



RSA-218-2017 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**RSA-218-2017 (O&M)
Reserved on:-03.09.2025
Date of Decision : 05.09.2025**

Kitabo Devi and Others

....Appellants

VERSUS

Shanti Devi and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. Surender Lamba, Advocate
for the appellants.

Mr. Sudhanshu Makkar, Advocate
for respondents No. 1 to 3.

Respondents No.4 to 10 proceed ex-pare.

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MANDEEP PANNU,J.

1. Present RSA has been filed by the appellants/defendants No. 1 to 5, namely Kitabo Devi and others, who are the legal heirs of Jage Ram, against Shanti Devi and others (plaintiffs and defendants No. 6 to 12), challenging the judgment and decree dated 03.12.2016 passed by the learned Lower Appellate Court.

Brief Facts

2. The plaintiffs, namely Shanti Devi, Chhotan Devi, and Dhapan, daughters of Sukha @ Sukhi Ram, instituted a suit against the legal representatives of Jage Ram, the legal representatives of Ran Singh, and Ram Kishan, sons of Sukha @ Sukhi Ram. The brief facts, as set out in the plaint, are that Sukha @ Sukhi Ram had three daughters, i.e., the present plaintiffs, and three sons, namely,



Ram Kishan (defendant No. 12), Ran Singh (since deceased) now represented by defendants No. 6 to 11), and Jage Ram (predeceased) represented by defendants No. 1 to 5).

3. It was pleaded that Sukha @ Sukhi Ram, father of the plaintiffs and defendants Ram Kishan, Ran Singh, and Jage Ram, was the owner in possession of the suit land. He died about 18–19 years prior to the institution of the suit. Upon his death, the plaintiffs along with their three brothers succeeded to the estate and became owners in possession of the suit land in equal shares. The case of the plaintiffs is that being married in different villages, they occasionally used to visit their parental house for the purpose of collecting rent of their share from the agricultural land. However, in the year 2008, when the defendants refused to pay them the rent, they approached the Halqa Patwari and came to know that the mutation of inheritance of their father Sukha @ Sukhi Ram had been sanctioned and attested exclusively in favour of the other heirs to the exclusion of the plaintiffs.

4. It was further pleaded that after the death of Ran Singh also, the mutation of his inheritance was sanctioned in favour of his legal representatives, i.e., defendants No. 6 to 11, without recognizing the share of the plaintiffs. According to the plaintiffs, both these mutations are wrong, illegal, and against law and, therefore, liable to be set aside. The plaintiffs accordingly sought a decree for declaration to the effect that they are owners in possession of the suit land in equal shares as reflected in the Jamabandi for the years 2004–2005. In the alternative, it was prayed that in case they are found to be out of possession or are dispossessed during the pendency of the proceedings, the suit be decreed for joint possession.



5. Upon notice, defendants No. 1 to 5, being the legal representatives of Jage Ram, and defendant No. 12, Ram Kishan, appeared and contested the suit. Defendants No. 1 to 5 filed a joint written statement, while defendant No. 12 filed his separate written statement. In both sets of written statements, preliminary objections were raised regarding locus standi, maintainability, and other technical grounds. On merits, the defendants categorically denied the relationship claimed by the plaintiffs. It was specifically pleaded that the plaintiffs are not the daughters of Sukha @ Sukhi Ram, who had only three sons, namely, Ran Singh, Ram Kishan, and Jage Ram. On this basis, the defendants asserted that after the death of Sukha @ Sukhi Ram, they alone became owners in possession of his movable and immovable property, and that the mutations of inheritance were rightly entered and attested in their favour.

6. The plaintiffs filed replication to the written statements of the defendants, wherein they reiterated the averments made in the plaint and denied those in the written statements.

7. From the pleadings of the parties, the following issues were framed for adjudication:

1. Whether the plaintiffs are owners in possession of suit property in equal shares? OPP
2. Whether mutation of inheritance of Sukha @ Sukhi Ram bearing No. 322 dated 21.07.1995, and mutation regarding inheritance of Ran Singh, son of Sukha @ Sukhi Ram, bearing No. 423 dated 04.09.2003, are illegal, wrong, null and void ab-initio and thus liable to be set aside? OPP



3. If the above issues are proved, whether the plaintiffs are entitled to a decree of declaration with alternative relief of possession as prayed for? OPP
4. Whether the present suit is not maintainable in the present form? OPD
5. Whether the plaintiffs have no locus standi to file the present suit? OPD
6. Whether the plaintiffs have not approached the Court with clean hands and have concealed true and material facts from the Court? OPD
7. Whether the present suit is hopelessly time-barred? OPD
8. Relief.
8. Both the parties led their respective evidence.

Findings of the Trial Court

9. After appreciating the pleadings and evidence and hearing learned counsel for the parties, the learned trial court returned a finding that the cause of action, if any, accrued to the plaintiffs either on 20.06.1991, when Sukha @ Sukhi Ram died, or on 21.07.1995, when the mutation of inheritance of Sukha @ Sukhi Ram was entered and attested, whereas the present suit has not been filed within a period of limitation, that is, three years from the date on which cause of action had arisen.
10. It was further observed that the law regarding limitation is clear, and the Court should be vigilant enough to check the limitation on the suit, as no relief can be given to a person who has approached the Court beyond the prescribed



period of limitation. Accordingly, considering the suit to be barred by limitation, it was dismissed on that ground.

11. Feeling aggrieved by the aforesaid judgment and decree passed by the learned trial Court, an appeal was preferred by the plaintiffs.

Findings of the Lower Appellate Court

12. The learned Lower Appellate Court decreed the suit of the plaintiffs by setting aside the judgment and decree passed by the trial court, holding that the suit land is jointly owned and possessed by the parties to the suit. Therefore, the plaintiffs have a continuing cause of action to file the suit as and when their rights are threatened.

13. It was further observed that the plaintiffs were claiming declaration being in possession as co-sharers, and the basis for such declaration was a pre-existing right in the suit land on the ground of inheritance of the property of Sukha @ Sukhi Ram, their father, by challenging the mutation of inheritance of Sukha @ Sukhi Ram. It was further observed that there is nothing on record to show that the plaintiffs had ever approached the revenue authorities for sanction of mutation of their father after his death, and it is not even the case of the defendants that any of the plaintiffs were present at the time of attestation of mutation. Thus, the point of limitation stood determined against the defendants.

14. The learned Lower Appellate Court relied upon various judgments, including a Division Bench judgment of this Court in *Ibrahim @ Dharamvir versus Smt. Sharifa @ Shanti reported in 1979 PLJ 469* and held that there is no limitation for filing a suit on the basis of inheritance.

15. Accordingly, the point of limitation was decided against the defendants, and the suit of the plaintiffs was decreed to the effect that they are



owners in possession in equal shares of the land as reflected in the Jamabandi for the year 1994–95. It was further declared that the mutation of inheritance of Sukha @ Sukhi Ram as well as the mutation of inheritance regarding the share of Ran Singh are wrong, illegal, void, and liable to be set aside as not binding upon the rights of the plaintiffs.

16. Feeling aggrieved by the above order passed by the learned Lower Appellate Court, the present appeal has been filed by appellants/defendants Kitabo Devi and others, legal heirs of Jage Ram s/o Sukha @ Sukhi Ram.

Submissions of Learned Counsel for the Appellants

17. It is argued by learned counsel for the appellants/defendants No. 1 to 5 that the impugned judgment and decree dated 03.12.2016 passed by the learned Appellate Court is against facts, contrary to law, illegal, void, and deserves to be set aside. It is submitted that the learned Appellate Court failed to appreciate that the present suit was filed beyond the period of limitation of three years after the cause of action arose to the plaintiffs, i.e., on the death of their father Sukha @ Sukhi Ram as well as the date on which the mutation of inheritance of Sukha @ Sukhi Ram was entered and attested. Referring to Exhibit P-5, counsel submitted that Sukha @ Sukhi Ram died on 20.06.1991 and the mutation of inheritance was entered and attested on 21.07.1995, whereas the suit was filed much after the cause of action.

18. It was further argued that it is an admitted fact that the plaintiffs used to visit their parental house for collecting rent of their share. This clearly shows that they had knowledge of the death of their father as well as of the mutation in favour of the sons. Despite this knowledge, they did not file the suit within the prescribed period. It was next contended that the plaintiffs never remained in



possession and that they have not sought the relief of possession. Had they sought possession, the suit filed within 12 years would have been within limitation. However, since the plaintiffs sought only declaration to the effect that they are owners in possession, the limitation of three years applies, and thus, the learned trial court rightly held that the suit was barred by limitation. The findings of the learned Lower Appellate Court, therefore, are perverse and liable to be set aside.

Submissions of Learned Counsel for respondent Nos. 1 to 3

19. On the other hand, learned counsel for the respondents/plaintiffs has argued that there is no illegality in the well-reasoned judgment passed by the learned Lower Appellate Court. It was contended that in matters of inheritance, no period of limitation is prescribed, as inheritance never remains in abeyance and heirs succeed to the property of the deceased in accordance with law. Mutation entries do not confer title, and the mere fact that the same were entered in favour of the sons excluding the daughters cannot deny the right of inheritance to the daughters. It was urged that the suit cannot be held to be time-barred.

20. In support of his contentions, counsel for the respondents relied upon *Mohinder Singh (died) and Rep. by his LRs and Another Vs. Kashmira Singh, AIR 1985 Punjab 215*, wherein a Division Bench of this Court held that inheritance does not remain in abeyance and that heirs succeed to the property immediately upon the death of the last male holder, and that no limitation is prescribed for filing a suit for possession based on inheritance.

Findings of This Court

21. I have considered the rival submissions of learned counsel for the parties and have carefully perused the record. The sole question that arises for



consideration is whether the suit instituted by the plaintiffs was barred by limitation.

22. It is a settled principle of law that in matters relating to inheritance, no period of limitation is prescribed for seeking possession of property on the basis of succession. The rights of heirs arise immediately upon the death of the last male holder, and such rights cannot be defeated merely on the ground that mutation was sanctioned in favour of some heirs excluding others. Mutation is only a fiscal entry for revenue purposes and does not create or extinguish title.

23. The Learned Lower Appellate Court was correct in relying on the principle that where a plaintiff bases his or her claim on inheritance, there exists a continuing cause of action so long as their right is denied. In the case of ***Mohinder Singh (died) and Rep. by his LRs and Another (supra)***, a Division Bench of this Court categorically held that no limitation is prescribed for a suit for possession based upon inheritance. This view was also affirmed by a Coordinate Bench of this Court in ***Ganpat and another versus Lachhman and others, 2008 (4) RCR (Civil) 9***, wherein it was held that there is no limitation for a suit for possession based on inheritance, and such a suit cannot be dismissed as time-barred.

24. Similarly, the Hon'ble Supreme Court in ***Balwant Singh versus Daulat Singh (dead) by LRs, 1997 (3) RCR (Civil) 409***, held that a widow is entitled to succeed and become absolute owner under the provisions of the Hindu Succession Act, and mere sanction of mutation in favour of another person will not divest her of her right. Mutation entries cannot convey or extinguish title in property, the widow must be deemed to have continued in possession and become the absolute owner.



25. As regards the cause of action, reference may also be made to the judgment of a Division Bench of this Court in *Ibrahim @ Dharamveer versus Smt. Sharifa @ Shanti, 1979 PLJ 469*, where it was held that mere entry of mutation in the name of a defendant would not furnish any cause of action to the plaintiff to file a suit for declaration.

26. It is also pertinent to observe that under the law of succession as envisaged in the Hindu Succession Act, 1956, as amended, the daughters are recognized as Class-I heirs, entitled to inherit the estate of their father equally along with the sons. The right of succession is a substantive right, which accrues immediately on the death of the last male holder and does not remain in abeyance. Such rights of inheritance flow from statute and not from any subsequent recognition by way of mutation or other entries in the revenue record. Mutation is merely a fiscal arrangement for collection of land revenue and cannot curtail or extinguish the vested rights of heirs under succession law. Once the right of inheritance has crystallized by operation of law, the same continues to subsist unless lawfully divested in accordance with statutory provisions. Therefore, a daughter's right to succeed to her father's property cannot be denied on the technical ground of limitation, as the cause of action in such cases is a recurring one, subsisting so long as her right is denied or threatened. Thus, viewed from the perspective of succession law, the daughters stand on an equal footing with sons, and their claim based on inheritance cannot be defeated merely because the suit is filed beyond three years from the date of attestation of mutation.

27. In view of the above-discussion and applying these settled principles, it is evident that the findings of the learned Lower Appellate Court are in consonance with law. The plaintiffs were claiming inheritance from their father

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Sukha @ Sukhi Ram, and their right cannot be defeated on the ground of limitation. The trial court, in dismissing the suit as barred by limitation, ignored the settled law that no limitation is prescribed in such cases. The learned Lower Appellate Court rightly held that the plaintiffs had a continuing cause of action and decreed the suit.

Conclusion

28. Accordingly, this Court upholds the judgment and decree passed by the learned Lower Appellate Court dated 03.12.2016. It is held that the suit of the plaintiffs is not barred by limitation, and the decree declaring them to be owners in possession of the suit land in equal shares, while setting aside the impugned mutations, is affirmed.

29. The appeal is accordingly dismissed.

30. Pending application(s), if any, also stands disposed of.

September 05, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes