

103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-765-1994 (O&M)
Date of decision: 16.05.2024

Hukami Devi
....Appellant

Versus

Durgi
..Respondent

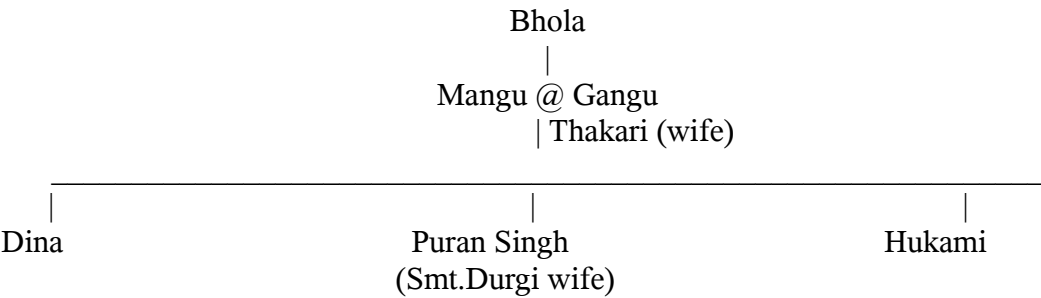
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.G.S.Dhaliwal, Advocate for the appellant

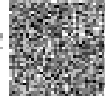
Mr. Rajesh Tushar, Advocate for
Mr. Roshan Lal, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

1. In this Regular Second Appeal, the defendant assails the correctness of the judgment passed by the First Appellate Court, which in turn, has been reversed the judgment passed by the trial court.
2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.
3. A small pedigree table would enable the Court to understand the inter se relationship between the parties:-



4. The dispute in the present case is with regard to the estate of late Sh.Dina, who died unmarried and issueless on 13.04.1985.
- Smt.Durgi widow of Sh.Puran filed a suit for the grant of decree of



declaration that Smt.Hukam Devi @ Hukami is not legal heir of Sh.Dina. Hence, she is not entitled to succeed the estate of late Sh.Dina and the mutation of inheritance sanctioned in favour of Smt.Durgi and Smt.Hukami in equal share is illegal.

5. The defendant, while contesting the case, claimed that she is sister of Sh.Dina, being daughter of Sh.Mangu @ Gangu. The trial court dismissed the suit, however, the First Appellate Court reversed the judgment passed by the trial court.

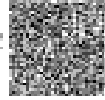
6. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

7. Learned counsel representing the appellant, while criticising the First Appellate Court's judgment submits that the entire approach of the First Appellate Court was incorrect. While elaborating, he submits that the First Appellate Court has failed to follow the basic principles of law.

8. Per contra, the learned counsel representing the respondent submits that documents Ex.P-7 and P-9 prove that Smt.Hukami was born to Sh.Ghanaya with whom Smt.Thakari remarried after death of Sh.Mangu @ Gangu. He submits that Sh.Mangu died in the year 1926 whereas Smt. Hukami was born on 02.07.1930.

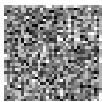
9. This Court has considered the submissions made by the learned counsel representing the parties.

10. First of all, the First Appellate Court has erred in shifting the entire burden of proof upon the defendant. The plaintiff was required to prove her case. She did not appear in the court to testify.



The trial court drew adverse inference. However, the First Appellate Court refused to draw adverse inference on the ground that the plaintiff has produced some evidence. In this case, deposition of plaintiff was of paramount importance, particularly when she was claiming that the defendant is not her husband's sister. Her cross-examination was necessary to dig out the truth. Secondly, the First Appellate Court has misread the evidence. The plaintiff has only examined Sh.Jasbir Singh, Clerk who has produced the date of birth certificate Ex.P-7 and the death certificate Ex.P-9. Ex.P-7 is relating to Smt. Bambo and not Smt.Hukami. There is no evidence that Smt.Hukami was also known as Smt.Bambo. Moreover, Smt. Bambo's father name in the certificate is Sh.Gangu s/o Sh.Noka whereas Smt.Hukami's father name was Sh.Mangu @ Gangu s/o Sh.Bhola. Hence, document Ex.P-7 does not relate to the defendant. The next document is Ex.P-9, which is the death certificate of Sh.Gangu s/o Sh.Noka whereas defendant's father name is Sh.Mangu @ Gangu s/o Bhola. Hence, the First Appellate Court has overlooked this fact.

11. Moreover, the defendant appeared in evidence and deposed that she is daughter of Sh.Mangu @ Gangu and Smt. Thakari. She specifically states that her mother Smt. Thakari never remarried with Sh.Ghanaya. The plaintiff did not lead any evidence to prove that Smt. Thakari had remarried with Sh.Ghanaya. Moreover, Smt. Thakari, during her lifetime, executed a mortgage deed Ex.D1 on 13.09.1931, in which, it was recited that Smt. Hukami is her daughter. The First Appellate Court has overlooked this document. It may be noted here



that the First Appellate Court has concluded on the basis of document Ex.P9 that Sh.Mangu @ Gangu, the father of defendant died on 06.06.1926 whereas document Ex.P9 does not relate to Sh.Mangu @ Gangu s/o Sh.Bhola. The defendant, while appearing in evidence, has deposed that at the time of death of her father, she was six years old.

12. Moreover, the revenue authorities sanctioned mutation in the presence of respectables. The burden was on the plaintiff to prove that the mutation has been wrongly sanctioned. Consequently, the judgment passed by the First Appellate Court suffers from perversity. Hence, the same is set aside and the judgment and decree passed by the trial court is restored.

13. Regular Second Appeal stands allowed.

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

16.05.2024

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE