Class I heir along with her mother Sompti. It was held that the said ground establishes that the Dhakeli was not the daughter of Lohari and Sompti. As a consequence thereof, it was held that she not being daughter of Lohari and Sompti, the respondent-plaintiff being son of the brother of Lohari were the legal heirs and nearest to the line of succession were entitled to succeed to the properties left behind by Smt. Sompti widow of Lohari. The findings on issues No.1 and 3 as well as issue No.3 were accordingly reversed. The relevant extract of the order passed by the Additional District Judge, Faridabad is reproduced as under:-

“8. I have heard the learned counsel for the parties and have examined the record of the trial court.

9. Defendant No.3 Smt. Dhakeli claims herself to be daughter of Smt. Somoti and Lohorey. After the death of Lohorey, Smt. Somoti and defendant No.3 Smt. Dhakali would have succeeded to these properties but mutation of properties of deceased Lohorey was sanctioned only in favour of Smt.

Somoti. Lohorey died after coming into force Hindu Succession Act. Heavy burden is cast upon defendant No.3 Smt. Dhakeli to prove that she was daughter of Lohorey and Smt. Somoti as had it been so, in normal course under the provisions of Hindu Succession Act, she also would have succeeded to the properties of Lohorey alongwith her mother S.t. Somoti. The fact that the mutation of the properties of Lohorey was sanctioned only in favour of Smt. Somoti weighs very heavily against the claim of defendant No.3.

10. Defendant No.3 Smt. Dhakeli while appearing as PW1 had only taken specific stand that she was born in village Baghola. Her further stand is that the birth entries are entered in the register maintained by the Chowkidar of the village. However, no such birth entry has been produced. The case of the plaintiff is that defendant No.3 is a daughter of Tulsi son of Chhitariya resident of village Sibol. Though she in one breath denies the suggestion that she was born in village Sihol but in the second breath she takes the stand that she does not know if she was born in village Sihol or not. Except the statement of defendant No.3 herself, the only other evidence being led by defendants is the statement of defendant No.2 Dibban son of Mamraj who has been examined as DW2. He also is an interested person as much as that they claim that they had been put in possession of part of the suit property by defendant No.3. Except defendant Nos. 2 and 3, no other independent witness has been examined by the defendants in support of their plea. The oral evidence of the defendants is met by oral evidence of the plaintiff. Plaintiff Ram Dayal appeared as PW2 and deposed regarding the relationship of the parties. It is denied that Smt. Dhakeli defendant No.3 is the daughter of Smt. Sompti and Lohorey. PW3 Rai Ram and PW4 Ram Chander also specifically deposed that Lohorey and Smt. Sompti died

issueless. Defendant No.1 and 2 sons of Mamraj resided with her maternal uncle namely Gunga and Lohorey and as such occupied part of the suit property but they have no right, title or claim whatsoever to this property.

11. On behalf of the defendant-respondents, it is vehemently argued that mutation of Smt. Sompti has already been sanctioned in favour of defendant No.3. The mutation as such does not create any right. Once it is established that there is no basis for the mutation, then no right would follow from such mutation.

12. The plaintiff has also led in evidence birth entry Ex.Px of daughter of Tulsi son of Chhitaria of village Sihol. Defendant No.3 while appearing as DW1 has neither admitted nor denied the suggestion that she was born in village Sihol. On the other hand, defendants have taken the stand that defendant No.3 was born in village Baghola and the birth record of village Baghola is maintained by the Chowkidar of the said village but no such entry has been led in evidence. The mutation of Lohorey after his death was sanctioned, in favour of his wife Smt.Sompti alone. In normal course, had defendant No.3 been the daughter of Lohorey and Smt. Sompti, then there was no reason or the circumstance that as to why defendant No.3 would have not succeeded to the estate of Lohorey with Smt. Sompti. These facts when taken together give rise to the conclusion that defendants have failed to establish that defendant No.3 was the daughter of Lohorey and Smt. Sompti and as such the findings of the lower court under issue No.3 are liable to be reversed and it is held that defendants have failed to establish that defendant No.3 is the daughter of Lohorey and Smt. Sompti. Issue No.3 is decided accordingly against the defendants.

13. The natural consequences of the above findings under issue No.3 that defendant No.3 is not established to be daughter of Lohorey and Sompti is that the plaintiff who is son of brother of Lohorey is the legal heir who would have succeed to the suit properties left behind by Smt. Sompti wife of Lohorey. Accordingly, findings of the lower court under issues No.1 and 2 are also reversed. The plaintiff is legal heir of deceased Smt. Sompti and is entitled to succeed to the properties and has acquired ownership of the suit properties described in para Nos. 1 and 2 of the plaint. Both these issues No. 1 and 2 are decided accordingly in favour of the plaintiff-appellant and against the defendant- respondents.

14. Accordingly, the appeal succeeds. The judgment and decree of the learned lower court are set aside. The suit of the plaintiff is decreed and a decree for declaration is passed in favour of the plaintiff-appellant and against the defendants- respondents to the effect that he is owner in possession of the gait measuring o malan 5 marlas described in para No.1 of the plaint and further it is declared that he is owner of a house described in para No.2 of the plaint and as a consequential relief, decree for possession of he said house as per description given in para Nos. 1 and 2 of the plaint is passed in favour of the plaintiff and against the defendants with costs throughout which is assessed at Rs.500/-(five hundred). Decree sheet be prepared accordingly.”

8 Aggrieved thereof, the present appeal had been preferred by the defendants.

9 Learned counsel for the appellant has argued that the Additional District Judge, Faridabad has committed an error while reversing

the well reasoned judgment and decree passed by the Sub Judge First Class, Palwal. It has been further argued that the revenue record which was maintained in the ordinary course by an independent and impartial authority has been disbelieved by the Addl. District Judge, Faridabad, without any valid reasons notwithstanding that the Shajra Nasab has proved the mutations sanctioned firstly on the demise of Lohari and thereafter on the demise of Sompti which clearly established that Dhakeli was the daughter of Lohari and Sompti. The respondent-plaintiff had in fact brought on record the birth certificate pertaining to child born to one Tulsi Ram which is irrelevant since the said document has neither been related and there is no relationship established between the said document and appellant-defendant No.3-Dhakeli. It is also argued that the Additional District Judge, Faridabad, was clearly in an error in ignoring the testimony of DW.2 Dibban only on the ground that he was an interested party by ignoring the relationship which was duly established and remained undisputed and that by virtue of the said relationship, he was more equipped to be close in relation to the status of Dhakeli vis-à-vis Sompti and Lohari. He argued that the Additional District Judge, Faridabad, misread the evidence and has reversed a well reasoned and speaking judgment passed by the Sub Judge First Class, Palwal and the same is liable to be set aside.

10 It is also noticed that Mr. Chander Singh, Advocate, had earlier entered appearance on behalf of the respondent-plaintiff, however, he did not put in appearance. The Registry was called upon to inform the counsel representing the respective parties and as per the report of the Registry dated 01.12.2023, it was informed that intimation had been sent to the

Advocate Mr. Chander Singh, appearing on behalf of the respondent-plaintiff. An intimation was sent again to the counsel appearing on behalf of the respondent-plaintiff as per the report dated 02.04.2024 about listing of the case for 03.04.2024. However, he has chosen not to appear. The matter pertains to the year 1993. The respondent-plaintiff is accordingly ordered to be proceeded against ex parte and the appeal is taken up for hearing.

11 It is evident from the judgment and decree passed by the Addl. District Judge, Faridabad, that the Addl. District Judge, Faridabad, has drawn the presumption against appellant-defendant No.3 only on the ground of alleged suspicion as to why she was not recorded as a successor at the time when mutation was sanctioned in favour of Sompti after the death of Lohari and that the testimony of DW.2 Dibban was discarded being an interested person.

12 The reference made by the Addl. District Judge, Faridabad, to the above said evidence is not well founded inasmuch as there is no reference to the Shajra Nasab that had been brought on record along with an unimpeachable evidence in the form of sanction of mutations against which no objection was raised at the time of such sanction. Although, it is not in dispute that mutation is not a proof of title, however, the burden lies on the person disputing the mutation to establish that the same has been wrongly sanctioned. A negative burden could not have been cast upon the appellants-defendants. Nonetheless in view of the onus having been put up on defendant No.3, specific evidence was led by the appellants-defendant No.3 in the form of not only the testimony of witnesses who were related but also on the mutations that were sanctioned twice as well as the Shajra

Nasab that clearly shows that the appellant-defendant no.3 was daughter of Sompti from the loins of Lohari. The Addl. District Judge, Faridabad, was in error in disregarding the testimony of DW.2 merely because he was related. The said basis is not sufficient to impeach the creditworthiness of a witness and that in family affairs, testimony of a witness who is related, has to be given weightage as against a third party witness who may not be privy to the affairs between the family. The related witness cannot be kept at any different pedestal and DW.2 could not have been put at a disadvantageous position merely on account of being related. The Addl. District Judge, Faridabad, failed to refer to any discrepancies or material contradictions in the testimony of the said witness before coming to a conclusion that said testimony was bereft of merits and deserved being disregarded. This way of disregarding the testimony, without reference to the deposition and its co-production was an inappropriate manner of discarding an evidence brought on record.

13 Besides, the Addl. District Judge, Faridabad, also failed to refer to the Shajra Nasab that was prepared by the Revenue authorities. A mere suspicion as regards absence of the name of the appellant-defendant No.3 at the time of sanction of mutation in favour of Sompti (mother of Dhakeli) cannot be a ground to belie the relationship and/or dispute that she was not entitled to succeed.

14 Under the given circumstances, it has come on record that at the first instance the properties were transferred in favour of Sompti widow and a daughter may not claim or press for her right and claim for sanction of mutation also in her favour at that point of time. There is no unnatural

conduct in a mere sanction of mutation in favour of widow and not in favour of the daughter at that point of time along with her mother. Besides, it is not in dispute that after the death of Sompti, mutation No.3121 was sanctioned in favour of appellant-defendant No.3 and that the said mutation also remained uncontested. In the event, the respondent-plaintiff had any objection as regards the entitlement of appellant-defendant no.3 Smt. Dhakeli to not be an heir of Sompti and Lohari, they could have raised a challenge to the said mutation at that point of time. It is also noticed that the said mutation is also not the subject matter of challenge in the present suit as well. Hence, once the mutation has become final amongst the parties and the same is not a subject matter of challenge either in the proceedings under the Revenue Law or before the Civil Court under the Punjab Land Revenue Act, the said mutation has sufficient corroborative value to support the claim of appellant-defendant No.3.

15 The issue may be examined from a perspective that Dhakeli was not a daughter born to Sompti from the loins of Lohara, still, Sompti would become absolute owner of property under Section 14 of the Hindu Succession Act, 1956 and as per the general rules of succession in case of female Hindu under Section 15, her son/daughter is entitled to succeed. The Section does not justify that the daughter of a Hindu female has to be from the loins of her deceased husband only to be entitled to inherit property inherited by her from her husband. The right has been vested in all children or children of pre-deceased children of a Hindu female irrespective of conception of the children. Thus, even on said count Dhakeli would have a right to succeed to the property.

16 For the foregoing reasons, I find that the judgment passed by the Addl. District Judge, Faridabad, suffers from an improper appreciation of evidence and the conclusions are drawn on the basis of conjectures and surmises which are based on misinterpretation of the evidence led by the appellants-defendants and the statutory provision and mandate of Sections 14 and 15 of the Hindu Succession Act, 1956.

17 The present appeal is accordingly allowed. The judgment and decree dated 22.05.1993 passed by the Additional District Judge, Faridabad, is set aside and the judgment and decreed dated 16.05.1991 passed by the Sub Judge First Class, Palwal, is restored.

18 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

April 03, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

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