

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A. No. 1179 of 2004 (O&M)

Date of Decision:- 13.08.2015

Pritam Singh and others

.....Appellants

Versus

Paramjit Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Satinder Khanna, Advocate,
for the appellants.

Mr. Kewal Singh Boparai, Advocate
for the respondent.

SHEKHER DHAWAN, J.

Present Regular Second Appeal against judgment and decree dated 09.01.2004 whereby the First Appellate Court dismissed the appeal against judgment and decree dated 12.04.2002, passed by Civil Judge (Jr. Divn.), Ludhiana.

2. For the sake of convenience, the parties are being referred to as per their status before the Court of first instance. The detailed facts of the case have already been recapitulated in the judgments of the Courts below. Relevant facts for the purpose of decision of present Regular Second Appeal that plaintiff-Paramjit Kaur had filed suit for declaration

to the effect that she is owner in joint possession to the extent of 1/6th share, out of the property measuring 83 kanals 4 marlas, as detailed in schedule of the plaint. Her father Bachan Singh and defendant Nos.1 to 5 were owners in joint possession to the extent of 1/3rd share, out of the property measuring 259 kanals 16 marlas. Bachan Singh died in the year 1972, intestate leaving behind plaintiff and defendants as his natural and legal heirs and mutation was sanctioned in favour of Pritam Singh, Avtar Singh and Jagtar Singh to the extent of ½ shares and Smt. Harpal Kaur widow of Bachan Singh to the extent of ½ share. Plaintiff and defendant No.4 were not given any notice at the time of sanctioning of the mutation. Bachan Singh had not deprived her from share in his estate nor had executed any Will in favour of anybody regarding his property. Joginder Singh, grand-father of plaintiff, died in the year 1993, intestate and his property was transferred in the name of plaintiff and defendants in equal shares on the basis of natural succession.

3. Defendants contested the suit and taken the plea that suit is time barred and plaintiff estopped by her act and conduct from filing the present suit. Plaintiff was unmarried when Bachan Singh died and it was in her knowledge that Bachan Singh had executed Will dated 15.12.1971 in favour of his sons Pritam Singh, Jagtar Singh and Avtar Singh to the extent of ½ share and Harpal Kaur widow to the extent of ½ share. Plaintiff and Charanjit Kaur were present at the time of sanctioning of mutation. They have also admitted the execution of Will executed by Bachan Singh. Marriage of plaintiff was performed by defendant Nos.1 to

3 and 5 as per their status after spending huge amount. The present suit was filed at the instance of husband of plaintiff, out of greed to grab the property of the defendants. So, the defendants are owner in possession of the suit property only on the basis of Will of Bachan Singh dated 15.12.1971.

4. Court of first instance after settling the issues and recording the evidence, returned the findings that defendants failed to prove the Will on the basis of which the claim of real daughter of Bachan Singh from the property left by Bachan Singh has been ignored. The plea of adverse possession was taken by plaintiff and same was not accepted by the Court of first instance and decreed the suit of the plaintiff for declaration as owner in joint possession to the extent of 1/6th share. Defendants preferred appeal before the Court of first appeal but remained unsuccessful.

5. Being aggrieved by the said findings, the defendants are in second appeal before this Court.

6. At the time of arguments, learned counsel for the appellants took the plea that Will was duly proved and Courts below simply disbelieved the Will on the ground of minor contradictions. That was because of the fact that statement of witnesses were recorded after lapse of time. Learned counsel for the appellants also took the plea that it had come in the cross-examination of Paramjit Kaur (PW-2) that land was never cultivated by her nor she had received any amount on account of income of land.

7. Learned counsel for the appellants also took the plea that appellants were in possession as owner of suit property and the same was recorded in revenue record after marriage of sisters without any interference in suit filed after 30 years asserting right of ownership cannot be considered as title of the appellants had perfected till then on the basis of their adverse possession. On this point, reliance was placed upon judgment from Hon'ble Supreme Court in case **Parsinni (dead) by L.Rs Vs. Sukhi**, 1993(3) R.R.R. 681, wherein, such a law was laid down.

8. While arguing on this point, learned counsel for respondent took the plea that present appeal is against the concurrent findings of both the Courts below. More so, it had come in the statement of Kamaljit Singh (DW1) in cross-examination that no Will was attached in the record of mutation. Meaning thereby, there was nothing available, which on the basis of which mutation was sanctioned in favour of appellants excluding real daughters. Paramjit Singh (DW2) has also admitted this fact. More so, inheritance in this case was reopened on the date of death of grandfather and mutation (Ex.P4) was sanctioned in 1992-93. Learned counsel for respondents has placed reliance upon judgment from Co-ordinate Bench of this Court in case **Ranjit Singh Vs. Kanwaljit Singh and others**, 2004 A.I.R. (Punjab) 211, wherein view was taken by this Court that if the mutation was sanctioned on the basis of Will and no such Will produced when mutation was challenged, the same is invalid as per Sections 35 and 36 of the Punjab Land Revenue Act, 1886.

9. As regards to the law of limitation, learned counsel for the respondents has placed reliance upon judgment from Hon'ble Division

Bench of this Court in case **Mohinder Singh (deceased by LRs) and another** Vs. **Kashmira Singh**, AIR 1985 Punjab and Haryana 215, wherein, Hon'ble Division Bench recorded observations that in such like cases where rights are on the basis of title, no period of limitation is prescribed under law. Identical view was taken by Co-ordinate Bench of this Court in case **Gurcharan Singh and others** Vs. **Surjit Kaur and others**, 2005(3) R.C.R. (Civil) 628.

10. As regards to plea of adverse possession, learned counsel for respondent took the plea that plaintiff being joint owner of the property and there was no ouster from the suit property though she was not in actual cultivating possession and the land was being sown by her brothers, plea of adverse possession is not maintainable. On this point reliance has placed upon judgment from Hon'ble Supreme Court in case **Darshan Singh and others** Vs. **Gujjar Singh (dead by LRs) and others**, 2002(1) Civil Court Cases 0548.

11. As regards to relevance of sanctioning of mutation, learned counsel for respondent has placed reliance upon judgment from Hon'ble Supreme Court in case **Balwant Singh and another** Vs. **Daulat Singh (dead) by L.Rs and others**, 1997(2) PLJ 132, wherein, Hon'ble Supreme Court while interpreting the provisions of Sections 34 to 37 and 44 of Punjab Land Revenue Act held that mutation do not convey or extinguish any title. The entries by way of mutation are relevant only for the purpose of collection of land revenue.

12. The concurrent findings recorded by both the Courts below

are based on facts that Will dated 15.12.1971 whereby respondent was excluded from the property left by her father. There are no grounds to set aside the said findings of fact recorded, which are otherwise on facts of the case and evidence available on file. There was absolutely no reason given in the Will dated 15.12.1971 for exclusion of plaintiff and defendant No.4. More so, the said Will was never produced at the time of sanctioning of mutation, as admitted by DW1 and DW2 in their respective cross-examinations. Such mutation sanctioned in the absence of any Will do not confer any title in favour of the appellants and same plea was rightly negated. Such a view was taken by this Court in **Ranjit Singh** Vs. **Kanwaljit Singh and others**, case (supra). More so, sanctioning of mutation does not create any title in favour of the parties and such a law laid down by Hon'ble Supreme Court in **Mohinder Singh (deceased by LRs) and another** Vs. **Kashmira Singh** case (supra). As regards to plea of adverse possession, the view was negated by Hon'ble Supreme Court in **Darshan Singh and others** Vs. **Gujjar Singh (dead) by LRs and others** case (supra) that if a Co-sharer is in possession of the entire property, his possession cannot be deemed to be adverse for other co-sharers unless there has been complete ouster of other co-sharers.

13. As regards to limitation for challenging the mutation, law was laid down by Division Bench of this Court in **Mohinder Singh (deceased by LRs) and another** Vs. **Kashmira Singh** case (supra), wherein, it has been observed that it is well established principle of law

that inheritance does not remain in abeyance and the heirs after the death of the last male holder succeed to the property of the deceased in accordance with law. After the death of the last male holder his heir is not required to file any suit for possession on the basis of inheritance. He becomes full owner of his share in the property on the death of the last male holder. For establishing his right as an heir, he is not required to file a suit. However, a situation may arise when the heir is not in possession of the property may have to be filed and on contest the same may fail on the defendant proving that he has perfected his title by adverse possession. It is such type of suit which is governed by the provisions of Art.65. Thus, it is clear that no period of limitation is prescribed for filing a suit for possession on the basis of inheritance.

14. In view of the above, the concurrent findings recorded by both the Courts below are based on the facts and evidence available on file and there are no grounds to interfere in the findings recorded. There is no substantial question of law involved in the present Regular Second Appeal. Resultantly, the same is hereby dismissed.

August 13, 2015
naresh.k

(SHEKHER DHAWAN)
Judge