

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

141

RSA-1234-1989 (O&M)
Date of Decision: 01.04.2024

RAJA RAM (SINCE DECEASED) THROUGH LRs

... Appellant(s)

VERSUS

JAI RAM AND ORS.

... Respondents

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

Present: Mr. Sanjeev Gupta, Advocate
for the appellant(s).

Mr. Viney Saini, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

CM-3246-C-2020

This is an application under Order 1 Rule 10 (2) read with Section 151 of C.P.C. seeking deletion of name of respondent No.4, Chamela Ram (since deceased) from the array of respondents.

It has been informed that respondent No.4, Chamela Ram has expired during the pendency of the present appeal and his LRs are already impleaded in this appeal as respondents No.1 to 3. Therefore, there is no need to implead them separately. Hence, the deletion of name of said Chamela Ram from the array of respondents has been prayed for.

Learned counsel for the appellant has no objection to the application being allowed.

Accordingly, instant application stands allowed and the name of respondent No.4, Chamela Ram is hereby deleted from the array of respondents.

CM-3252-C-2020 & CM-9470-C-2023

CM-3252-C-2020 has been filed for seeking impleadment of the LR of respondent No.1, Jai Ram (since deceased); and similarly, the CM-9470-C-2023 has been filed for seeking impleadment of LR of late Shri Raja Ram, the sole appellant.

It is informed that both the above mentioned persons have died during the pendency of the appeal leaving behind their respective LR as mentioned in the abovementioned applications.

The counsel for the respective parties have no objection to the applications being allowed.

Accordingly, the present applications are allowed subject to all just exceptions and the respective LR of respondent No.1, Jai Ram as well as the sole appellant namely Shri Raja Ram are hereby impleaded in the present appeal for pursuing the present appeal only and without prejudice to the rights of any third person/party.

The latest Amended Memo of Parties is ordered to be taken on record and the Registry is directed to tag the same at an appropriate place of the paper book and page mark the same.

CM-9469-C-2023

Allowed as prayed for.

MAIN APPEAL

The appellant-plaintiff is in second appeal against the judgment and decree dated 13.04.1987 passed by the Sub Judge IIIrd Class, Kurukshetra passed in Civil Suit No.250 of 1986 dated 15.06.1985/16.04.1986 and subsequent dismissal of his appeal bearing No.86 of 1987 dated 16.05.1987 by

the Addl. District Judge, Kurukshetra vide judgment and decree dated 08.03.1989.

The appellant-plaintiff filed the suit for declaration with consequential relief of possession averring that Chandu Lal (predecessor in interest) had two sons namely the appellant-plaintiff Raja Ram and one Chura Ram. Chura Ram died on 21.09.1980 issueless and leaving behind the appellant-plaintiff as the only LR, being his brother. It was stated in the plaint that Chura Ram was initially married to one Har Kaur daughter of Mahara resident of village Batan Kheri, however, she died without any child. Chura Ram remarried with daughter of one Smt. Kirti resident of village Ladwa, however, she also passed away after six months of the marriage. A son was born from the said wedlock, however, soon after the demise of the second wife of Chura Ram, the said son also passed away. Thereafter, Chura Ram is stated to have purchased a woman namely Paro and that said Paro was already having a daughter aged 3-4 years from her earlier marriage. Consequent upon performance of marriage of Chura with Paro, the said daughter namely Sardari also started residing alongwith Chura Ram and Paro. The third wife Paro also died after six months of the marriage. Sardari was nearly 3½ -4½ years old at the time of demise of her mother Paro. Sardari was thereafter brought up by Chura Ram and all her parental obligations were performed by Chura Ram on humanitarian grounds and that she was infact not the natural born daughter of Chura Ram. It was stated that the respondents-defendants are the successors of Sardari daughter of Paro. It is also stated that the appellant-plaintiff and the deceased brother Chura Ram had been living together and were having joint cultivation of the land. The respondents-defendants No.1 to 3 are the sons of

Sardari and that they have no right, title or interest in the property and that the same was required to be devolved upon the appellant-plaintiff on death of Chura Ram.

On notice, a reply/written statement was filed by the respondents-defendants wherein they denied the allegations levelled by the appellant-plaintiff. It was contended that their mother namely Sardari was the natural born daughter of deceased Chura Ram and that the appellant-plaintiff has no preferential title to deny the claim of Sardari who was a Class-I heir of Chura Ram. It is submitted that the respondents-defendants being children of Sardari were entitled to succeed to the her estate and that the mutation No.288 had been rightly sanctioned in favour of the respondents-defendants.

On completion of the pleadings, the following issues were framed:

- (i) Whether the plaintiff is only legal heir of Chura Ram deceased and he is entitled to inherit his estate? OPP
- (ii) Whether the defendants forcibly dispossessed the plaintiff from the land mentioned in para No.3 of the plaint? OPP
- (iii) Whether the plaintiff has no locus standi to file the suit? OPD
- (iv) Whether the suit is not maintainable in the present form? OPD
- (v) Whether the plaintiff has not come to the Court with clean hands? If so, its effect? OPD
- (vi) Whether the plaintiff has filed the suit malafide? OPD
- (vii) Whether the defendant Nos.1 to 3 are the real sons of Sardari, the real daughter of Chura deceased? OPD.
- (viii) Whether the plaintiff has got no cause of action? OPD
- (ix) Whether the suit is bad for non-joinder of necessary parties? OPD

- (x) Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD
- (xi) Whether the suit is nothing but an abuse of the process of Court? OPD
- (xii) Whether the plaintiff not properly verified as per Order 6 Rule 15 CPC? OPD
- (xiii) Whether Sardari was married by Chura as his daughter as alleged? If so, its effect? OPD
- (xiv) Whether the suit is barred by principle of res judicata? OPD
- (xv) Whether the defendants are entitled to special costs under Section 35.A CPC? OPD
- (xvi) Relief.

In support of his case, the appellant-plaintiff examined himself as PW-1 while one Dayal Singh appeared as PW-2 and one Mangtu Ram was examined as PW-3. While the appellant-plaintiff reiterated his submissions made in the plaint, PW-2 Dayal Singh deposed to the effect that Chura Ram was living with the appellant-plaintiff Raja Ram during his life time and that the land in question was being cultivated by the appellant-plaintiff and his son Ishar. PW-3 also supported the version of PW-2. The challan/jamabandi and copy of the statements of Chamela and one Gaimda were amongst the documents that were exhibited on the file.

On the other hand, the respondent-defendant No.4 had appeared as DW-1 and supported his version. He also examined one Babu Ram as DW-2, who specifically deposed that Sardari was the daughter of Chura Ram and the respondents-defendants No.1 to 3 were sons of Sardari daughter of Chura Ram.

Upon consideration of the respective evidence and the depositions led before the trial Court the Sub Judge IIIrd Class, Kurukshetra dismissed the suit filed by the appellant-plaintiff vide judgment and decree dated 13.04.1987.

Aggrieved thereof, the appellant-plaintiff preferred an appeal before the Additional District Judge, Kurukshetra bearing Civil Appeal No.86 of 1987.

After hearing the parties at length, the Addl. District Judge, Kurukshetra observed as under:

“6. I have heard the learned counsel for the parties. The only controversy between the parties is whether Sardari was daughter of Chura Ram or that she was a pichhlag when Chura Ram performed marriage with her mother. The version of the appellant is that Chura Ram was his brother and he died issueless and so he inherited his share in the suit land being his only heir and successor and that the defendant Nos.1 to 3 the sons of Chamela from Sardari, are not in any way related with Chura Ram because Sardari was not daughter of Chura and she was pichhlag when Chura Ram performed marriage with her mother. His further case is that Chura Ram performed two marriages but the both died issueless and then he purchased one women namely Paro and she started resident with him as his wife and Paro had brought Sardari as her pichhlag daughter. The said Paro also expired after some six months of the marriage.

The parties have led only oral evidence regarding the relationship of Sardari with Chura Ram. Raja Ram plaintiff himself appeared as PW1 and deposed that Chura Ram was his brother, deposed that the first marriage of Chura Ram took place with a women resident of village Batan Kheri and she died before the performance of muklava ceremony. Then his second marriage was performed at Ladwa and his second wife gave birth to a son

who died and his wife also died. Thereafter he performed no marriage, Lateron he purchased one woman namely Paro who lived with him for a period of six months and then she also died. He also stated that Sardari was brought by Paro as pichhlag daughter and so she was not daughter of Chura Ram.

Dyal Singh Sarpanch of village Chari deposed that Raja Ram is brother of Chura Ram and that Chura Ram was residing with Raja Ram prior to his death. He also stated that Chura Ram had no daughter and he died issueless. He also supported the plaintiff's version that Chura Ram brought one women in his house and she brought a girl. aged about 2 years in his house as pichhlag. After the death of Chura Ram the defendants entered into the possession of the suit land. Mangu Ram PW3 stated that he has head from others that Sardari was a pichlag daughter of Chura Ram. On the other hand the defendants examined Chamela Ram DW1 who deposed that the name of his wife was Sardari. She was daughter of Chura Ram resident of village Chari and that her marriage was performed about 45 years ago with him. The marriage party went to the house of Chura Ram and he performed the marriage as father of Sardari. He also deposed that when his sons and daughters were married Chura Ram gave bhat etc. Then after the death of Chura Ram the land was mutated in favour of Sardari despite the contest from Raja Ram. Then Sardari died and so the defendants inherited the land as his legal representatives Babu Ram DW2 is residing of village Bhog Pur where Sardari was married with Chamela. He has also stated that Sardari was daughter of Chura Ram and he used to come to village Bogpur. He also stated that defendant Nos. 1 to 3 are the sons of Sardari from Chamela. Darshan Lal DW3 deposed that Sardari's mother (who was married with Chura Ram) was real sister of his father and that Sardari is daughter of Chura Ram. He also stated that his father had five sisters and that one of them was married with Chura Ram. He also deposed that Sardari was married at village Bhogpur and

the defendant Nos. 1 to 3 are her sons. Gainda Ram who is an old man of 60 years of village Chari, was examined as DW4. He stated that Chura Ram was married with a woman of village Bubka and that Sardari was daughter of Chura Ram. He also stated that Chura Ram performed the marriage of Sardari as his daughter. Nanu Ram DW5 has also supported the defendant's version. Jai Ram defendant son of Sardari appeared as DW6 and he has also stated that his mother Sardari was daughter of Chura Ram and that Sardari used to call Chura Ram his father while Chura Ram used to call her as daughter.

7. *After the death of Chura Ram mutation was entered in the name of Sardari as his daughter on 3.11.1980. Chura Ram expired on 27.9.1980. The mutation was contested by Raja Ram plaintiff and it was finally decided on 30.7.1986 i.e. after a period of about five years and ultimately mutation was sanctioned in favour of Sardari. In the mutation proceedings evidence of both the parties was recorded by the revenue officer. The plaintiff also filed a suit earlier for permanent injunction in the year 1981 but it was withdrawn on 31.1.1985 with permission of the court to file fresh suit on the same cause of action. The present suit has been filed for possession taking the plea that during the pendency of the earlier suit, the defendants entered into forcible possession. In case the defendants were not residing at village Chari with Chura Ram they would not have been allowed to enter into the possession of the land as well as the house of Chura Ram. The plaintiff who is aged about 86 years appeared in the witness box himself but he could not examine any other person who actually saw Sardari coming as pich lag to the house of Chura Ram. He examined only two witnesses, i.e. Dayal Singh Sarpanch and Mangtu Ram. Dayal Singh Sarpanch was 40 years of age when he appeared in the witness box. So he is not supposed to have seen Sardari coming as pichlag. Mangtu Ram also stated that as he heard in the village that Sardari was pichlag.*

On the other hand the defendants examined six witnesses including Chamela Ram and his son Jai Ram. They both stated that Sardari was daughter of Chura Ram. Their evidence is also conduct evidence. However, much importance cannot be attached with this conduct evidence because even a pichlag daughter is called as daughter by the father and the child also called him as father. In the villages even a pichlag child is brought up like a real child and his or her marriage is also performed. The only difference is that he is deprived of the inheritance of the father. But in this case all the witnesses appearing on behalf of the defendants stated that Sardari was daughter of Chura Ram. Darshan Lal DW3 stated that Sardari was real sister of his father and she was married with Chura Ram at village Chari and there- after Sardari was born to them. So this witness belongs to maternal side of Sardari and has deposed about her relationship with Chura Ram.

On the other hand the plaintiff failed to examine any person who had seen Sardari coming as pichlag. In the earlier suit he made the statement that he never saw Sardari nor he knows as to who was she. His statement is Ex.D3. As already mentioned before filing that suit he contested the mutation proceedings and in those proceedings also his statement was recorded, the copy of which is Ex.D4. In those proceedings he deposed that Chura Ram was married with Har Kaur resident of Rattan Kheri who died. Then he never performed his second marriage. In those proceedings he stated that he knew Sardari and that she was pichlag daughter of Chura Ram when the mother of Sardari was brought up by Chura Ram in his house on payment of some amount and that at that time she was 3½ years of age. So he has been taking different stand on different occasions. Sardari was married in Samat 2001 and Kanya dan etc. was written. The bahi leaf of is mark. Then on 26.6.1970 Jai Ram son of Chamela was married and the marriage was attended by Ishwar Singh and Ram Kumar sons of Raja Ram. Ram Kishan son of Chamela was married on 27.5.1973 and that

marriage too was attended by Ishwar Singh son of Raja Ram plaintiff, vide nauta Bahi Ex. DW6/A. So the plaintiff's sons were attending the marriage of sons and daughters of Sardari and were making donations. In case Sardari was pichhlag no such further connection would have been maintained. The plaintiff could also ascertain as to whether Sardari's mother was earlier married and from where she brought Sardari as her pichhlag but no such evidence has been led by him. So it has not been established that Sardari was pichlag daughter of Chura Ram. So the finding of the trial court on Issue Nos. 1 and 7 are upheld.

8. No other point was urged or pressed before me. In view of my above discussion the appeal fails and the same is hereby dismissed with no order as to costs. Decree-sheet be prepared accordingly and the file be consigned to record-room."

The appeal preferred by the appellant-plaintiff before the Addl. District Judge, Kurukshetra was accordingly dismissed.

Aggrieved thereof, the present Regular Second Appeal has been filed.

Learned counsel for the appellant-plaintiff has argued that the specific case of the appellant-plaintiff was to the effect that Paro was not lawfully married to Chura Ram and that the said fact has not been denied by the respondents-defendants in their written statement. He thus contends that in the absence of denial of status of Smt. Paro as not being the legally wife of Chura Ram, Sardari would not have any preferential claim as she is not the lawful heir of Chura Ram and that in the absence of any issue/ child born to Chura Ram, the appellant-plaintiff would be entitled to succeed the estate of Chura Ram as Class-II heir.

Counsel for the respondents-defendants has, on the other hand, controverted the submissions advanced by the appellant-plaintiff by adverting to the written statement filed by the respondents-defendants, wherein it is submitted that a specific response has been filed denying the averment that Sardari was not born to Paro from the loins of Chura Ram and rather a specific case has been set up before the Sub Judge IIIrd Class, Kurukshetra to the effect that Sardari was born to Chura Ram from Smt. Paro. He contends that no evidence has been led by the appellant-plaintiff to establish that Smt. Sardari was not a daughter born to deceased Chura Ram. He further contends that the said aspect has already been examined by the Courts below concurrently and having found that there is no cogent and convincing evidence adduced by appellant-plaintiff, the suit was dismissed.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present appeal with their able assistance.

It is not in dispute that other than the oral deposition made by the witnesses examined by the appellant-plaintiff, there is no documentary evidence on record on the basis whereof it could be conclusively determined that Smt. Sardari was not born to Chura Ram, since deceased, from Smt. Paro. Even though the specific factual aspect that Smt. Paro had been purchased by Chura Ram is not denied in the written statement, however, the same cannot be a ground to assume that the status of Smt. Paro being wife of Chura Ram was not that of a matrimony. The intent between Paro and Chura Ram at that point of time was to enter into a matrimonial relationship and to portray to the world at large that Smt. Paro was lawfully wedded wife of Chura Ram. Hence,

notwithstanding the mode and manner in which a relationship came in existence, the presumption which flows in law is that Smt. Paro was legally married to Chura Ram and that there was no other living spouse of late Chura Ram at that point of time. Further, even otherwise, there is no mandate of law that a child is required to be born from existing lawful marriage, in order to claim himself/herself to be a Class-I heir. Hence, even if a child is born out of an illegitimate relationship, he/she would still be entitled in law to be a Class-I heir.

The specific stand of the respondents-defendants was to the effect that Sardari was naturally born daughter of Chura Ram and that the said issue has already been considered concurrently by the Court below. The extract of the findings recorded by the Addl. District Judge, Kurukshetra shows that all obligations pertaining to Sardari were performed by Chura Ram and that even the witnesses of the appellant-plaintiff admit that marriage of Sardari was performed by Chura Ram and subsequently, other rituals i.e. *Bhat* etc. were also performed by Chura Ram. Mutation of the land was also sanctioned in favour of Sardari despite the same having been contested. It is also not disputed that Sardari used to visit the village and perform other obligations as a daughter of Chura Ram. Further, Darshan Lal (brother of Paro) had also appeared as witness and he specifically deposed that Sardari was born from the loins of Chura Ram. The said deposition has gone uncontroverted and there is no other evidence on record on the basis whereof, the deposition of the defence witnesses, supporting that Sardari was born to Chura Ram, could be falsified.

Concurrent findings of facts have been recorded by both the Courts in relation to the status of Smt. Sardari, from whom the respondents-defendants

have derived their title, after noticing that Sardari was Class-I heir of Chura Ram.

I find that there is no cogent material or evidence available on record on the basis whereof, the concurrent findings recorded by both the Courts can be said to be bad or based upon non-appreciation of settled position of law or misappreciation of evidence adduced on record.

Finding no merit, the present appeal is dismissed and the judgments and decrees passed by both the Courts are hereby affirmed.

APRIL 01, 2024
rajender

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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No