

2024:PHHC:168502



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

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**RSA No.2248 of 2019 (O&M)
Reserved on : 10.12.2024
Date of Decision: 17.12.2024**

Neetu & Anr.

....Appellants

VERSUS

Smt. Bhagwan Devi @ Bhano & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Raj Kumar Gupta, Advocate for the appellants.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellants against the judgment and decree dated 12.07.2016 passed by the Trial Court and the judgment and decree dated 18.09.2018 passed by the First Appellate Court dismissing the suit for declaration and permanent injunction filed by them.

2. The brief facts relevant to the present *lis* are that the plaintiff-appellants approached the Court averring that they were the daughters of Bina @ Meena who was the daughter of Jage and his wife Smt. Bhagwan Devi (defendant-respondent No.1). Hari Ram (defendant-respondent No.2) was the son of Jage while Bimla (defendant-respondent No.3) was the other daughter of Jage. The plaintiff-appellants thus claimed that they were the grand-daughters of defendant-respondent No.1 and the nieces of defendant-

respondent Nos.2 and 3. It was averred that after the death of Jage the suit land was succeeded by his legal heirs - his widow, son and daughters - i.e. the defendant-respondent Nos.1 to 3 and the mother of the plaintiff-appellants and mutation to this effect was recorded and sanctioned by the revenue authorities. As per the plaintiff-appellants their mother Bina @ Meena died on 13.10.1989 and after her death the plaintiff-appellants stepped into the shoes of their mother Bina @ Meena being the first class legal heirs and thus the plaintiff-appellants are owners in possession of the suit land to the extent of 1/12 share i.e 1/24 share each. The defendant-respondent No.1 had already sold her 1/12 share on 10.05.1988 while defendant-respondent No.3 had in 2004 relinquished her share in the suit land in favour of her brother i.e. defendant-respondent No.2. It was the case set-up that after the demise of their mother Bina @ Meena the mutation of inheritance was sanctioned in favour of the defendant-respondent No.1 instead of the plaintiff-appellants. The plaintiff-appellants had learnt that that after getting the illegal mutation No.2172 sanctioned the suit land had also been partitioned mutually among the co-sharers. Hence, the suit for declaration challenging the mutation No.2172 and for permanent injunction. In the written statement the defendant-respondent No.1 raised preliminary objections regarding maintainability, cause of action, limitation, etc. On merits it was submitted that the plaintiff-appellants had no relation with Bina d/o Jage who had died unmarried and that the defendant-respondent No.1 was the sole legal heir of Bina d/o Jage. Defendant-respondent No.2 made a statement that written statement filed on behalf of defendant-respondent No.1 be also read as written statement on behalf of defendant-respondent No.2. Defendant-respondent No.3 was proceeded against ex-parte. In the

replication the contents of the plaint were reiterated and those of the written statement were denied.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled for a decree for declaration to the effect that the mutation No.2172, 2198 are illegal, null and void and not binding upon the rights of the plaintiffs ? OPP
2. Whether the plaintiffs are also entitled for a decree for permanent injunction restrained from alienating the suit land from changing the nature of the suit land by way of excavating the soil of otherwise and from creating the encumbrances, charge and lien over the suit property ? OPP
3. Whether the suit is not maintainable in the present form ? OPD
4. Whether the suit of the plaintiff is time barred ? OPD
5. Whether the plaintiffs are estopped by their own act and conduct to file the present suit ? OPD
6. Whether the plaintiffs have no cause of action to file the present suit ? OPD
7. Relief.

4. The Trial Court dismissed the suit vide judgment and decree dated 12.07.2016. Aggrieved by the same an appeal was preferred by the plaintiff-appellants which appeal was also dismissed by the First Appellate

Court vide judgment and decree 18.09.2018. Hence, the present regular second appeal.

5. Learned counsel for the plaintiff-appellants has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellants. It is submitted that the plaintiff-appellants are the daughters of Bina @ Meena who was the daughter of Jage and therefore the plaintiff-appellants are entitled to succeed to her share in the suit land. As per counsel the impugned judgements and decrees are based upon conjectures and surmises and cannot be sustained.

6. I have heard learned counsel for the plaintiff-appellants.

7. Both the Courts have reached concurrent findings of fact that the plaintiff-appellants have failed to prove that their mother Bina @ Meena was the daughter of Jage. Bina daughter of Jage died unmarried in the month of June 1988 while Meena Devi (mother of the plaintiff-appellants) died on 13.10.1989 as disclosed by her death certificate Ex.P6. The death certificate Ex.P6 also does not prove that Meena Devi was the daughter of Jage. The plaintiff-appellants have miserably failed to link their mother Meena Devi with Jage. Even defendant-respondent No.1 while appearing as DW1 denied that she and Jage had any daughter named Meena Devi. Further, there is nothing on the record to also establish that the plaintiff-appellants are in possession of the suit land. Learned counsel for the plaintiff-appellants has not been able to convince this Court that the findings recorded by the Trial Court and the First Appellate Court are erroneous in any manner. No cogent and reliable evidence has been pointed out to convince this Court to take a divergent view from the one taken by both the Courts. No other point was argued.

8. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case. The appeal, being devoid of any merits, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.12.2024
Ankur

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO