

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2323-1993 (O&M)
Reserved on: 03.02.2025
Pronounced on: 06.02.2025

RAMBAI AND ANOTHER

Vs.

SAROJ AND OTHERS

. . . .APPELLANTS

. . . . RESPONDENTS

CORAM: HON’BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Mani Ram Verma, Advocate, for the appellants.

Mr. Man Mohan, Advocate, for respondent Nos.1 & 2.

DEEPAK GUPTA, J.

By way of present Regular Second Appeal, plaintiffs of the case have assailed the judgment and decree dated 26.08.1993 passed by the First Appellate Court of Ld. Additional District Judge, Bhiwani, whereby judgment and decree dated 10.03.1990 passed by the trial Court, decreeing the suit for declaration & permanent injunction regarding the property in dispute, was allowed, thus, reversing the judgment of the trial Court.

2. In order to avoid confusion, parties shall be referred as per their status before the Trial Court.

3.1 To understand the facts, it is necessary to mention the pedigree table between the parties, which is as under: -

Pusha @ Posa				
!				
Kalu			Chandra [died 1983]	
!				
Haria	Sube Singh (died 1972)	Ram Bai @ Om Bai	Bhanti @ Bati	Javitri @ Savitri
!				
Saroj (widow)	Krishna (daughter)	Satish (son)		

3.2. As is evident from the abovesaid pedigree table, Pusha @ Posa had two sons namely, Kalu and Chandra. Both of them inherited total land measuring 162 kanals 14 marlas situated in the revenue estate of Village Tigrana, Tehsil and District Bhiwani in equal shares. There is no dispute regarding $\frac{1}{2}$ share of land inherited by Kalu after his death.

3.3 The present dispute pertains to $\frac{1}{2}$ share in the total land pertaining to Chandra, who had died in 1983, unmarried and issue-less. His brother Kalu had five children - two sons namely, Haria and Sube Singh; and three daughters namely, Ram Bai @ Om Bai, Bhanti @ Bhati and Smt. Javitri @ Savitri. Sube Singh had died in 1972 leaving behind his widow Saroj, daughter Krishana and son Satish.

3.4 The suit has been filed by Ram Bai @ Om Bai and Bhanti @ Bhati seeking declaration against their brother Haria - defendant; and successor-interest of the deceased brother Sube Singh – defendants N: 2 to 4. The plaintiffs have impleaded their sister Javitri @ Savitri as the proforma defendant. It was alleged by the plaintiffs that Saroj, Krishana and Satish i.e. the successors-in-interest of Sube Singh had filed a suit bearing No.611 of 1982 against Chandra and Haria in Civil Court, Bhiwani alleging the family settlement of 1971, by virtue of which Chandra had relinquished his $\frac{1}{4}$ share in total land in favour of Haria; and $\frac{1}{4}$ share in favour of Plaintiffs' of that suit i.e. Saroj, Krishna and Satish. Chandra contested that suit and denied any such family settlement, but unfortunately during the pendency of that suit, said Chandra died. After his death, Haria i.e. surviving defendant of that suit made a statement that compromise had been effected between the parties. Counsel appearing for Haria also made a statement that Haria along with Saroj, Krishna and Satish were the only legal representatives of Chandra. On the basis of that statement and the compromise pleaded, Haria was declared owner of $\frac{1}{2}$ share of the land of Chandra; whereas Saroj, Krishna and Satish were declared to be owner of remaining $\frac{1}{2}$ share of the land of Chandra by way of the judgment and decree dated 03.03.1984.

3.5 By way of the present suit, the plaintiffs have challenged the aforesaid decree dated 03.03.1984 to be null, illegal and void by claiming that they along with defendant No.4 Haria and proforma defendant-Javitri @ Savitri inherited the suit land i.e. the share of Chandra in the total land in equal share. It was also pleaded that in the previous litigation, Haria through his counsel had made a misleading statement that there was no other legal representatives of Chandra, despite the fact that plaintiffs of the present suit i.e. Ram Bai @ Om Bai, Bhanti @ Bhati; and Javitri @ Savitri, being the daughters of Kalu were also alive. They assailed the decree dated 03.03.1984 based upon compromise to be null, illegal and void and not binding on their rights. Apart from decree of declaration, they further prayed for consequential relief of permanent injunction to restrain the defendants from alienating the suit property in any manner.

3.6 Defendant No.4 of this case namely, Haria admitted the claim of the plaintiffs. However, defendants No.1 to 3-Saroj, Krishna and Satish contested the suit. They asserted that by virtue of the family settlement effected in 1971, they had become owner of 1/2 share of the land of Chandra, whereas Haria had become owner of the remaining 1/2 share. It was also pleaded that the said family settlement was reduced into writing and had been executed between Chandra and Haria and attested by some of the witnesses and as such, Haria and Sube Singh had become owner of the suit land and they being the legal heirs of Sube Singh are owner in possession of 1/2 share and the remaining half belongs to Haria. They asserted that judgment and decree dated 03.03.1984 was valid and binding on the plaintiffs.

3.7 Necessary issues were framed. Evidence produced by the parties was taken on record. Ld. Trial Court decreed the suit on 10.03.1990 by holding that judgment and decree dated 03.03.1984 in Civil Suit No.611 of 1982 had been passed merely on the basis of misleading statement made by counsel representing Haria therein to the effect that there was no other legal heir of Chandra besides the parties to that suit. It was further held that family settlement Ex.D1 produced on record from the side of the defendants could

not be relied upon being an unregistered document and also for want of any fingerprint expert produced by the defendants so as to prove the thumb-mark of Chandra on the said document, who during the pendency of the previous litigation had denied any such family settlement. However, the rights of defendant No.4-Haria in the estate left behind by Chandra were upheld in terms of Sections 8 & 9 of the Hindu Succession Act, 1956 [for short 'the Act']. Resultantly, it was held that plaintiffs along with defendant Nos.4 & 5 had inherited the suit land left by Chandra in equal share.

3.8 Aggrieved by the abovesaid judgment and decree of the trial Court, the defendants No.1 to 3 of the suit i.e. legal heirs of Sube Singh filed the appeal, which has been allowed by the First Appellate Court of Id. Additional District Judge, Bhiwani, vide impugned judgment dated 26.08.1993, resulting into the dismissal of the suit filed at the instance of the plaintiffs (*appellants herein*).

4.1 Assailing the aforesaid reversal, it is contended by Id. counsel for the appellants-plaintiffs that First Appellate Court has reversed the findings and dismissed the suit simply on the premise that suit property in the hands of Chandra was ancestral and that plaintiffs being the daughters of Kalu did not have any right to inherit the ancestral property. It is pointed out that First Appellate Court also held that the family settlement of 1971 was proved in view of the statement of Haria. Id. counsel has pointed out that suit property had been inherited by Chandra and Kalu from their father Pusha @ Posa and there was no evidence that Pusha @ Posa had inherited the same from his forefathers and as such, the suit property in the hands of Chandra was not ancestral and rather, it was his personal property.

4.2 It is further contended that in the Civil Suit of 611 of 1982, which was filed by the legal heirs of Sube Singh i.e. Saroj, Krishna and Satish, Chandra had specifically denied any settlement of 1971. Unfortunately, said Chandra died and then Haria being an interested party, made a statement in his favour and in statement of legal heirs of his brother Sube Singh and it is on the basis of that misleading statement that suit property was held to be owned by Haria to

the extent of 1/2 share and legal heirs of Sube to the extent of 1/2 share. Said Haria through his counsel had made a misleading statement that Chandra did not have any other legal heir despite the fact that Ram Bai @ Om Bai, Bhanti @ Bhati and Javitri @ Savitri being the daughters of Kalu i.e. sisters of Haria were alive at that time.

4.3 Still further, it is argued that family settlement of 1971 was not at all proved as no evidence was adduced by the defendants to prove that the same bear the thumb impression of Chandra. No expert was examined, so as to prove the same and as such, First Appellate Court committed grave error in setting aside the well-reasoned judgment passed by the trial Court.

5. On the other hand, Id. counsel for the respondents-defendants has defended the impugned judgment passed by the First Appellate Court, submitting that by view of the family settlement of 1971, Chandra had given 1/2 share of his property to the predecessor namely Sube of contesting defendants of the case i.e. Saroj, Krishna and Satish. He prayed for dismissal of the appeal.

6. I have considered submissions of both the side and have appraised the record carefully.

7. Total property measuring 162 kanals 14 marlas was inherited by two brothers namely, Kalu and Chandra from their father Pusha in equal shares. There was no evidence to hold that Pusha @ Posa had inherited the same from his father/ grand-father. As such, the suit property in the hands of Chandra was not ancestral and rather, it was his personal property. Findings to the contrary made by the first appellate court are not sustainable accordingly. It is undisputed that Chandra died unmarried and issueless, thus leaving behind no class I legal heir.

8. Once it is found that suit property inherited by Chandra from his father was his personal property and he did not have any class I legal heir, Sections 8, 9 & 11 of the Hindu Succession Act, 1956 become relevant to the case, which read as under: -

“8. General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:—

- (a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;
- (b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- (d) lastly, if there is no agnate, then upon the cognates of the deceased.

9. Order of succession among heirs in the Schedule.—Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

10. Distribution of property among heirs in class I of the Schedule.-

Xxxxxxxxxxxxxx (not relevant)

11. Distribution of property among heirs in Class II of the Schedule.—The property of an intestate shall be divided between the heirs specified in any one entry in Class II of the Schedule so that they share equally.”

9. The Schedule attached to Hindu Succession Act, 1956, specifying the Class I and Class II legal heirs of a Hindu male is as under: -

THE SCHEDULE

(See section 8)

HEIRS IN CLASS I AND CLASS II

Class I

Xxxxxxxxxxxxxxxxxx (not relevant)

Class II

- I. Father.
- II. (1) Son’s daughter’s son, (2) son’s daughter’s daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation.—In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.”

10. As noted earlier, Chandra died unmarried and issue-less. He did not leave behind any class-I legal heir. He did not even have any Class-II heir in entry No.1, 2 & 3. Haria, Ram Bai @ Om Bai, Bhanti @ Bhati and Javitri @ Savitri being the brother's son and brother's daughters of Chandra were thus the only in Clause II legal heirs falling in Entry 4 of the Schedule, who would have inherited the suit property left behind by Chandra, in view of Section 8 read with Section 9 & 11 of the Hindu Succession Act, 1956, except for the impugned judgment and decree dated 03.03.1984 passed in Civil Suit No.611 of 1982 titled 'Saroj etc. Vs. Chandra and another.'

11. Based upon the evidence on record, Id. trial Court has rightly observed that the abovesaid decree dated 03.03.1984 was passed simply on the basis of statement made by counsel for Haria to the effect that Saroj, Krishna and Satish (*plaintiffs*) and Haria (*defendant*) were only legal representatives of Chandra. This statement was patently wrong and misleading as Haria, Ram Bai @ Om Bai, Bhanti @ Bhati and Javitri @ Savitri being the brother's son and brother's daughters of Chandra, who were alive at the time of death of Chandra (Sube having already died) were actually the legal heirs of Chandra as noted above. It is apparent that plaintiffs and Haria-defendant in Civil Suit No.611 of 1982 colluded with each other in order to deprive the plaintiffs of the present case Ram Bai @ Om Bai, Bhanti @ Bhati and proforma

defendant Javitri @ Savitri of their share in the suit land left behind by Chandra (deceased).

12. It has been further rightly observed by the trial Court that assertion of Saroj etc. (*plaintiffs of Civil Suit No.611 of 1982*) regarding the settlement of 1971, had been specifically controverted by Chandra in his written statement. No evidence was produced so as to prove any such alleged family settlement. The decree had been passed purely on the basis of statement of counsel for Haria, who had made a wrong statement that there was no heir of Chandra besides Haria and Saroj etc. Ld. trial Court has rightly observed that it was a collusive decree based upon misrepresentation and fraud and so, the plaintiffs being the legal heirs of Chandra (deceased) are entitled to inherit his estate along with Haria and proforma defendant Javitri @ Savitri and they are within their legal right to challenge the collusive decree passed on their back.

13. Although in the present litigation, Saroj appeared into the witness box and also examined Bharat Singh and Dhoom Singh so as to prove the family settlement Ex.D1 of 1971 and it has been testified by Bharat Singh that he had written the family settlement and the same was thumb marked by Chandra, but it is rightly observed by the trial Court that said document (Ex.D1) is purported to be executed by Chandra, Sube and Haria and it was thumb marked by Chandra. It is written on a plain paper. It purports to show that out of his 81 kanal 7 marla of land situated in village Tigrana, Tehsil and District Bhiwani, Chandra had transferred half of the land to Sube Singh son of Kalu and another half to Haria son of Kalu. It has been rightly observed that no weight can be given to this document, as it is not a registered document despite the fact that the suit land in the hands of Chandra was his self-acquired property and not the ancestral property. Although, no finger print expert was examined so as to prove the thumb mark of Chandra on the document Ex.D1, but even if it be assumed that it bore the thumb mark of Chandra, no weight can be given to this unregistered document as it purported to transfer immovable property of the value more than ₹ 100/-.

14. In the above circumstances, Ld. trial Court rightly ignored the alleged family settlement of 1971, which was pleaded by Saroj etc. Ld. First Appellate Court has completely gone in error by holding that suit property in the hands of Chandra was ancestral in the absence of any evidence to that effect. Ld. First Appellate Court also went in error by holding that the family settlement of 1971 (Ex.D1) was proved on record. This Court is not in agreement with the observations made by the First Appellate Court.

15. There was absolutely no reason to interfere in the well-reasoned judgment passed by the trial Court, which was based upon proper appreciation of legal as well as the factual position as per evidence produced by the parties.

16. In view of the entire discussion as above, present appeal is hereby accepted. The judgment and decree passed by the First Appellate Court are hereby set aside; whereas, the judgment & decree passed by the trial Court are hereby restored.

Appeal is allowed accordingly. Parties to bear their own costs.

06.02.2025

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>No</i>