

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-1324-2022 (O&M)
Date of Decision: 08.05.2025****MANBIR NOW DECEASED THROUGH HIS LRS AND ANOTHER
.....APPELLANTS****Vs.****PHULEY AND OTHERS
.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present: Mr. Vishwajeet Singh, Advocate
for the appellants.

DEEPAK GUPTA, J.

Plaintiffs of the case are in this regular second appeal against the concurrent findings of the Courts below, inasmuch as suit for declaration regarding property in dispute filed by them was dismissed by the trial Court on 24.07.2014 and the said judgment was affirmed by the First Appellate Court on 22.09.2021, by dismissing of the appeal of plaintiffs-appellants.

2.1 Subject matter of dispute is 08 kanal 16 marla of land situated in Village Kasan, Tehsil and District Gurugram, detailed in the plaint. Admittedly, the predecessor-in-interest of the plaintiffs had given the said land to one Battan son of Chander son of Fusa on *bhonedari*.

2.2 Plaintiffs claimed that *bhonedari* rights were to remain in force till the rendering of the services to supply water to the plaintiffs/their ancestors and in case of failure, *bhonedar* could be ejected by the majority of the owners. It was further the case of the plaintiffs that defendants are not related to Battan in any manner whatsoever, but they succeeded in getting the mutation No.6507, sanctioned in their favour, in collusion with the revenue staff on 05.08.2005. Previously also, they got mutation No.4383 entered in their favour regarding the land, but the same was rejected. It is further alleged that defendants previously forcibly wanted to dispossess some of the owners of the shamat Patti Bakhat Singh of their ownership



rights in the property in dispute, but they failed to do so. FIR was also registered in this regard.

2.3 Plaintiffs sought the decree of declaration that they are owners in possession of the suit land and entries to the contrary in the name of defendants are wrong and illegal and in case, defendants are found to be in possession, then a decree for possession be passed favour of plaintiffs.

3. Defendants opposed the claim by contending to be in possession of the suit land for the last more than 50 years. They further claimed to be the descendants of Battan. They further defended the mutation No.6507 in their favour. Controverting all other averments, they prayed for dismissal of the suit.

4. Necessary issues were framed. Evidence produced by the parties was taken on record. Trial Court dismissed the suit and the Appellate Court affirmed the findings.

5. Assailing the aforesaid concurrent findings, learned counsel for the appellants-plaintiffs contends that evidence on record has not been properly appreciated, as defendants could not prove themselves to be descendants of Battan Singh and as such, suit was liable to be decreed.

6. This Court does not find merit in the above contention.

7. It is no doubt true that both the Courts below returned the findings that ancestors of plaintiffs had given land on the *bhoneddari* to one Battan. It was further found by the Courts below that defendants could not prove themselves to be descendants of Battan, as neither any authenticated revenue record in the form of any pedigree table of Battan was produced nor any other evidence was produced to show as to how the rights of inheritance of Battan had travelled to defendants. So much so, one of the witnesses examined by the defendants, namely Phool Singh, admitted during cross examination that defendants are not successor-in-interest of Battan. As such, findings of the Courts below to the effect that defendants are not



descendants of Battan; and that predecessor-in-interest of the plaintiffs had given the land on *bhonedari* to Battan are affirmed.

8. Now, the question is as to whether plaintiffs-appellants were entitled to the declaration as prayed by them. As rightly observed by the First Appellate Court that no concrete evidence was produced as to when Battan had expired, where he had expired and in case he had actually expired, then his civil death was required to be got declared as per the requirement of Section 108 of the Indian Evidence Act, in case he was not heard for more than 07 years.

9. This Court does not find any illegality in the aforesaid finding as returned by the First Appellate Court, as in the absence of concrete proof regarding the death of Battan, or as to who are his legal heirs, no declaration as claimed by the plaintiffs-appellants in the suit, can be granted.

10. As such, holding the appeal to be devoid of any merit, the same is hereby dismissed.

08.05.2025

Pry

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes

Whether reportable?

No