

**(1989) 08 P&H CK 0186**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 103 of 1979

Shadi Lal and ors.

APPELLANT

Vs

Dewan Chand and ors.

RESPONDENT

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**Date of Decision:** Aug. 31, 1989

**Citation:** (1990) PLJ 1 : (1990) 1 RRR 236

**Hon'ble Judges:** G.R.Majithia, J

**Advocate:** Mr. Vijay Kumar Jhanji, Advocate, Mr. Ravi Kapur, Advocate, Mr. K.P. Bhandari, Senior Advocate, Advocates for appearing Parties

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**Judgement**

G.R. Majithia, J.

This judgment will dispose of Regular Second Appeal Nos. 103 and 104 of, 1979.

**THE FACTS.**

The appellants Shadi Lal and others (hereinafter referred to as the plaintiffs) filed a suit for declaration that they were the owners of the suit land and as a consequential relief for possession of the same and further that sale deed dated January 15, 1968 being invalid will not affect their rights. They claimed that they were the heirs of Des Raj deceased, who was the last male owner of the land in suit. The suit land was allotted to him in lieu of the land left by him in Pakistan. The defendants Nos. 1 to 5 representing themselves to be the heirs of Des Raj deceased sold the suit land to defendant No. 6 vide sale deed dated January 15, 1968.

2. Initially, the suit was filed for declaration only as the plaintiffs claimed that they were in possession of the suit land through their tenant Kartar Singh, During the pendency of the suit, it was claimed that Kartar Singh in collusion with defendant No 6 had delivered possession of the latter necessitating the amendment of the plaint and a decree for possession was sought for.

3. The suit was contested by the defendants. The defendant No. I to 5 took the plea that they were heirs of Des Raj and that mutation of inheritance was rightly sanctioned in their favour and that they validly sold the suit land to defendant No. 6.

4. The pleadings of the parties gave rise to the following issues

1. Whether the plaintiffs are the sole heirs of Des Raj deceased ? OPP.

2. Whether defendant No 6 is a bona fide purchaser for consideration without notice and if so, what is its effect ? OPD. 6.

3. Whether the suit is properly valued for purposes of court fee and jurisdiction ? OPD,

4. Whether the sale in question is the outcome of fraud and misrepresentation and is not binding on the plaintiffs ? OPP.

5. Whether the land in the suit was let out by the plaintiffs to defendant No. 7 and if so to What effect ? OPP;

6. Relief.

5. Under issue No. 1, the trial court found that the plaintiffs were the only heirs of the deceased. Issue No. 2 was answered in favour of the plaintiffs and against the defendants. Issue No. 3 was decided against the defendants and it was held that suit for declaration was maintainable and it was not required that the plaintiffs should have filed a suit for cancellation of the sale deed. The plaintiffs were not a party to the sale deed and as such they could maintain a simple suit for declaration, based on title. Issue No. 4 was decided in favour of the plaintiffs. Under issue No. 5, it was found that defendant No. 7 was a tenant under Des Raj deceased and after his death, he attorned to the plaintiffs. Ultimately the suit was decreed

6. The defendants assailed the judgment of the learned trial judge in two separate appeals and the First Appellate Court disposed of both the appeals by one judgment. It is probably for this reason that two appeals have been filed by the plaintiffs.

7. The principal question which arises for determination is whether the plaintiffs are the heirs of Des Raj deceased. The trial judge relying upon the pedigree table Ex. P6, Jamabandi Ex. PI and the ocular evidence came to the conclusion that the plaintiffs are the heirs of the deceased being his agnates and the defendants although agnates of the deceased but the plaintiffs were connected with the deceased with a fewer degree of ascent than the defendants and were preferential heirs as compared to the defendants. The learned appellate Judge rejected the claim of the plaintiffs on the solitary ground that the pedigree table as given in the plaint does not correspond to the pedigree table Ex P6. The explanation rendered by the plaintiffs that their counsel in the trial Court drafted the plaint on the basis of the mutation entry Ex. P2 was not accepted as correct. In the mutation Ex. P2, the pedigree table prepared by the Patwari was in conflict with pedigree table Ex. P6. The mistake made by the Patwari was repeated in the plaint. The learned Appellate Judge did not appreciate that the pleadings in the Mufasil have not to be considered in the manner as has been done by him. It is well settled that the pleadings have to be

liberally construed, These are not drafted by experts and sometimes are drafted without examining the documentary evidence. In the instant case, the mistake in the plaint appears to have crept in because the pedigree table may not be with the counsel who drafted the plaint and he may have treated the pedigree table given in the mutation Ex. P2 as correct and hastened to reproduce the same. The illiterate litigants cannot be made to suffer for the lapse made by their counsel who did not insist upon the parties to obtain documentary evidence before drafting the plaint.

8. The discrepancy between the pedigree table in the plaint and pedigree table Ex. P6 is the touch stone of the judgment of the First Appellate Court which negated the plaintiffs' claim solely on this ground. He did not refer to the facts proved on record which found favour with the trial judge. He did not advert to the reasoning and conclusion arrived at by the trial Judge before reversing the finding recorded under Issue No. 1 by the latter. It was held in *Rani Hemanta Kumari Debi v. Maharaja Jagadhindra Nath Roy*, (1986) 16 Mad. LJ 272 (PC) that it is better that the Appellate Court, whenever it reverses the judgment of the lower Court, comes into close quarters with the judgment of the lower Court and meets the reasoning therein. This well settled principle of law was ignored by the learned Appellate Court when he was disposing of the appeals. From the reading of pedigree table Ex. P6, it is apparent that Ganga Ram and Amir Chander were two brothers and Des Raj deceased represented the line of Ganga Ram while the plaintiffs are the descendants of Amir Chand. In Ex. P6 the father's name of Ganga Ram and Amir Chand is not mentioned but they have been joined with a connecting line and that clearly shows that they were real brothers, otherwise they would not have been connected with such a line. A bare look on the pedigree table Ex. P6 indicates that father's name of Ganga Ram i.e. Jawala Dass was mentioned in the same column and the only inference deduceable is that Amir Chand and Ganga Ram were the sons of Jawala. The error in the mutation entry Ex. P2 does not detract the authenticity of pedigree table Ex. P6.

9. The learned Appellate Judge was swayed by one more consideration that the plaintiffs did not get the mutation of inheritance sanctioned in their favour on the death of Des Raj and kept silent for more than 19 years and this is an indicator that their claim was not genuine. He lost sight of the fact that the plaintiffs asserted in the plaint and proved on record that they entered in possession of the suit land on the death of Des Raj and they were in possession through their tenant defendant No. 7 and that the latter had been paying them rent and the dispute arose only when the defendant Nos. 1 to 5 transferred the suit land to defendants Nos. 6 and defendant No. 7 in collusion with defendant No. 6 handed over possession to him. If the plaintiffs were in possession through their tenant, it could not be even remotely suggested that the plaintiffs were not protecting their rights or title. Their possession per se is a strong circumstance of assertion of title. The sanctioning of mutation, if any, would be only a circumstance evidencing the assertion of title and in the instant case nonsanctioning of the mutation will not lead to an inference

that the plaintiffs did not assert their title since they were already in possession after the death of the deceased. The sanctioning of the mutation will not confer any title on them. Mutations are entered and sanctioned only for fiscal purposes so that the State may collect land revenue from the persons in whose favour it was sanctioned. The plaintiffs could only be nonsuited if the defendants were able to establish that they had perfected their title by adverse possession. Article 65 of the Limitation Act applies to suits based on title and it is for the defendants to plead and prove as to on which date they entered into adverse possession and that they had perfected their title by prescription. There is no such plea much less proof on this point. Consequently, by no stretch of imagination the learned Appellate Judge could observe that the plaintiffs were sleeping over their rights and that their silence resulted in estoppel against them.

10. For the foregoing reasons both the appeals are accepted, the Judgment and decree of the appellate Court are set aside and that of the trial Court are restored. The suit is decreed with costs throughout.