

2024:PHHC:051956

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1256-1994 (O&M)

Date of decision: 18.04.2024

Bhagwana and others

....Appellants

Versus

Indira

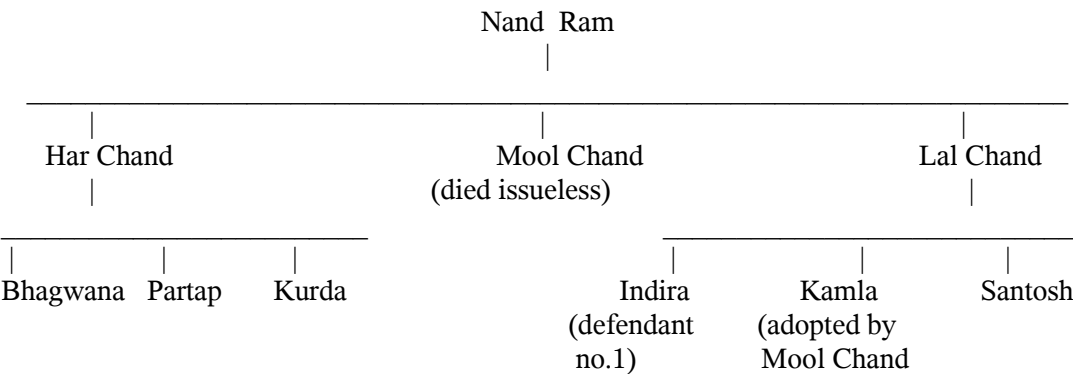
..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Sanjeev Kumar Aggarwal, Advocate for the appellants
Mr. R.K.Sharma, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the plaintiffs assail the correctness of concurrent findings of fact arrived at by the courts below while dismissing their suit for the grant of decree of declaration that the judgment and decree dated 04.10.1983 passed in favour of Smt.Indira (defendant no.1) is illegal, null and void.
2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.
3. To demonstrate the inter-se relationship between the parties a pedigree table is extracted as under:-



4. Sh.Mool Chand was unmarried and issueless. Smt. Indira filed a suit claiming that in a family settlement Sh.Mool Chand

acknowledged her to be owner of the property. Sh.Mool Chand appeared in the suit and conceded to claim, resulting in decree dated 04.10.1983. He also executed a registered Will bequeathing his entire property in favour of Smt.Indira on 01.08.1983. Sh.Bhagwana, Partap and Khurda filed a suit for declaration that such decree is not binding on their rights. In substance, the plaintiff claims that the property is ancestral, which could not be alienated without legal necessity and valuable right. On appreciation of evidence, both the courts have dismissed the suit on the ground that the plaintiff has failed to prove custom, which prohibits a sonless proprietor from transferring the property in favour of his niece.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

6. It may be noted here that the First Appellate Court has only modified some of the findings of the trial court, however, the result of the suit remains the same.

7. Learned counsel representing the appellants submits that in this case, custom is proved and Sh.Mool Chand had no right to transfer the property by way of a consent decree.

8. This Court has considered the submissions made by the learned counsel representing the parties. However, finds no substance therein. It is well settled that the custom is not only required to be pleaded but also proved. In the present case, the plaintiffs have claimed that it was ancestral property and they are governed by custom in the

order of alienation and succession, however, no specific custom applicable to sonless proprietor was brought to the notice of the Court.

9. Keeping in view the aforesaid facts, no ground to interfere is made out.

10. Hence, dismissed.

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

18.04.2024
rekha
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE