

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**RSA Nos. 332, 333 & 334 of 1996.**

**Judgement reserved on: 24.3.2008.**

**Date of decision: 31.3.2008.**

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**( For title, please see reverse).**

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***Coram***

**The Hon'ble Mr. Justice Kuldip Singh, Judge.**

***Whether approved for reporting?***

**For the Appellants                    :**  
**( Please see reverse).**

**For the Respondents                :**

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**Kuldip Singh, Judge.**

This judgement shall dispose of RSA Nos. 332, 333 and 334 of 1996 arising out of Civil Appeals Nos. 27-S/13 of 1995, 28-S/13 of 1995 and 29-S/13 of 1995, decided by learned District Judge, Solan by a common judgement, dated 2.9.1996. The parties are mentioned in the same manner as in the trial court.

**2.** The facts in brief are that Sobha Ram plaintiff filed three suits, being Case Nos. 25/1 of 1990, 26/1 of 1990 and 27/1 of 1990 against Megh Ram defendant No.1 and 12 others regarding three sets of land for declaration and consequential relief of permanent injunction. The suit land has been described in the plaint of each case separately. In all the suits, the case of the plaintiff is that plaintiff and defendant No.1 Megh Ram are real brothers. Chet Ram father of

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***Whether the reporters of the local papers may be allowed to see the Judgment?***

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the plaintiff and defendant No.1 was owner in possession of the suit land in each case. The father of the plaintiff died in the year 1946 leaving behind the plaintiff and defendant No.1 as his legal male heirs while Smt. Janki, Kaunla alias Muni and Smt. Padma as female issues. After the death of Chet Ram, mutation of inheritance qua immovable property in each suit left behind by Chet Ram should have been sanctioned in favour of plaintiff and defendant No.1 equally, but the same was wrongly, illegally and behind the back of the plaintiff sanctioned in favour of defendant No.1 exclusively. The plaintiff was minor at that time. The mutation sanctioned in favour of defendant No.1 in each suit showing him to be the only son and sole successor of deceased Chet Ram is wrong, illegal and not binding on the plaintiff. Similarly, the revenue entries in each suit showing defendant No.1 Megh Ram as owner in possession of the suit land are also wrong, illegal and are not binding on the plaintiff. The mutation and revenue entries after the death of Chet Ram in each suit were got incorporated by Megh Ram in his favour in collusion with the revenue officials inasmuch as Megh Ram himself happened to be the Patwari in the revenue department and had influence over the revenue officials. No notice regarding sanction of mutation in any suit was given to plaintiff. Bansi Ram, Numberdar a close relative of Megh Ram made a false report with the intention to help Megh Ram. In these circumstances, the mutation sanctioned in favour of Megh Ram defendant No.1 in each suit after the death of Chet Ram is wrong and illegal. The plaintiff and defendant No.1 are owners in possession of the suit land in each suit.

3. The suits were contested, defendants No.1 to 3 and 5 to 9 filed joint written statements in Civil Suit No. 25/1 of 1990, Civil Suit No. 26/1 of 1990 and Civil Suit No. 27/1 of 1990, in which preliminary objections of limitation, not maintainability of the suit and valuation were taken. On merits, it has been denied that plaintiff and Megh Ram, defendant No.1 are real brothers, being the sons of Chet Ram. It has been submitted that mutation of the property in each suit has been rightly sanctioned and the revenue entries are correct. On the pleadings of the parties, issues were framed on 4.10.1991 in all the suits. On 6.3.1992, Civil Suit No. 26/1 of 1990 and Civil Suit No. 27/1 of 1990 were ordered to be consolidated with Civil Suit No. 25/1 of 1990. The evidence was recorded in Civil Suit No. 25/1 of 1990. The learned Sub Judge Ist Class, Kandaghat decreed all the suits on 31.3.1995 by holding that plaintiff and defendant No.1 are the sons of Chet Ram. The defendant No.1 filed three appeals against the judgement and decree dated 31.3.1995, which have been dismissed by learned District Judge, vide common judgement dated 2.9.1996. The defendant No.1 Megh Ram filed three appeals against the common judgement dated 2.9.1996. Megh Ram defendant No.1/ appellant died during the pendency of second appeals. In RSA No. 332/96 and RSA No. 333/96 legal representatives of Megh Ram have been brought on record. All the three appeals have been admitted on following substantial questions of law:-

1. Whether the suit of the plaintiff was within limitation and could be decreed when the mutation of inheritance of Shri Chet Ram was attested only in

favour of Megh Ram on 3.1.1947 and the suit filed on 13.9.1990?

2. Whether in view of the fact that Fulma was divorced by Chet Ram and married Jas Ram in a Kareva form of marriage before the death of Chet Ram raised the presumption of divorce of Fulma with Chet Ram and established the paternity of Sobha Ram to Jas Ram?
3. Whether the court below has relied upon inadmissible oral and documentary evidence and raised wrong inferences from facts proved on record and also misconstrued the divorce deed Ex. DW 3/A and Ex. DW 7/A?
4. Whether the two suits were barred under Order 2 Rule 2 C.P.C. and the plaintiff's claim was also barred by clear ouster and adverse possession?

4. I have heard Mr. Rajnish K. Lall, Advocate vice Mr. K.D. Sood, Advocate, appearing for legal representatives of appellant/defendant No.1 and proforma respondents, Mr. Romesh Verma, Advocate, appearing for the respondent/ plaintiff in all the appeals and have also gone through the record. Mr. Rajnish K. Lall has submitted that the courts below have not properly appreciated the material on record, the inference drawn from the material on record is not possible. The plaintiff is not the son of Fulma alias Mathu from Chet Ram, he is the son of Fulma alias Mathu from Jas Ram. The suits are barred by limitation. The divorce deeds Ex. DW 3/A and Ex. DW 7/A, have not been properly interpreted. Fulma was divorced by Chet Ram and she married with Jas Ram by way of Kareva marriage

before the death of Chet Ram. The two suits were barred, under Order 2, Rule 2 of the Code of Civil Procedure. The claim of the plaintiff was also barred by ouster and adverse possession. On behalf of respondent No.1- plaintiff, it has been submitted that the two courts have concurrently held that plaintiff- respondent No.1 is the son of Chet Ram. No substantial questions of law are involved in the appeals. The learned counsel representing respondent No. 1 – plaintiff has supported the impugned judgement and decree.

**Substantial questions No. 1 and 4:**

5. The plaintiff has filed the suits for declaration and injunction on the basis of title. It has been submitted that the mutation was attested on 3.1.1947 and the suits were filed on 13.9.1990, and, therefore, the suits were time barred. The case of plaintiff is that he is the son of Chet Ram and after the death of Chet Ram, he is entitled to inherit the estate left by Chet Ram alongwith defendant No.1 Megh Ram. The further case of plaintiff is that mutations were attested in his absence and no notice of attestation of mutations was given to him. It is settled proposition of law that mutation does not confer any title. The suits were filed by plaintiff in his own right by pleading his title. Therefore, unless ouster of plaintiff by way of adverse possession is proved then the suits are within limitation. The written statement was amended and the plea of adverse possession was taken in the amended written statement and thereafter issue No. 6-A of adverse possession was framed. In the amended written statement, the pleadings of alleged adverse possession are to the following effect:-

“..... Further the plaintiff has no right, title or interests in the suit land and the possession of the defendants over the suit land is hostile, continuous, uninterrupted, open to the knowledge of public at large and plaintiff after the death of their fathers. The plaintiff despite of knowledge regarding the suit lands has neither contributed anything nor taken profits, hence deprive of ouster is also applicable and he has no claim over the suit lands of Kothi, Kangut and Koon.”

The perusal of above pleadings would show that defendants have not pleaded the starting point of adverse possession against plaintiff and when it matured into title by way of adverse possession. DW 1 Megh Ram in his statement has not stated anything about hostile possession or ouster of plaintiff from the suit land. He has not stated when adverse possession had commenced against plaintiff and when he acquired title on suit land by way of adverse possession. He has not stated about any overt acts of defendants on suit land from which inference can be drawn about the ouster of plaintiff from the suit land. The two courts below have concurrently held that defendants have failed to prove their adverse possession on the suit land. It is a finding of fact and requires no interference. The defendants have not taken plea of bar of suit, under Order 2, Rule 2 of the Code of Civil Procedure in the written statement and there is no issue to this effect. In the lower appellate court also no such plea was raised. Therefore, in second appeals, the legal representatives of defendant No.1 and others cannot be permitted to take the plea of bar of suit, under Order 2, Rule 2 of the Code of Civil Procedure. Once the legal representatives of defendant No.1 and others have failed to

prove their adverse possession on the suit land then the suits on the basis of title filed by plaintiff are within limitation. The substantial questions of law No.1 and 4 are decided against the appellants in all the appeals.

**Substantial questions of law Nos. 2 & 3.**

6. It has been submitted on behalf of the appellants that Fulma after obtaining divorce from Chet Ram married with Jas Ram by way of Kareva before the death of Chet Ram and plaintiff was born to Fulma from the loins of Jas Ram. It is admitted case of the parties that Fulma was the wife of Chet Ram. It is also admitted case of the parties that Fulma was the mother of plaintiff. The question is whether plaintiff was born to Fulma from the loins of Chet Ram or Jas Ram. The learned District Judge has referred extensive documentary evidence wherein plaintiff has been recorded as the son of Chet Ram. In Ex. PY/1, copy of judgement dated 17.11.1977 in Civil Suit No. 250/1 of 1973 Sobha Ram and Megh Ram both have been shown sons of Chet Ram and they are impleaded as plaintiffs alongwith other persons as plaintiffs. Thus Megh Ram has admitted Sobha Ram to be the son of Chet Ram in Ex. PY/1. The divorce between Chet Ram and Fulma has not been proved. In fact on 7.8.1993, at the time of framing of additional issue No. 6-A, the learned counsel for the defendants had not pressed the issue regarding the custom and divorce of Mathu. It has come on record that Mathu was also known by the name of Fulma, who was none-else but the mother of plaintiff and defendant No. 1. Once the plea of divorce of Fulma alias Mathu was given up, then the legal representatives of defendant No.1 and

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others are precluded from taking the plea that Chet Ram had divorced Fulma alias Mathu. In that situation, any child born during the wedlock of Chet Ram and Fulma will be presumed to be the issue of Chet Ram.

7. It has come on record that plaintiff was born during the life time of Chet Ram and the plea of divorce of Chet Ram with Fulma was given up by the defendants, therefore, plaintiff shall be presumed to be the son of Fulma born from the loins of Chet Ram. Ex. DW 7/A list of articles and alleged divorce deed Ex. DW 3/A are of no help to the defendants in view of the fact that they have given up the plea of divorce. The substantial questions of law No. 2 and 3 are decided against the legal representatives of defendant No.1 and others but in favour of plaintiff. The two courts below have rightly appreciated the material on record properly. No case for interference has been made out.

8. No other point was urged.

9. As a result of above discussion, all appeals, being RSA Nos. 332, 333 and 334 of 1996 are dismissed with costs.

**CMP No. 150 of 1999 in RSA No.333 of 1996**  
**CMP No. 151 of 1999 in RSA No.334 of 1996.**

10. Infructuous, in view of the dismissal of the main appeals.

**March 31, 2008.**  
**(Hem)**

**( Kuldip Singh )**  
**Judge.**



**1. RSA No. 332 of 1996.**

Smt. Shanti Devi & ors ..... Appellants.

Vs.

Sobha Ram & ors. .... Respondents.

For the Appellant : Mr. Rajnish K. Lall, Advocate, vice Mr. K.D.Sood, Advocate, for the appellant and proforma respondents No. 2 to 13.

For the Respondents : Mr. Romesh Verma, Advocate, for respondent No.1.

**2. RSA No. 333 of 1996.**

Smt. Shanti Devi & ors ..... Appellants.

Vs.

Sobha Ram & ors. .... Respondents.

For the Appellant : Mr. Rajnish K. Lall, Advocate, vice Mr. K.D.Sood, Advocate, for the appellant and proforma respondents No. 2 & 4 to 9.

For the Respondents : Mr. Romesh Verma, Advocate, for respondent No.1.

**3. RSA No. 334 of 1996.**

Megh Ram ..... Appellant.

Vs.

Sobha Ram & ors. .... Respondents.

For the Appellant : Mr. Rajnish K. Lall, Advocate, vice Mr. K.D.Sood, Advocate, for the appellant and proforma respondents No. 2 & 4 to 9.

For the Respondents : Mr. Romesh Verma, Advocate, for respondent No.1.