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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-323-2020 (O&M)**Reserved on : 18.11.2024****Pronounced on : 10.12.2024**

Girraj Singh

....Appellant

VERSUS

Braham Singh & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashok Kaushik, Advocate for the appellant.

ALKA SARIN, J.

1. The present regular second appeal has been preferred by the plaintiff No.1-appellant against the judgements and decrees dated 13.12.2016 and 06.07.2019 passed by the Trial Court and the First Appellate Court dismissing his suit for declaration and permanent injunction.

2. The suit was filed by the plaintiff No.1-appellant and his brother Mahavir (plaintiff No.2-respondent No.2 herein) averring that the suit land was owned and possessed by their grand-father Vijay Singh s/o Sada Sukh and after the death of Vijay Singh the suit land was inherited by his three sons namely Murli, Shambhu and Pat Ram in equal shares i.e. 1/3rd share each. Murli expired leaving behind the plaintiffs and defendant No.1 (respondent No.1 herein) as his legal heirs/successors-in-interest qua his respective share in the suit land. Pat Ram during his life sold his respective share i.e. 1/3rd share in the suit land to different persons. Shambhu died issueless on 23.01.1977 being unmarried. As per the plaintiffs the 1/3rd share of Shambhu should be divided between the plaintiffs, defendant No.1 and

proforma defendants in equal shares. However, defendant No.1 by playing fraud along with Smt. Sukhwati and with the revenue authorities, got sanctioned the mutation in his own favour qua the 1/3rd share of Shambhu claiming himself as being the son of Shambhu and Smt. Sukhwati being the widow of Shambhu. As per the plaintiffs, on the basis of the wrong entries in the revenue record the defendant No.1 filed three separate partition suits for three different khewats which partition suits were decided by the Assistant Collector IIInd Grade and the defendant No.1 was declared as owner of 1/3rd share of Shambhu in all the khewats. The defendant No.1 had threatened to interfere in the possession of the plaintiffs and grab their share, hence the suit. In his written statement the defendant No.1 pleaded that the plaintiffs and defendant Nos.2 to 6 are the legal heirs of Murli while the defendant No.1 is the son and legal heir of Shambhu. It was averred that Smt. Sukhwati was married with Murli and after the death of Murli Smt. Sukhwati made a Karewa with Shambhu and out of this Karewa the defendant No.1 was born in 1971. It was denied that Shambhu died issueless and was unmarried. It was further averred that the plaintiff-appellant had admitted the partition and also given a written submission to the Police on 02.12.2010 that he is the son of Murli and the defendant No.1 is the son of Shambhu and he has no objection regarding the partition proceedings. The remaining defendants filed a separate written statement submitting that if the suit is decreed then they have no objection.

3. From the pleadings of the parties following issues were framed :

1. Whether the plaintiffs are entitled to relief a decree for declaration, as prayed for ? OPP

2. Whether the plaintiffs are entitled to relief a decree for permanent injunction, as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD
4. Whether the plaintiffs have no cause of action and locus standi to file the present suit ? OPD
5. Whether the plaintiffs have not come to the Court with clean hands ? OPD
6. Whether the suit is bad for non-joinder and mis-joinder of necessary parties ? OPD
7. Relief.

4. Vide judgement and decree dated 13.12.2016 the Trial Court dismissed the suit of the plaintiffs. The appeal of the plaintiffs was also dismissed by the First Appellate Court vide judgement and decree dated 06.07.2019. Hence, the present regular second appeal by the plaintiff No.1-appellant alone.

5. Learned counsel for the plaintiff No.1-appellant has contended that both the Courts have erred in dismissing his suit. It is urged that the suit land was inherited by all the parties since Shambhu had died issueless and was unmarried. It is urged that the defendant No.1 was not the son of Shambhu and neither was Smt. Sukhwati ever married to Shambhu.

6. Heard counsel for the plaintiff No.1-appellant.

7. In the present case the plaintiff No.1-appellant has been unable to disprove that Smt. Sukhwati performed Karewa with Shambhu after the death of her husband Murli. The evidence, oral and documentary, produced by the plaintiffs itself did not support the case set-up by them. Even the year of birth of the defendant No.1 is after the death of Murli and therefore there is no possibility of defendant No.1 being born from the loins of Murli. The

birth certificate of defendant No.1 also mentions his father's name as Shambhu. It is also to be noted that in the plaint of an earlier suit (Ex.D41) filed by the present plaintiff No.2 (respondent No.2 herein) the present defendant No.1 was impleaded as a party described as 'Braham Singh son of Not Known' and Smt. Sukhwati was impleaded as a party described as 'widow of late Budha' with a specific averment that after the death of Murli Smt. Sukhwati had performed Karewa with Budha son of Harbhajan. There are contradictions in the stand taken by the plaintiffs. Learned counsel for the plaintiff No.1-appellant is unable to point to any cogent and reliable evidence on the record to dislodge the concurrent findings recorded by both the Courts. In the absence of such reliable evidence, the findings recorded by both the Courts cannot be faulted. No other point was argued.

8. In view of the above, no mistake or error of law or facts can be found with the judgments and decrees passed by both the Courts. No question of law, much less any substantial question of law, arises in the present case. The appeal being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

10.12.2024

Yogesh Sharma

(ALKA SARIN)

JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No