

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1132-1989 (O&M)
Reserved on: 22.03.2024
Date of decision: 18.04.2024

AJAIB SINGH AND OTHERS

..Appellants

Versus

TEJA SINGH (DECEASED) THROUGH LRS & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate with
Mr. Varun Prakash, Advocate
for the appellants.

Mr. Malkiat Singh, Advocate
for respondent No.1 to 6.

Mr. Ashok Bhardwaj, Advocate
for respondent No.7 and 8.

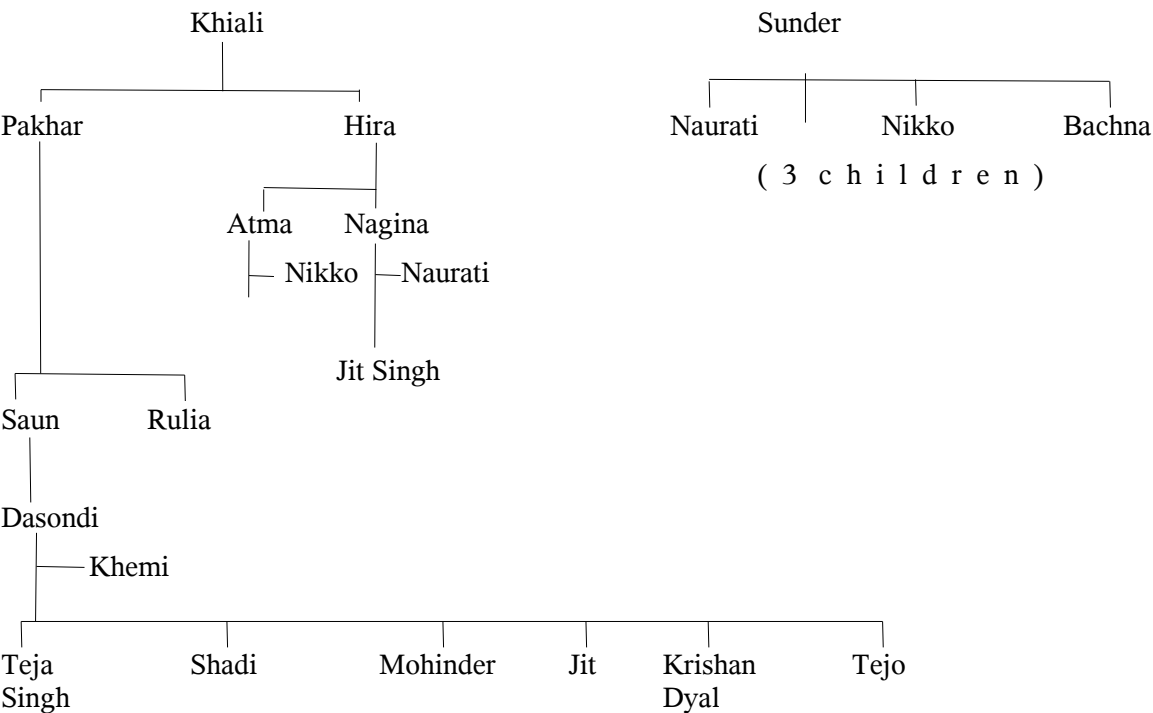
ANIL KSHETARPAL, J.

1. Brief facts of the case:-

1.1 In this regular second appeal, the legal representatives of the plaintiffs assail the correctness of the judgment passed by the First Appellate Court, which in turn has reversed the judgment passed by the trial Court.

1.2 In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

1.3 For better comprehension of inter se relationship between the parties, two pedigree tables are demonstrated hereunder:-



1.4 The dispute in the present case is with respect to the property left behind by Sh. Jeet Singh son of Sh. Nagina. One Sh. Rajender Singh, originally claimed the property left behind by Sh. Jeet Singh on the basis of a Will. He filed a separate suit against Sh. Teja Singh and others, claiming to have inherited the property of Sh. Jeet Singh by virtue of Will dated 05.04.1979, which was dismissed by the trial Court; against which he did not file any appeal. The second suit was filed by Smt. Nikko and Sh. Bachna daughter and son of Sh. Sunder against Sh. Rajinder Singh & Sh. Teja Singh and others with a prayer to grant decree for possession as owner of land measuring 67 kanal and 18 marlas along with share in *shamkisar deh* and for possession of land measuring 1 kanal and 4 marla, and 1 ½ (half) share of khasra No.22/32 (1-4) relating to bara No.101 as well as a house and a plot.

1.5 In substance, the case of Smt. Nikko and Sh. Bachna is that Sh. Jeet Singh died issueless and did not leave behind his widow. Smt. Nikko and Sh. Bachna are claiming the property being brother and sister of Smt. Naurati, mother of Sh. Jeet Singh.

1.6 On the other hand, Sh. Rajinder Singh as already noticed, claimed the property on the basis of the alleged Will of Sh. Jeet Singh dated 05.04.1979, whereas, Sh. Teja Singh and others are claiming the property being heirs of Sh. Jeet Singh. Two suits, one filed by Sh. Rajinder Singh and second filed by Smt. Nikko and Sh. Bachna were consolidated. Sh. Rajinder Singh's suit was dismissed, whereas, Smt. Nikko's suit for possession was decreed. Sh. Rajinder Singh did not file any appeal. However, Sh. Teja Singh etc. filed first appeal, which has been accepted.

1.7 In this case, the solitary issue, which requires adjudication is “whether Smt. Nikko and Sh. Bachna, children of Sh. Sunder are entitled to inherit the property of Sh. Jeet Singh?” Sh. Teja Singh etc. are denying that Smt. Naurati was Sh. Jeet Singh's mother and Smt. Nikko and Sh. Bachna are not related to Sh. Jeet Singh.

2. **Arguments put forth by the learned counsel representing the parties:-**

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of the lower Court record.

2.2 The learned counsel representing the parties have also filed the written submissions, which are extracted as under:-

2.3 The submissions made by the learned counsel representing the appellant are as under:-

“POINTS FOR CONSIDERATION

Whether Naurati (mother of Jeet Singh) was sister of Nikko and Bachna all being children of Sunder?

As far as the fact that Naurati was mother of Jeet Singh is an admitted fact in the written statement filed by respondent. The only dispute between the parties is as to whether Nikko and Bachna were related to Naurati and being Class-II heirs are entitled to inherit the property of Jeet Singh.

In order to prove relationship between Naurati, Nikko and Bachna the appellants have placed on record birth certificates Ex. P2, Ex. P3 and Ex. P4 showing that Sunder resident of village Behlolpur was father of 2 female and one male children. Plaintiff examined the following witnesses:

PW8- Karam Singh (age 80 yrs) r/o village Behlolpur who was close relative of Naurati (mother of Jeet Singh).

PW7 – Nikko (no suggestion regarding name of father or relationship with Naurati in cross-examination)

PW9- Inder Singh (age 55 yrs) r/o Village Behlolpur

PW10- Ajit Singh (age 85yrs) r/o village Behlolpur.

PW11 - Bachna s/o Sunder

PW14- Kirpa Singh (age 85yrs).

PW16- Mehar Singh (age 73yrs) r/o village Alapur.

Still further Defendant Teja Singh appeared as DW1 who in his cross examination merely expressed his lack of knowledge regarding relationship of Narati with Sunder of Behlolpur) or Nikko or Bachna. However, DW 9 Bachan Singh admitted in his cross examination that Jeet Singh used to call Bachna as MAMA (maternal uncle) whenever Bachna visited him.

Most important document which clearly established the relationship between Naurati and Nikko is Ex. PW1/A dated 27.7.1914. This document clearly supports the version of the plaintiff and records that Nikko and Naurati were two sisters. Naurati had married Nagina and Nikko was married with Atma. Before Muklawa of Nikko could be brought, Atma died and Muklawa of Nikko was brought by Nagina. It was further stated in the document that without the consent of Nagina, Nikko had re-married with Naraina and in order to settle this dispute Naraina paid Rs. 350/- to Nagina.

Thus the appellants have led sufficient evident in terms of Section 50 of the Evidence Act to prove the relationship of Nikko and Bachna with Naurati and, thus, being the brother and sister of the mother of the deceased, appellants were entitled to inherit the property of Jeet Singh.”

2.4 Per contra, the learned counsel representing the respondent. No.

1 to 6 has made the following two submissions:-

“5. That the appellants relied upon the birth certificates Ex. P2, P3 and P-4 mention only the name of father of the child born which is given as Sunder. The name of mother of child are not given on which the appellants relied upon that the mother of the Jit Singh deceased was

sister of Nikko which was not proved by the Birth Certificate as well as oral evidence given by the appellants. The Birth Certificate relied upon by the trial court has not been connected with the appellants.

6. That the oral evidence to prove relationship is not enough to hold that the Norati was the sister of Nikko simply because Bachna stated that Jit Singh used to call him as maternal uncle (mama) is not enough to prove the relationship.”

2.5 Whereas, the learned counsel representing respondent No. 9 and 10 has submitted as under:-

“1. That the birth certificates i.e. Ex. P-2, P-3 & P-4 were tender into evidence by Sh. T.C. Gupta Advocate on behalf of Niko (plaintiff) on 15.01.1985 (page 126 of LCR) and closed his evidence in affirmative. The said birth certificates have not been proved in accordance with law by examining any official from the office of the Registrar of births and deaths.

2. That even the birth certificates Ex. P-2, which is in Urdu at page no. 165 of the LCR was issued on 22.04.1983. Birth certificate Ex. P-3 at page no. 165 of the LCR was issued on 22.04.1983 and birth certificate Ex. P-4 at page no. 169 of the LCR was also issued on 22.04.1983.

3. That Bachna (plaintiff no. 2) s/o Sunder in his cross examination at page 110 of the LCR submitted that he was not related to the parties.

Respondents no. 7 & 8 are the subsequent purchasers.

1. That appeal was accepted by the Ld. Additional District Judge, Ropar vide judgment and decree dated 27.01.1989.

2. That present RSA was filed in the year 1989.

3. That the respondents Teja Singh and Ors. through their power of attorney namely Bhag Singh sold the suit land measuring 67 knals 18 marlas to Sohan

Singh s/o Kartar Singh s/o Sh. Bir Singh r/o Kurali, Tehsil Kharar, District Ropar vide sale deed dated 29.12.1993 for consideration of Rs. 2,00,000/-. The sale deed dated 29.12.1993 is on record as Annexure A-2 filed with CM No. 5288/C of 2020.

4. That the respondent no. 7 and 8 purchased 60 kanals 4 marlas land out of the suit property from Smt. Amarjit Kaur wife and Harinder Singh s/o Sh. Sohan Singh vide sale deed dated 03.03.2003 (Annexure A-3).

5. That the appellants filed CM No. 5288/C of 2020 under order 22 Rule 10 CPC for impleading the subsequent vendees namely Balwinder Singh and

Gurminder Singh i.e. present respondents no. 7 & 8. The said application has been filed after 17 years of purchase of part of the suit land by the respondents no. 7 & 8.

6. That the act and conduct of the appellants show that they were never interested in the suit property, since they knew that they have no title over the suit property.

7. That the appellants have not placed on record any Jamabandi or any other revenue record to show that there was any mention of the pendency of any litigation of the suit property. Therefore the appellants cannot take the benefit of lis-pendence.

8. That perusal of the record shows that the appellants never filed any application for stay.

9. That purchase of the part of the suit property by the respondents no. 7 & 8 is in good faith and for consideration. Perusal of the sale deed dated 03.03.2003 (Annexure A-3) would show that the sale consideration was of Rs. 30,10,000/-. The respondents no. 7 & 8 respectfully submit here that the sale consideration was paid by them out of the land acquisition amount received by them and after withdrawal from the bank. The respondents no. 7 & 8 can prove the same if opportunity is granted to them for leading evidence.

10. That the respondents no. 7 and 8 are from village Sarangpur, U.T. Chandigarh, whereas the suit property is situated in Fatehpur, Tehsil Kharar, District Ropar (now SAS Nagar Mohali). Therefore the respondents no. 7 & 8 never had any occasion of any pending litigation.

11. That the appellants have neither alleged nor proved any fraud or misrepresentation on part of the respondents no. 7 & 8.

12. That the respondents no. 7 & 8 are the bonafide purchasers for consideration and good faith.”

2.6 The learned counsel representing respondents No. 9 and 10 have filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, in order to produce the copies of sale deeds executed in their favour on 29.12.1993 and 03.03.2003, their bank account statement to prove that the amount was paid, copies of jamabandis for the year 1990-1991, 1995-1996, 2001-2002, 2005-2006, 2010-2011, and copies of receipts of the electricity consumption charges. These documents, even if admitted in evidence, would not be relevant because the crucial issue which require

adjudication in the case is that, “who was the nearest relative of Sh. Jeet Singh?” If the claim of the plaintiffs Smt. Nikko and Sh. Bachna is accepted, then they will fall in Class II row 9 of the Hindu Succession Act, 1956, whereas the Sh. Teja Singh etc. fall in the category of cognates because they are Sh. Jeet Singh’s great grand-father's great grand-children and they do not fall in the heirs enlisted in table of Class II.

3. Reasons recorded by the First Appellate Court:-

3.1 The following reasons have been recorded by the First Appellate Court while reversing the judgment passed by the trial Court:-

- i. In the birth certificates Ex.P-2, P-3 and P-4, neither the name of the child nor his/her mother has been mentioned, and both these necessary details are missing.
- ii. Sh. Bachana has failed to disclose the name of Smt. Nikko's first husband and he did not go to mourn the death of Sh. Jeet Singh.
- iii. On account of certain contradictions in the oral evidence, the document dated 27.07.1914 is not reliable, particularly, when she states that Sh. Nagina was never her husband.
- iv. Sh. Hazura Singh son of Smt. Nikko, has stated that he came to know about Sh. Jeet Singh's death after a period of 1 and ½ (half) year and he had no idea about the amount Sh. Jeet Singh paid to purchase the land from custodian department.
- v. The conduct of Sh. Hazura Singh son of Smt. Nikko and the conduct of the plaintiffs prove that they never considered themselves to be owner of the property.

4. Evidence produced by the respective parties:-

4.1 At this stage, the evidence led by the parties is required to be analyzed, evaluated, and appreciated.

4.2 First and foremost, it is a well settled principle that relevant documentary evidence is required to be preferred in place of oral evidence. Secondly, in order to prove relationship of one person to another, the evidence of any person, who as a member of family or otherwise, has special means of knowledge on the subject is relevant.

4.3 In this case, the plaintiffs have produced as many as four documents. Ex.P-2, P-3 and P-4 are the birth certificates of Smt. Naurati, Smt. Nikko and Sh. Bachna as children of Sh. Sunder. No doubt the names of these children are not mentioned in the birth certificate, however, it is proved that Sh. Sunder resident of village Behlolpur was father of two female and one male children. Beside this, the plaintiffs have produced the document Ex.PW1/A executed on 27.07.1914. On its careful perusal, it becomes evident that Smt. Naurati and Smt. Nikko were two sisters who were married to Sh. Nagina and Sh. Atma, two brothers, respectively. After marriage, Sh. Atma died and Sh. Nagina brought Smt. Nikko in his home in Muklawā ceremony along with Smt. Naurati. In earlier times, the marriage used to take place between the children. After they attained a reasonable age, the husband would bring the wife from her parental home. This ceremony in local language is called Muklawā. However, Smt. Nikko became the part of the family by virtue of Muklawā ceremony. Smt. Nikko remarried with Sh. Naraina. There was some dispute which resulted in settlement dated 27.07.1914. Sh. Naraina paid Rs.350/- to Sh. Nagina. This is more than a 30 years old document, which was brought on record.

4.4 The translated version of the document dated 27.07.1914, reads

as under:-

“I, Nagina Singh s/o Hira Singh, caste Ramdasia, resident of Alla Pur, Pargana Kharar. Mrs. Nikko d/o Sunder, caste Ramdasia, resident of Behlolpur, Tehsil Kharar got married to Atma, my own brother, about nine years ago. After his death, it has been six years since Mrs. Nikko's Karewa was performed with me as per the traditions of community. After the Karewa was performed, Mrs. Nikko as my wife had come to my home and settled there. However, she was not obeying my command. There was a strained relationship between me and aforesaid woman. At present, the lady is about 18 years and six months old. Hence, she is a young woman. On account of mutual conflict, I have separated the aforesaid woman as my wife. Now I have given up the claim that she is my wife. I have received worth rupees 350/- as per the current currency— half of which stands 175/- rupees-in cash i.e. at the time of writing this document in respect of the value regarding jewelleries and dresses which I had spent on aforesaid woman, from Naraina s/o Rallu, caste Ramdasia, resident of Rampur, Pargana-Tehsil Ropar. Now aforesaid woman has the right to perform Karewa with aforesaid Naraina and settle down and reside with aforesaid Naraina. Now I have nothing to do with the aforesaid woman including her jewelleries and dresses. Nor will I have any such claim thereon in future. In case I happen to make any claim, the same will be deemed invalid. Hence, I have got this writing scribed so that it may serve as an authority/proof.

Dated: 27th July, 1914.

Written by: Chotu Ram, Arzi Nawis (Deed Writer), Ropar.

Executant:

Nagina Singh,

Colour Wheatish

Witnesses

Gehla s/o Santa

Caste Ramdasia, Purkhali, Pargana Ropar

Santa Chowkidar

Caste Ramdasia

Pargana...

Deviditta s/o

Caste Ramdasia, Rampur...

Rangila s/o”

4.5 In the oral evidence, the plaintiffs have examined PW-8 Sh. Karam Singh, aged 80 years, resident of village Behlolpur, who was a close relative of Smt. Naurati. He has been stated to possess special knowledge on the subject. He has corroborated the plaintiffs case. PW-7 Smt. Nikko has stepped in the witness box to testify. She has stated that she was married to Sh. Atma, whereas Smt. Naurati was married to Sh. Nagina. Her brother's name is Sh. Bachna and they are children of Sh. Sunder. No suggestion was given to her during the cross-examination with regard to name of her father or relationship with Smt. Naurati. If statement of a witness on a particular aspect is not challenged in the cross-examination by the opposite party or his counsel, such part of the statement is deemed to have been admitted. PW-9 Sh. Inder Singh is again resident of village Behlolpur. PW-10 Sh. Ajeet Singh aged 85 years and PW-14, Kirpa Singh, aged 85 years are residents of village Behlolpur. PW-16 Sh. Meher Singh, aged 73 year is resident of village Alapur. PW-11 Sh. Bachna son of Sh. Sunder (plaintiff No. 2) has also testified.

4.6 Per contra, defendants examined DW-1 Sh. Teja Singh who expressed his lack of knowledge regarding relationship of Smt. Naurati with Sh. Sunder, Smt. Nikko or Sh. Bachna. However, DW-9 Sh. Bachan Singh different that Sh. Bachna (defendant) admitted in examination that Sh. Jeet Singh used to call Sh. Bachna as his maternal uncle (*mama*).

5. **Analysis of the reasons recorded by the First Appellate Court:-**

5.1 The First Appellate Court's reason No.(i) is required to be analyzed in the context of the period in which birth certificates Ex.P-2, P-3 and P-4 relate. All these certificates are of 19th/ early 20th century and the date of registration of these birth certificates is; Ex.P-2 is of 27.10.1895,

whereas Ex.P-3 and P-4 are of 27.10.1901 and 09.10.1898, respectively. The defendants have not produced any evidence to prove that at the relevant time, name of the mother or child was required to be mandatorily mentioned in the birth certificate.

5.2 The First Appellate Court's reason No.(ii) is also erroneous because Sh. Bachna at the time of appearing in evidence was 85 years old. Sh. Bachna's evidence could not be discarded on the ground of his poor memory to recollect Smt. Nikko's first husband's name or his not going to mourn the death of Sh. Jeet Singh, as both these facts are not sufficient to discard the overwhelming evidence produced by the plaintiffs. It is significant to note that at the relevant time, the means of communication were scarce and people had no easy access to each other. Hence, his inability to describe the location of property or the fact that he had never visited Alapur is a relevant fact, but it is not sufficient to discard the documentary evidence on the whole.

5.3 The First Appellate Court's reason No.(iii) also lacks substance because the First Appellate Court has tried to highlight the certain variations in the statement of Smt. Nikko and the document dated 27.07.2014. Smt. Nikko was making a statement after a period of more than 65 years. The human memory unlike computer cannot remember the minute details as such and it is unreasonable to opine otherwise.

5.4 During the cross-examination, the witnesses made certain statements and those statements are required to be analyzed properly. The witness' statements cannot be discarded on the basis of an isolated sentence divorced from the whole statement.

5.5 Smt. Nikko while appearing as PW-7 has stated that when Sh. Atma died, then Sh. Nagina Singh brought her in his house after performing

Muklawā ceremony. Sh. Nagina Singh also brought her sister Smt. Naurati. She lived with Naurati in the house of Sh. Nagina Singh for one and half year as his wife. During cross-examination, she stated that when she was residing in the house of Sh. Nagina Singh, she was not permitted to go outside and he was not allowing her to see anybody. There was some dispute inter se between Smt. Naurati and her because they were co-wives. In that context, she stated that Sh. Nagina Singh was my brother-in-law but never my husband. However, the aforesaid statement is required to be read in the context in which the aforesaid statement was made.

5.6 The Court has held that Smt. Nikko has stated that she was never married to Sh. Nagina is required to be read in the context of the fact that previously she was married to Sh. Atma, brother of Sh. Nagina. She along with her sister Smt. Naurati were brought in Muklawā ceremony by Sh. Nagina. She against the wishes of Sh. Nagina, married to Sh. Naraina. In these circumstances, the effect of her deposition that Sh. Nagina was never her husband is required to be examined.

5.7 The First Appellate Court's reason No.(iv) is also insubstantial. Sh. Hazura Singh is son of Smt. Nikko. He was not supposed to know the amount spent by Sh. Jeet Singh in purchase of the land. He is stated to have appeared as a witness in a suit filed by Sh. Bhajan Singh. Sh. Teja Singh had sold the property in favor of Sh. Bhajan Singh. In that suit, the issue was "whether Sh. Teja Singh and others are sons of the Sh. Dasondi or not?" Hence, the effect of statement of Sh. Hazura Singh is required to be carefully analyzed.

5.8 The First Appellate Court before reversing the judgment of the trial Court is required to critically analyze the reasons given by the trial Court. However, in this case, the First Appellate Court has failed to do so.

6. Discussion by this Court:-

6.1 The first argument of the learned counsel representing respondent No. 1 to 6 has already been examined in detail in the foregoing paragraphs. Similarly, the second argument of the learned counsel of respondent No. 1 to 6 is also not correct because not only the oral evidence, but the documentary evidence has also been produced. Similarly, the first argument of the learned counsel representing respondent No.7 and 8 is incorrect. The certified copies of the birth certificate issued by the competent authority are per se admissible.

6.2 This Court has failed to comprehend the second argument put forth by the learned counsel representing the respondent. Undoubtedly, the language used in the birth certificates is Urdu, which have been read with the help of official translator attached to this Court. These certificates prove that three children, two females and one male were born to Sh. Sunder at village Behlolpur.

6.3 With regard to argument No.3, it may be noted that the entire statement of Sh. Bachana is required to be read and not the isolated sentence.

6.4 Respondents No. 7 to 9 and 10 are claiming to be the purchasers during the pendency of the second appeal. Hence, they are purchasers lis pendens, i.e. they purchased the property when the litigation was pending. They are governed by the rule of lis pendens. Hence, they cannot claim to be the bonafide purchasers. Their purchase is subject to the result of the pending litigation.

7. Decision:-

7.1 Keeping in view foregoing discussion, the appeal is allowed.

7.2 All the pending miscellaneous applications, if any, are also

disposed of.

April 18th, 2024

(ANIL KSHETARPAL)
JUDGE

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No