

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-4127-2008 (O&M)
Reserved on: 15.01.2024
Date of decision: 13.02.2024

NANAK CHAND (DECEASED) THROUGH LRS.
Versus
SATBIR (DECEASED) THROUGH LRS & OTHERS

..Appellant
..Respondents

2. COCP-3478-2019

NANAK CHAND (DECEASED) THROUGH LRS.
Versus
SATBIR & OTHERS

..Petitioner
..Respondents

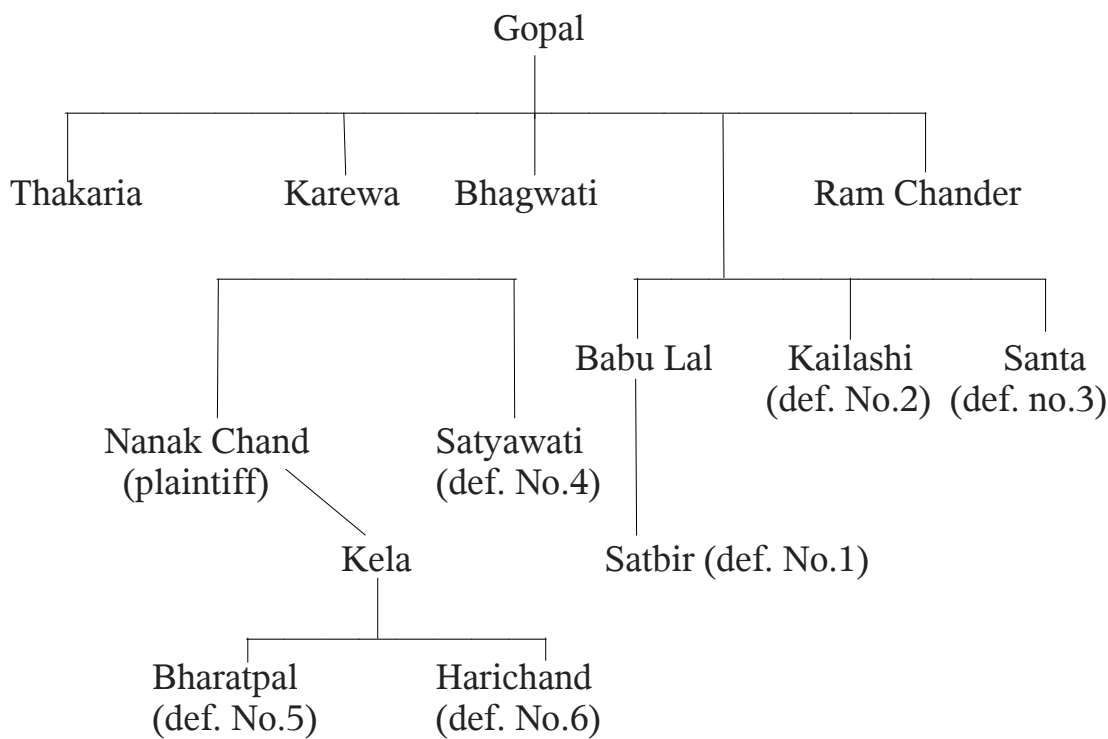
CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Puneet Jindal, Sr. Advocate
with Ms. Navroop Jawanda, Advocate
for the appellant.

Mr. Rahul Sharma, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. In this regular second appeal, the plaintiff (Sh. Nanak Chand) assails the correctness of the judgment and decree passed by the First Appellate Court, which in turn has reversed the judgment and decree passed by the trial Court.
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. A small family tree of the parties would help the Court to understand their *inter se* relation, which is extracted as under:-



4. Sh. Chander @ Ram Chander was married to Smt. Bhagwati. The couple was blessed with three children namely Sh. Babu Lal (son), Smt. Kailashi and Smt. Santa (daughters). Sh. Chander @ Ram Chander is stated to have died in the year 1950. Subsequently, Smt. Bhagwati married (karewa-customary marriage) with Sh. Thakaria, the younger brother of Sh. Chander @ Ram Chander. Sh. Thakaria and Smt. Bhagwati were blessed with two children namely Sh. Nanak Chand (plaintiff-appellant) and Smt. Satya Wati. It is the case of the plaintiff-Sh.Nanak Chand, that Sh. Thakaria was in possession of the land as tenant under Sh. Gobind Ram, Sh. Arjan Dev, Sh. Madan Lal, sons of Sh. Meghraj who filed petition for eviction of Sh. Thakaria from the tenanted land, in which Sh. Thakaria was ordered to be evicted subject to allotment of equivalent land out of surplus pool. In other words, it was a conditional order. Thereafter, Sh. Thakaria was allotted the suit land from the surplus pool, however, before the allotment letter could be issued, Sh. Thakaria died. Hence, the allotment letter was issued in favour of Smt. Bhagwati, who was widow of Sh. Thakaria. Smt.

Bhagwati died in the year 1985. The revenue authorities sanctioned the

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mutation in favor of Sh. Nanak Chand-plaintiff and Smt. Satya Wati, daughter of Sh. Thakaria and Smt. Bhagwati, however, defendant No.1, 2 and 3, challenged the aforesaid mutation. The Assistant Collector, Ist Grade, ordered sanction of mutation in favor of five class-I heirs of Smt. Bhagwati namely Sh. Nanak Chand, Smt. Satya Wati, Sh. Babu Lal, Smt. Kailashi and Smt. Santa. The plaintiff Sh. Nanak Chand filed Civil Suit No.707 of 21.12.1987 against Sh. Babu Lal, Smt. Kailashi, Smt. Santa and Smt. Satya Wati. Sh. Babu Lal filed a written statement admitting the claim of the plaintiff. He also suffered a statement in the Court to the effect that he has entered into settlement and he has no right in the aforesaid land and the suit be decreed. On the basis of the aforesaid statement, due to ill advise, Sh. Nanak Chand also made a statement that he has no objection if the suit is dismissed as withdrawn. Consequently, the suit was dismissed as withdrawn on 04.01.1989.

5. It is also the case of plaintiff that defendant No.2 to 4 in the previous suit, namely Smt. Kailashi, Smt. Santa, Smt. Satya Wati and State of Haryana did not contest. Subsequently, Sh. Satbir son of Sh. Babu Lal and defendant No.5 to 7, namely the plaintiff's wife and two sons colluded and a conclusive degree was got passed to the effect that Sh. Satbir is owner to the extent of 2/5th, whereas defendant No.5 to 7 are owner of 3/5th share and accordingly, the entries were got made in the revenue record after partitioning the property. The plaintiff prays for grant of decree of declaration that the decree of declaration got passed by the defendants and the order of partition and mutation are null and void and not binding on the rights of the plaintiff. The defendant No.1 and 3 contested the suit. They claimed that the land was allotted to Smt. Bhagwati and she became

previous suit was result of fraud and misrepresentation and they are co-owners of the property. It was also claimed that the plaintiff has already transferred with right in favor of Smt. Kela Devi, his wife, and Sh. Bharat Pal and Sh. Hari Chand, his two sons.

6. The trial Court on appreciation of evidence decreed the suit filed by the plaintiff and he was declared owner in possession of the entire suit land, which in appeal has been reversed by the First Appellate Court.

7. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

8. On the one hand, the learned counsel representing the appellant while highlighting the facts which have already been noticed, submits that the trial Court correctly decreed the suit, whereas, on the other hand the learned counsel representing the respondents has submitted that the suit filed by the plaintiff is barred under Order XXIII Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the “CPC”), and the allotment of land is in the name of Smt. Bhagwati who had made the payment. There is no documentary evidence on record to show that the land in question was allotted to Sh. Thakaria nor there is evidence on record to show that Sh. Thakaria was tenant over land measuring 31 kanal and 13 marlas. It is also contented that the plaintiff has claimed himself to be owner as coparcenary, which is not made out. It is also contended that the property held by Smt. Bhagwati was her absolute property in view of Section 15(2) of the Hindu succession Act, 1956 (hereinafter referred to as the “1956 Act”), and the suit filed by the plaintiff was barred by limitation.

9. This Court has considered the submissions and analyzed the arguments of the learned counsel representing the parties.

10. It may be noted here that Sh. Thakaria was a tenant and by a conditional order that he will be allotted land out of surplus pool is proved on careful reading of order passed by the Assistant Collector (Ex.D-9) dated 11.12.1987. Moreover, Sh. Babu Lal in the previous suit has specifically admitted the plaintiff's case by filing an admitting written statement. In the previous suit, Sh. Nanak Chand stated the aforesaid facts. Sh. Babu Lal while filing the written statement, admitted the contents of each and every paragraph. Moreover, Sh. Babu Lal suffered statement (Ex.P-4), in which he admitted that he has no right, title or interest in the same. He rather made a statement that the suit be decreed. In that suit, defendant No.2 to 5, namely Smt. Kailashi, Smt. Santa and Smt. Satya Wati did not contest the suit. It was on account of ill advice the suit was withdrawn. The trial Court should have decreed the suit, which would have ended the litigation between the parties.

11. It may be noted here that it is not a case of the defendants that Smt. Bhagwati was cultivating the land as tenant and she was entitled to the property. Hence, there is no substance in the argument of learned counsel representing the respondent that the plaintiff has failed to prove his case.

12. The second argument of the learned counsel representing the respondent also does not have substance because Order XXIII Rule 1 of the CPC, shall not be applicable because the cause of actions in the previous and this suit was not same. The expression Sub-Rule 4 of Order XXIII of the CPC is 'such subject matter'. The expression 'such subject matter' does not denote only the suit property. It would denote the substance of the dispute, which is required to be decided. In this case, the plaintiff filed a suit because later on defendant No.1 and defendant No.5 to 7, in collusion with

No.1 i.e. Sh. Satbir is owner to the extent of 2/5th share. Thereafter, they got the property partitioned. This was not the cause of action in the previous suit. It is evident in the previous suit, the plaintiff claimed that he has requested the defendants not to interfere in his peaceful possession but defendants did not listen. Hence, the present suit and subsequent suit were based on different causes of action.

13. The next argument of the learned counsel representing the respondents also does not have substance because Smt. Bhagwati was allotted the land only because Sh. Thakaria was ordered to be evicted, subject to the allotment of land from surplus pool. It was in that context, Smt. Bhagwati was allotted land because Sh. Thakaria had died in the meantime. Thus, by implication, the property would have been allotted to Sh. Thakaria had he been alive. In such circumstances, the defendants cannot claim that Smt. Bhagwati was absolute owner of the property. In fact, she was only representing the state of Sh. Thakaria.

14. Similarly, there is no force in the submission of the learned counsel that no documentary has been produced to prove that Sh. Thakaria was in possession as tenant of land measuring 31 kanal and 13 marlas.

15. Sh. Babu Lal predecessor in interest of defendant No.1 has already admitted this fact. Moreover, the Assistant Collector, Ist Grade in the order Ex.D-9 has also, as a matter of fact found that Sh. Thakaria was a tenant against whom a conditional order of ejectment was passed and subsequently, in lieu thereof Sh. Thakaria was allotted the suit land.

16. As regard the next argument, it may be noted here that the plaintiff has made various alternative claims. However, the suit property is not a co-parcenary property.

respondent also lacks substance because on a careful perusal of the written statement filed by Sh. Babu Lal as well as his deposition in the Court Ex.P-4, it becomes evident that Sh. Babu Lal had in fact made a statement that the suit filed by Sh. Nanak Chand be decreed. It was the error on the part of the Court to dismiss the suit as withdrawn.

18. The next submission of the learned counsel representing the respondents that Smt. Bhagwati by virtue of Section 15(2) of the 1956 Act became absolute owner also does not stand closed scrutiny because Smt. Bhagwati was allotted land only because Sh. Thakaria, by then had died. In such circumstances, Smt. Bhagwati does not become absolute owner.

19. The last submission of the learned counsel representing the respondents that the suit filed by the plaintiff was time barred, also does not have substance because the plaintiff has claimed that the cause of action accrued to him on 16.11.2000, he is claiming decree of declaration that the order of partition be set aside.

20. It may be noted here that the alleged collusive decree suffered between defendant No.1 (Sh. Sabir) and defendant No.5 to 7, has not been produced. The limitation will begin to run only when the cause of action arises. Sh. Nanak Chand is not claiming any possession. Hence, the suit has not been filed beyond the period of limitation.

21. It may be noted here that the reasons recorded by the First Appellate Court and arguments of the learned counsel representing the respondent are common. Hence, it would not be appropriate re-examine the same. There is only one additional ground. The First Appellate Court has held that the plaintiff has transferred his share in favor of his wife and son.

In the considered opinion of Court, such *inter se* transfer of property in between the small family would not debar the plaintiff from claiming his

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rights in the property. It has also come on record that Smt. Satya Wati has already relinquished his share in favor of Sh. Nanak Chand. Now, the Court is required to examine the relief to which the plaintiff is entitled to. This Court has already held that Sh. Thakaria would be deemed to be owner of the property. It was a self acquired property. On the death of Sh. Thakaria, the property would devolve upon in equal share in favor of three class-I heirs namely Smt. Bhagwati, Sh. Nanak Chand and Sh. Smt. Satya Wati. Hence, as per Section 15, on the death of Smt. Bhagwati in the year 1985, her share i.e. 1/3rd of the suit property shall devolve upon on five class-I heirs namely Sh. Babu Lal, Smt. Kailashi, Smt. Santa (her children from the loins of Sh. Ram Chander or Chander) and Sh. Nanak Chand and Smt. Satya Wati (her childrens from the loins of Sh. Thakaria). Thus, Sh. Satbir would be owner to the extent of 1/15th share. Similarly, Smt. Kailashi and Smt. Santa will inherit 1/15 share each i.e. equivalent to their brother. Since Smt. Satya Wati has already relinquished her share in favor of Sh. Nanak Chand. The Nanak Chand's share would come to share would come to 12/15th because Sh. Nanak Chand became the owner of 1 /3rd share on the death of Sh. Thakaria. He also became the owner of 1/3rd share when Smt. Satya Wati relinquished her share. On the death of Smt. Bhagwati, he will inherit 2/15th share (1/15th each of Smt. Satya Wati and himself)

22. With these observations, the appeal is allowed.

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23. The contempt petition was filed against the violation of an interim order.

24. As the main appeal has been allowed, therefore, this Court does not find it appropriate to proceed with the matter.

of accordingly.

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

February 13th, 2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No