

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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1. RSA-2079-1989
Date of decision: 28.02.2024

GURCHARAN SINGH @ CHARAN SINGH (DECEASED)
THROUGH LRS & ORS.
..Appellants

Versus

BALWANT KAUR (DECEASED) THROUGH LRS & ORS.
..Respondents

2. RSA-1518-1989 (O&M)

BALWANT KAUR & BANTI
..Appellant

Versus

GURCHARAN SINGH @ CHARAN SINGH & ORS.
..Respondents

3. RSA-3288-2008 (O&M)

RANJIT SINGH & ORS.
..Appellants

Versus

SWARAN SINGH & ORS.
..Respondents

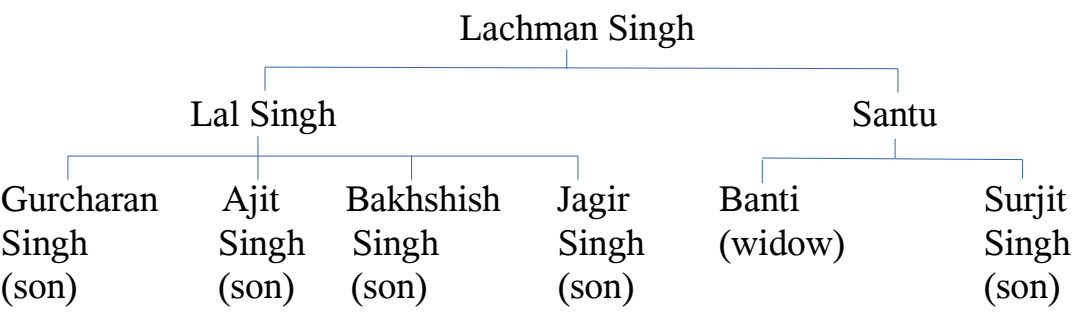
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate
with Mr. Varun Parkash, Advocate
for the appellant (in RSA-2079-1989)
for appellant No.1, 2 & 4 (in RSA-3288-2008)
& for respondents (in RSA-1518-1989).

Mr. Sudeep Mahajan, Advocate
and Ms. Saachi Mahajan, Advocate
for respondent (in RSA-2079-1989 & RSA-3288-2008)
for the appellant (in RSA-1518-1989).

ANIL KSHETARPAL, J.(Oral)

1. A batch of three connected appeals has come up for final disposal. The learned counsel representing the parties *are idem* that these three regular second appeals can be disposed of by a common judgment.
2. In fact, RSA-1518-1989 and RSA-2079-1989, are cross-appeals arising from a common judgment passed by the trial Court as well as First Appellate Court. RSA-3288-2008, is a connected appeal, which shall be dealt with in the latter part of this judgment.
3. In order to understand the controversy involved in the present case, pedigree table showing inter se relationship between the parties is extracted as under:-



4. Gurcharan Singh, Sh. Ajit Singh, Sh. Bakhshish Singh and Sh. Jagir Singh sons of Sh. Lal Singh filed a suit for grant of decree of declaration that they are owners in possession of agricultural land situated in villages, Dhilwan, Mand Dhilwan (situated in District Kapurthala), Village Jalluwal and Village Budha Theh (situated in District Amritsar) measuring 112 kanal and 14 marlas, 152 kanal and 18 marlas, 1 kanal and 3 marlas and 6 kanal and 7 marlas, respectively. They also prayed that they are entitled to withdraw the amount of compensation with respect to the acquired land of village Budha Theh with a consequential relief of permanent injunction. In

substance, the plaintiffs claim that the suit property was owned and possessed by Sh. Santu, their uncle. He died in the year 1950 leaving behind his only son Sh. Surjit Singh as his wife Smt. Banti had pre-deceased him. The whereabouts of Sh. Surjit Singh are not known and therefore, the plaintiffs have become owner of the property. In the alternative, they also claim that they have perfected their title by way of adverse possession. The defendant Smt. Balwant Kaur widow of Sh. Boor Singh has joined hands with the revenue officials and wrongly got mutation of land of Sh. Surjit Singh in her name claiming to be Smt. Banti (Surjit Singh's mother). It was alleged that whereabouts of Sh. Surjit Singh are not known for the last 15-16 years and therefore presumed dead.

5. The defendants while contesting the case claimed that Sh. Santu died leaving behind Smt. Banti @ Balwant Kaur (widow) and Sh. Surjit Singh (son). Subsequently, Smt. Banti re-married with Sh. Boor Singh and she was given new name i.e. Sh. Balwant Kaur. It was claimed that the plaintiffs are not in possession and in fact it is Smt. Balwant Kaur, who is in possession of the property. The revenue authorities have also sanctioned mutation in favour of Smt. Balwant Kaur @ Banti presuming Sh. Surjit Singh to be dead.

6. Both the Courts on appreciation of evidence have come to a conclusion that Smt. Balwant Kaur and Smt. Banti are one and the same person and she is widow of Sh. Santu who subsequently re-married with Sh. Boor Singh. In fact, as many as following four documents have come on record to prove that fact:-

i. Sh. Lal Singh during his lifetime filed a suit for pre-emption to pre-empt a sale deed executed by Sh. Surjit Singh during his lifetime. In that suit, Smt. Banti, widow of Sh. Santu and daughter of Sh. Sundar and now wife of Sh. Boor Singh impleaded as defendant No.5.

ii. Ex.D-1 is a release deed/transfer deed executed by Smt. Banti in favour of Sh. Surjit Singh with respect to the property inherited by her from her father Sh. Sundar Singh.

iii In the year 1961, Smt. Banti executed a power of attorney Ex.D-2 in favour of Sh. Lal Singh to pursue litigation on her behalf.

iv. The thumb impression of Smt. Banti on the aforesaid documents No.(ii) and (iii) have been compared with the standard thumb impression of Smt. Balwant Kaur and it has come on record that Smt. Banti and Smt. Balwant Kaur is one and the same person.

7. The learned counsel representing the appellants (plaintiffs) claim that Smt. Balwant Kaur has not led any evidence in terms of Section 50 of the Indian Evidence Act, 1872, to prove her relationship.

8. This Court has considered the submissions.

9. It is evident that as many as 4 documents including the plaint filed by the plaintiffs father as well as a general power of attorney executed by Smt. Banti in favour of Sh. Lal Singh clearly proves that Smt. Banti was

alive when her husband Sh. Santu died, therefore, the case of the plaintiffs that Smt. Banti pre-deceased her husband is not proved.

10. The second argument of the learned counsel representing the plaintiffs is to the effect that Smt. Banti forfeited her rights on her re-marriage with Sh. Boor Singh in absence of custom. He submits that a Full Bench in **Sada Kaur Vs. Bakhtawar Singh, 1970 PLR 1**, has held that there is a forfeiture of life estate inherited by the widow from her husband upon her re-marriage is the normal rule unless the custom admits exceptions.

11. On the other hand, the learned counsel representing the respondent submits that the plaintiffs neither pleaded custom nor it is their case in the plaint that she has forfeited her right.

12. Though this argument was taken up before the First Appellate Court, however, this is not the case pleaded by the plaintiffs while filing the suit. There is no issue on this aspect of the matter. Hence, it would not appropriate to go into this issue.

13. Examining the case from another angle, it may be noted that Sh. Surjit Singh is presumed dead, which in common parlance is called civil death. After the death of Sh. Surjit Singh, her mother will get the entire property because she is the only class-I heir. The relationship of mother and son does not cease to exist only because she re-married. A mother would always remain a mother of the child and similarly, a child would remain child of the parents. The attention of the Court has not been drawn to any custom, which adversely affects the child and mother relationship even if the mother remarries.

14. The revenue authorities have also sanctioned the mutation in her favour on the death of Sh. Surjit Singh. Hence, the argument of the learned Senior counsel representing the plaintiff has no substance.

15. The learned counsel representing Smt. Balwant Kaur has submitted that the First Appellate Court has erred in upholding the judgment of the trial Court with respect to the land measuring 112 kanal and 14 marla located in village Dhilwan. He submits that the First Appellate Court has erred in recording a finding that the plaintiffs have become owner by way of adverse possession. He submits that as per the revenue record, Sh. Gurcharan Singh, Sh. Ajit Singh, Sh. Bakhshish Singh and Sh. Jagir Singh are recorded to be in possession because they were relatives of Sh. Surjit Singh. He submits that the possession of all the co-sharers was joint and the plaintiffs cannot claim adverse possession.

16. On the other hand, the learned Senior counsel representing the plaintiffs contends that whereabouts of Sh. Surjit Singh were not known for the last 15-16 years before filing of the suit and therefore, the possession of the plaintiff was open hostile to the world. Hence, they are in adverse possession.

17. This Court has considered the submissions.

18. It is not in dispute that after the death of Sh. Lachman Singh, Sh. Lal Singh and Sh. Santu inherited the property jointly and they became co-sharers. After the death of Sh. Lal Singh, the property fell in the share of Sh. Gurcharan Singh, Sh. Ajit Singh, Sh. Bakhshish Singh and Sh. Jagir Singh, whereas, after the death of Sh. Santu, the property fell in the share of Sh. Surjit Singh. Hence, all the five persons namely Sh. Gurcharan Singh,

Sh. Ajit Singh, Sh. Bakhshish Singh, Sh. Jagir Singh and Sh. Surjit Singh became co-owners. It is not in dispute that the plaintiffs are related to Sh. Surjit Singh as they are first cousins. There is no evidence as to when their possession became adverse. It is also proved that whereabouts of Sh. Surjit Singh are not known for the last 15-16 years. Hence, the plaintiffs cannot claim adverse possession. Moreover, in the year 1961, Smt. Banti executed a power of attorney in favour of Sh. Lal Singh to pursue litigations. Thus, the possession of the plaintiff, if any, would be permissive. Even the revenue record proves that they are in possession being relatives of co-owners by way of relationship.

19. Although, the First Appellate Court has noticed that the parties are co-owners, however, held that in the absence of Sh. Surjit Singh from the village, his ouster is proved. In the considered opinion of the Court, the First Appellate Court has erred in adopting this line of reasoning. For proving exquisite of title by way of adverse possession, it is incumbent for the parties who claims exquisite of title by way of adverse possession to prove the following:-

- i. On what date, he came into possession?
- ii. What was the nature of his possession?
- iii. Whether the factum of possession was known to other party?
- iv. How long his possession continued?
- v. His possession was open and undisturbed?

20. Reliance in this regard can be placed upon **Sarup Vs. Smt. Banto, AIR 2005 (Supreme Court) 4407.**

21. Normally, the permissive possession does not convert into adverse possession only because the owner is not available. The adverse possession implies on that it commenced wrong and is maintained against right. When the commencement and continuation of possession is legal and proper referable to a permission, no adverse possession can be claimed.

22. Keeping in view the aforesaid discussion, the findings of the First Appellate Court that the plaintiffs have become owner with respect to the land located in Village Dhilwan, District Kapurthala is erroneous and therefore, set aside. Hence, RSA-1518-1989, shall stand allowed, whereas, RSA-2079-1989, shall stand dismissed.

23. For parity of reasons, the argument of the learned Senior counsel representing the plaintiffs that the plaintiffs have become owners of land located in three other villages by way of adverse possession is rejected.

RSA-3288-2008

24. In RSA-3288-2008, the appellants before this Court are purchasers of 24 kanal land from Sh. Lal Singh located in village Jalluwal. Sh. Lal Singh has sold land by referring to specific khasra numbers. Both the Courts have held that such sale of land is from undivided khewat and therefore, it amounts to sale of share from the joint khewat, which shall be subject to partition.

25. The learned counsel representing the appellants though made sincere attempt, however, failed to draw the attention of the Court to any substantive error in the aforesaid findings.

26. Hence, RSA-3288-2008, is also dismissed.

27. All the pending miscellaneous applications, if any, are also disposed of.

February 28th, 2024

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No