

IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

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**RSA-4767-2019 (O&M)
Date of decision: 25.02.2025**

Baby and another

...Appellant(s)

Vs.

Kamla and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gagandeep Sanwal, Advocate for the appellants.

NIDHI GUPTA, J.

CM-13561-C-2019

Prayer in this application filed under Section 151 CPC is for condonation of delay of 23 days in refiling the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 23 days in refiling the accompanying appeal is condoned.

CM-13562-C-2019

Prayer in this application filed under Section 5 of the Limitation Act read with Section 151 CPC is for condonation of delay of 45 days in filing the accompanying appeal.

Heard.

For the reasons mentioned in the application, the same is allowed and delay of 45 days in filing the accompanying appeal is condoned.

CM-13563-C-2019

By way of the present application, the applicants/appellants have sought to place on record order dated 15.09.2015 (Annexure A-1) passed by the learned Court of Metropolitan Magistrate, Rohini, Delhi.

No reason whatsoever has been cited in the said application as to why the said order was not produced by the applicants/appellants before the Courts below despite the fact that the plaintiff No.1/appellant No.1 is the complainant in FIR No. 651 of 1995.

As such, no ground is made out to entertain this application at this stage. The same is accordingly dismissed.

RSA-4767-2019 (O&M)

The plaintiffs are in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit of the appellants for declaration to the effect that the Rapat dated 19.10.2012 is illegal and void, et cetera; with consequential relief of injunction with additional prayer for grant of permanent injunction for restraining the defendants from selling and alienating or creating any sort of charge, encumbrance on the suit land as described in the plaint, has been dismissed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'plaintiffs'; and the respondents are the 'defendants'.

3. The brief facts of the case as set out in the plaint are that the plaintiff No.1 is the widow and plaintiff No.2 is the daughter of late Rambir son of Smt. Ram Kaur. Rambir expired on 19.05.1999. He was working as a Teacher. After his death, plaintiff No. 1 being his widow, has been appointed as Peon on compensatory ground; and the plaintiffs had also inherited the estate of Rambir at Kangenheri, New Delhi. It was the contention of the plaintiffs that after the death of Smt. Ram Kaur, the defendants (who are the brothers and sisters of the deceased Rambir), and Rambir had inherited suit land measuring 6 bighas 18 biswas situated in village Wazirabad, Tehsil and District Gurgaon vide mutation No. 7071. As Rambir had died intestate leaving the plaintiffs as only legal heirs and representatives, the plaintiffs claimed to have succeeded to his estate in equal share; and therefore, had become co-owners in joint possession of the suit land and all other properties left behind by Rambir. It was alleged in the plaint that defendants manipulated rapat bearing No. 588 dated 19.10.2012 in their favour by incorrectly stating that Rambir had died issueless. The plaintiffs had no knowledge of the said rapat and only came to know of the same in the second week of March 2013, when the defendants started claiming title over the suit land on the basis of the said rapat. As such, suit for declaration was sought that the alleged rapat dated 19.10.2012 is illegal, null and void.

4. Upon notice, defendants No. 1 to 4 appeared and filed written statement contesting the suit by *inter alia* submitting that although the deceased Rambir was the son of Smt. Ram Kaur, however plaintiffs were neither the legal heirs nor the legal representatives of the deceased Rambir; that plaintiff No. 1 was never appointed as Peon in lieu of services of Rambir; mutation No. 7071 of inheritance of Rambir regarding land in Kanganheri has already been cancelled; the plaintiffs had no right, title or interest in the suit land; and that the Rapat Roznamcha No. 588 dated 19.10.2012 is legal and valid; and that the said rapat was never got incorporated by the defendants. Dismissal of the suit was prayed for.

5. Defendant No. 5 also appeared and filed separate written statement admitting the claim of the plaintiffs. No replication was filed by the plaintiffs.

6. On the basis of the pleadings of the parties, following issues were framed:-

1. *Whether the plaintiffs are entitled for declaration with consequential relief of permanent injunction as prayed for?OPP*
2. *Whether the plaintiffs have not come with clean hands before the court? OPD*
3. *Whether the plaintiffs have no cause of action to file the present suit? OPD*
4. *Whether the plaintiffs are estopped from filing the present suit by their own act, conduct, admission, commission, omissions acquiescence and latches etc.?OPD*
5. *Whether the suit of plaintiffs is not maintainable in the present form? OPD*

6. Whether the plaintiff has no locus standi to file the present form?OPD

7. Whether the suit of the plaintiff is bad for mis joinder and non joinder of the necessary parties?OPD

8. Relief.

7. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issue No. 1 in favour of the defendants and against the plaintiffs; issues No. 2 to 7 against the defendants and in favour of the plaintiffs as the defendants neither adduced any evidence nor pressed the said issues during arguments; and accordingly suit of the plaintiffs was dismissed with costs vide judgment and decree dated 14.07.2015 passed by learned trial Court. The appeal filed by the plaintiffs was also dismissed by the learned Additional District Judge, Gurgaon vide judgment and decree dated 15.11.2018 thereby affirming the findings of the learned trial Court. Hence, the present second appeal.

8. Ld. counsel for the appellants/plaintiffs assails the impugned judgments and decrees of the learned Courts below by submitting that the plaintiff No.1 had filed an FIR No. 651 of 1995 under Sections 498A and 406 IPC at Police Station S.P. Badli against the six accused persons i.e.: (i. Gulab Singh; ii. Rambir son of Gulab Singh; iii. Sewa Ram son of Gulab Singh/defendant No.3; iv. Ramjit Singh son of Gulab Singh/defendant No.4; v. Ram Khilari son of Gulab Singh/defendant No.5; and vi. Gomti Devi wife of Ram Khilari, in which the learned Metropolitan Magistrate, Rohini Delhi had passed order dated 15.09.2015 (Annexure A-1) titled as '*State vs. Gulab Singh*' thereby acquitting the accused for offences under Section 498A and

34 IPC; while also holding that no offence under Section 406 IPC was made out against the accused Rambir who had expired during the trial and the proceedings against him stood abated vide order dated 21.12.1999. Learned counsel contends that from the above said FIR and order dated 15.09.2015, it is clear that plaintiff No.1 was married to Rambir; and plaintiffs were therefore entitled to inherit the state of deceased Rambir. It is further contended that learned Courts below are in error in dismissing the suit of the plaintiffs as the plaintiffs had led voluminous, cogent and documentary evidence in the form of Ex.P2 to Ex.P11 to prove her claim over the suit land. However, the same has been misread, misconstrued and/or ignored by the Id. Courts below. It is accordingly prayed that the present appeal be allowed.

9. No other argument is raised on behalf of the appellants/plaintiffs.

10. I have heard learned counsel for the appellants/plaintiffs and perused the case file in great detail.

11. It is the first contention of learned counsel for the plaintiffs that even though the accused persons were acquitted in the FIR No. 651 of 1995 by the learned Metropolitan Magistrate, Rohini, Delhi vide order dated 15.09.2015 (Annexure A-1), however the same proves the marriage of plaintiff No.1 with deceased Rambir. I find no merit in the said contention. Admittedly, Annexure A-1 was never produced by the appellants before either of the learned Courts below. The same is now

sought to be placed on record before this Court by way of an application under Order 41 Rule 27 read with Section 151 CPC (CM-13563-C-2019).

12. It has been stated by learned counsel for the plaintiffs before this Court that the said order dated 15.09.2015 could not be produced before the Courts below as the same was passed after passing of the impugned judgments and decrees of the learned Courts below. The said argument of learned counsel for the appellants is on the face of it false as the judgment and decree of the learned trial Court is 14.07.2015; whereas judgment and decree of the learned first appellate Court is 15.11.2018; whereas Annexure A-1 is dated 15.9.2015. There is no reason given as to why Annexure A-1 was not produced by the appellants at least before the learned first appellate Court. As such, the same cannot be entertained at this stage.

13. Even otherwise, perusal of Annexure A-1 shows that there is no finding recorded therein that the plaintiff No.1 was married to the deceased Rambir on 26.06.1988 as alleged. Further plaintiffs have failed to prove with cogent evidence that plaintiff No.1 is the widow and plaintiff No.2 is the daughter of the deceased Rambir. The learned first Appellate Court vide impugned judgment and decree dated 15.11.2018 affirmed the findings of the learned trial Court; while also holding that relation of the plaintiffs was not proven on record; that the plaintiffs had not disclosed in evidence including her affidavit when plaintiff No.1 got married with the deceased; plaintiff No.1 had not examined any witness to the alleged marriage between plaintiff No.1 and deceased Rambir who could prove that she was

legally wedded; even no DNA report that plaintiff No.2 is the daughter of the deceased Rambir was produced; that plaintiffs failed to disclose even in the plaint or in the entire evidence including her affidavit as to on what date and at which place, plaintiff No.1 was married to Rambir and who was witness of their marriage; the documentary evidence allegedly placed on record by the plaintiffs in the form of ration card, Aadhar card and appointment on compensatory grounds etc. Ex.P2 to P11 were held to be *per se* not permissible as the plaintiffs had failed to prove the same in accordance with law. Only the photocopies of the said documents were placed on record. Even the originals were not tendered. Thus, it is nowhere proven on record that plaintiff No.1 was ever married to the deceased Rambir as alleged.

14. As regards the other contentions raised by learned counsel for the plaintiffs, the same are also baseless and meritless. It is to be noted that plaintiffs are aggrieved of the rapat dated 19.10.2012. However admittedly, the said rapat dated 19.10.2012 has not been produced by the plaintiffs before the learned Courts below. The plaintiffs have failed to tender the impugned rapat dated 19.10.2012 and prove the said rapat on the case file. Thus, plaintiffs were not entitled to relief of injunction.

15. Moreover, Plaintiff No.1 had deposed in her cross-examination that suit land was acquired by Government of Haryana and that the defendants had taken compensation from the Government in respect of the suit land. In this background, question of ownership does not arise.

16. Learned counsel for the appellants/plaintiffs is unable to dispute or controvert the above said facts and findings.

17. Accordingly, the present regular second appeal is **dismissed**.

18. Pending applications, if any, stand disposed of.

25.02.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No