

**RSA No. 1427 and 1542 of 2011(O&M)**

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**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

**RSA No. 1427 of 2011(O&M)**

**Date of decision : October 8, 2015**

**Birbrender Singh and another**

**..... Appellants**

**Versus**

**Prabhjit Kaur and others**

**..... Respondents**

**RSA No. 1542 of 2011(O&M)**

**Mohinderjit Kaur and others**

**..... Appellants**

**Versus**

**Prabhjit Kaur and others**

**..... Respondents**

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

Present:- Mr. Arun Jain, Senior Advocate with  
Mr. Kushagra Mahajan, Advocate for the appellant  
in RSA No. 1427 of 2011.

Mr. Vikas Bahl, Senior Advocate with  
Mr. Kanwal Goel, Advocate  
for the appellants in RSA No.1542 of 2011.

Mr. M. L. Sarin, Senior Advocate with  
Mr. Kabir Sarin, Advocate  
for respondent Nos. 1,2 and 6.

Mr. M. L. Saggar, Senior Advocate with  
Mr. Gaurav Grover, Advocate  
for respondent Nos. 3 to 5, 7 to 13,15,25 and 26.

Mr. Ashish Aggarwal, Senior Advocate with  
Mr. Kartik Gupta, Advocate  
for respondent Nos. 17 and 22.

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

Amit Rawal, J.

This order of mine shall dispose of two appeals bearing RSA No.1427 of 2001 and 1542 of 2001 filed by the plaintiffs.

It would be apt to give pedigree table for appreciating controversy between the parties to the lis.

|                                                                       |                                                     |                                                                                                   |
|-----------------------------------------------------------------------|-----------------------------------------------------|---------------------------------------------------------------------------------------------------|
| Ranjit Singh                                                          |                                                     |                                                                                                   |
| Atma Singh                                                            |                                                     |                                                                                                   |
| -----                                                                 |                                                     |                                                                                                   |
| Balwant Kaur @<br>Ripudaman Kaur<br>(first wife)                      | Gurdev Kaur-----<br>(second wife)<br>defendant No.1 | Gurdev Singh<br>brother of Gurdev<br>Kaur (deft.No.7)<br><br>Jagpal Singh<br>(Grandson-deft.No.9) |
| Pritpal Kaur<br>(Defendant No.25)                                     |                                                     |                                                                                                   |
| Mohinderjit Kaur<br>(Appellant/Plaintiff)<br>No.1                     | Birbrender Singh<br>(Plaintiff No.2)                | Harmanjit Singh<br>(Plaintiff No.3)                                                               |
| -----                                                                 |                                                     |                                                                                                   |
|                                                                       | Krishan Avtar Singh<br>(defendant No.5)             | Surinderpal Kaur<br>(Defendant No.2)                                                              |
| -----                                                                 |                                                     |                                                                                                   |
| Rashpal Kaur<br>(wife)<br>Defendant No.5                              | Kanwaljit Singh<br>(son)<br>Defendant No.3          | Karminder Pal<br>Kaur(Daughter)<br>Defendant No.4                                                 |
| -----                                                                 |                                                     |                                                                                                   |
|                                                                       | Sarmohinder Singh                                   | Reetmohinder Singh<br>(Defendant No.6)                                                            |
| Sukhwinder Singh<br>(Defendant No.8)<br><br>Nephew of<br>Rashpal Kaur |                                                     |                                                                                                   |

Birbrender Singh, Mohinderjit Kaur d/o Pritpal Kaur and Harmanjit Singh son of Pritpal Kaur filed a suit against Gurdev Kaur w/o Atma Singh-defendant No.1, Surinderpal Kaur daughter of Atma Singh, Gurdev Kaur-defendant No.2, Kanwaljit Singh son of Krishan Avtar Singh, Karminderpal Kaur daughter of Krishan Avtar Singh, Gurdev Singh-defendant No.4, Rashpal Kaur widow of Krishan Avtar Singh-defendant No.5, Avtar Singh, Reet Mohinder Singh son of Hardeep Singh, Surinder Singh-defendant No.2, Reet Mohinder Singh son of Hardeep Singh, Sukhwnder Singh nephew of defendant No.8 for declaration that the plaintiffs and Pritpal Kaur-defendant No.25 are the owners in possession in equal shares, as fully detailed in the head note of the plaint and also sought relief of possession, as well as, joint possession with a further prayer of permanent injunction restraining defendant Nos. 1 to 25 from alienating the suit property, on the premise, that Atma Singh was owner of land, measuring 1848 Bighas 6 Biswas as per Jamabandi for the year 1938-39 in Village Burj Baghel Singhwala, Tehsil Malerkotla. The categoric pleadings in the plaint was that Atma Singh was married with Ripudaman Kaur alias Balwant Kaur (hereinafter called as 'Ripudiman Kaur') and out of their wedlock the plaintiffs, aforementioned, are the children.

Mr. Vikas Bahl, learned Senior counsel assisted by Mr. Kanwal Goel, Advocate submitted that Ripudaman Kaur filed an application under Section 488 Cr.P.c for grant of maintenance at the rate of ₹40/- per month and the same had been allowed on 11.11.1986 (sambat) (difference of 56 years 8 months and 17 days).

However, Atma Singh did not pay maintenance to his wife and for realization of the amount. Ripudaman Kaur stated to have filed civil suit for recovery of maintenance and during the pendency of the proceedings a compromise Ex.P-30 in RSA No.1542 of 2001 (Annexure A-1) was arrived at whereby, instead of paying subsistence amount, it was decided to give 1/3<sup>rd</sup> share of agricultural land i.e. land comprising khasra No.1/107-108, 9/166-167, 9-169-170 10 bighas (as mentioned in the compromise) to Ripudaman Kaur. It was specifically mentioned that the income obtained from the said land will be treated as subsistence of Ripudaman Kaur, so long so, she is alive she will get total produce of the land and out of the produce, share of Jagdev Kaur was also included.

He further submits, that it was also mentioned that Ripudaman Kaur shall not be entitled to mortgage the above land in any manner, but will use the land only for subsistence (guzara) out of the maintenance. Thus, in essence, Atma Singh gave 600 bighas 14 biswas of land to Ripudaman Kaur till her life, in lieu of the maintenance and regarding that rapat No.320 in the rapat roznamcha of patwari was also entered and in furtherance of mutuation qua the said land was also sanctioned. It was further submmitted, that she continued in possession of the said land in lieu of decree of maintenance. However, in the year 1950-52 the consolidation proceedings started and a separate tak of land measuring 556 bighas 6 biswas was allotted to her in lieu of land measuring 600 bighas 14 biswas and out of the said land some land measuring

about 9/10 bighas was consumed in Government drain. Thus, in essence Atma Singh was left with the land measuring 141 bighas 16 biswas, in the aforementioned village i.e. Burj Baghel Singh Wala as per jamabandi for the year 1954-55.

He further submits that since Atma Singh had also performed second marriage with Gurdev Kaur and from their wedlock one son Krishan Avtar Singh and one daughter Surinder Pal Kaur were born. As per the provisions of Section 14 (1) of the Hindu Succession Act, 1956 (hereinafter called as 'the 1956 Act') claimed inheritance viz-a-viz property of Ripudaman Kaur. By virtue of the compromise decree Ripudiman Kaur became full and absolute owner of land, which was given to her in lieu of maintenance, as she continued to enjoy and possess this land as full owner. Atma Singh died on 1.10.1956. On account of death of Atma Singh the entire property vide Mutation Ex.DW-3/16 dated 29.9.1957 was entered into and accordingly the estate of Atma Singh as per Annexure P-16 their respective share were mutated i.e. Krishan Avtar Singh being son, Pritpal Kaur and Surinder Pal Kaur beng daughters and Gurdev Kaur being wife became his legal heirs and Krishan Avtar Singh inherited 1/4<sup>th</sup> share, Pritpal Kaur and Surinder Pal Kaur inherited 1/2 share in equal shares and Ripudaman Kaur and Gurdev Kaur inherited in equal shares 1/4<sup>th</sup> share and mutatisation No.276 was sanctioned in their favour.

He further submitted, that the mutation was wrongly entered into and should have been sanctioned in respect of

land owned and possessed by Ripudaman Kaur. Thus, the same is illegal, null and void.

It was further submitted, that Ripudaman Kaur filed a suit for injunction which was partly decreed vide judgment and decree dated 29.3.1961 whereby the trial court enjoined the defendants therein that the plaintiff i.e. Ripudaman Kaur shall not be dispossessed in respect of land till her death. But the other relief viz-a-viz partition was declined.

He further submitted that the appeal filed against the same was dismissed on 29.3.1961. Krishan Kumar died in the year 1960 and was survived by defendant Nos. 1,3,4 and 5. Pritpal Kaur daughter of Ripudaman Kaur filed a civil suit wherein the plaintiff Nos. 2 and 3 got a collusive decree dated 3.6.1972 whereby Pritpal Kaur transferred her 1/4<sup>th</sup> share in the land owned by her in favour of plaintiff and he further submitted that Ripudaman Kaur while in her full sense and disposing mind, vide a Will dated 9.6.1972 bequeathed the entire property to the extent of 1/4<sup>th</sup> share to the plaintiffs in equal share and remaining 1/4<sup>th</sup> to plaintiff in equal shares to the extent of 1/3<sup>rd</sup> share to each of the plaintiffs.

It has further been submitted that defendant No.1 illegally and without any right transferred 3/16<sup>th</sup> share of 40 Bighas and 7 Biswas of property to defendant No.7, who further sold it to defendant Nos.10 to 12 without any right. Defendant Nos. 1,2,4 and 5 sold the land. Thus, extent of their shares in favour of defendant Nos.7,9,1, 22 and 23 and defendant No.6 was further sold to

defendant No.8 and so on so forth. The detail of which has been given in the plaint which need not to be repeated as it has already been noticed by both the courts below.

In order to lend support to his arguments Mr. Vikas Bahl, learned Senior counsel has relied upon the following judgments in Vaddeboyina Tulasamma and other Vs. Vaddeboyina Sesha Reddi (dead) by L.Rs 1977 AIR (SC)1944, Balwant Singh VS. Daulat Singh (dead by L.Rs) 1997(3) RCR (Civil) 409, Sri Ramakrishna Mutt.rep.by Manager Vs. M. Maheswaran and others 2010(4) RCR (Civil) 791, Ibrahim alias Dharam Vir Vs. Smt. Sharifan alias Shanti 1980 AIR (Punjab) 25, Tejinder Singh and another Vs. Kuldip Singh and others 2009(2)PLR 445, Mohinder Singh and others Vs. Shangara Singh and another 2007 (5) RCR (Civil) 388 to contend that mere entry in the mutation in the name of particular party would not give rise any cause of action to file suit for declaration and property to at the hands of Ripudaman Kaur during her life time in land ripened into absolute ownership as per Provisions of Section 14(1) of 1956 Act.

Mr. M. L. Sagar, learned Senior counsel appearing on behalf of the respondents emphatically relied on paragraph 6 of the judgment and decree dated 28.1.1960 which reads thus:-

*“The result of the above discussion is that the plaintiff’s suit for permanent injunction is decreed with costs and the defendants are directed not to interfere in the enjoyment of*

*the possession of the land in dispute by the plaintiff and not to take possession of the land in dispute till her death. But the other relief claimed by the plaintiffs that defendant shall not partition the property in dispute is refused , because even if the property in dispute is allotted to all or any of the defendants as a result of the partition proceedings, it will not amount to interference in her right to the enjoyment of the property in dispute. Pronounced. File.”*

He further argued that that the Will dated 9.6.1972 executed by Ripudaman Kaur, there is no mention of area as mentioned in the mutation. The cause of action, if any, could have been said to be accrued in favour of Ripudaman Kaur to claim absolute ownership as per Section 14 (1) of 1956 Act when Atma Singh died in the year 1956 and the mutation merged with the decree dated 29.1.1960. Even as per the decree suffered by Pritpal Kaur in favour of plaintiff Nos. 2 and 3 Birbrender Singh and Harmandeep Singh, it is in respect of 1/4<sup>th</sup> share and not in respect of entire share, which Ripudaman Kaur alleged to have acquired as absolute owner. He further submitted that the mutation bearing No. 469 dated 29.7.1973 Ex.DW/15 affected as per the decree dated 3.6.1970 was also not objected to by Ripudaman Kaur. The sale deeds aforementioned sold from time to time were never challenged by Ripudaman Kaur during her life time, much less till she left abode on 2.6.1994.

He further submitted that the plaintiffs were/are estopped, from challenging the mutation affected in the year 1959 by

filing a suit in the year 1995. In support of his submissions he relied on the judgment rendered by this Court in **Manjit Singh (dead) through L.Rs Vs. Kidar Nath and another 2005 (2) RCR (Civil) 25.**

He further submitted that claim of the plaintiffs is hit by res judicata inasmuch as, that once the claim of Ripudaman Kaur during her life time viz-a-viz partition was declined. In support of his submissions he relied on the judgment rendered by Hon'ble the Supreme Court in **Ananaimuthu Thevar ( deceased) by L.Rs Vs. Alagammal and others 2005 AIR (SC) 4004.** He further submitted that defendant Nos. 1 to 6 filed a written statement and contested the suit by stating therein that the suit was not within time as it amounts to challenging the civil court decree and sales effected by different parties on different dates. It has further been submitted that Ripudaman Kaur and her daughter Pritpal Kaur received compensation from the State Government along with other co-owners as legal heirs of Atma Singh in respect of acquisition of land which the plaintiffs claimed to be absolutely owned by Ripudaman Kaur. The suit was also barred under Order 2 Rule 2 CPC in view of the consent decree dated 3.6.1972. The factum of transfer of land by Atma Singh in favour of his first wife Ripudaman Kaur in lieu of maintenance was denied. He further submitted that Atma Singh was the sole and absolute owner in possession of the entire land in suit till his death on 10.10.1956. In essence, Atma Singh became owner of the land measuring 600 bighas 14 biswas instead of 684 bighas 6 biswas and Ripudaman Kaur never remained in possession of the land aforementioned. Even the compensation awarded by the

Land Acquisition Collector in respect of land measuring 9/10 bighas acquired by the State for carving out a drain was received by all the co-owners as heirs of Atma Singh. No body disputed the disbursement of the compensation to all the co-owners. It was emphatically denied that Ripudaman Kaur as per the provisions of Section 14(1) of 1956 Act became full owner at any stage. Before the Collector Agrarian Reforms Malerkotla for determination of surplus area of Ripudaman Kaur, her real brother and Mukhtiar-am made statement that Ripudaman Kaur was owner only to the extent of 1/8<sup>th</sup> share in the property left by Atma Singh.

He further submitted that Gurdev Kaur-defendant No.1 during her life time transferred the entire 1/8<sup>th</sup> share in the suit property which came to her on the death of her husband Atma Singh and 1/16<sup>th</sup> share acquired on account of death of her son Krishan Avtar Singh to Gurdev Singh-defendant No.7 i.e.Gurdev Singh brother of Gurdev Kaur in a civil court decree dated 22.4.1972. All the civil court decrees still subsist and were never challenged by Ripudaman Kaur during her life time or by defendant No.25.

He further submitted that Rashpal Kaur-defendant No.5 sold 1/6<sup>th</sup> share in the suit property in favour of defendant No.8 in the year 1960. Defendant No.7-Gurdev Singh also sold 23 bighas 15 biswas out of land to defendant No.13 and 14 and further sold part of land to defendant Nos.10, 12 and 14. Defendant No.4 sold part of land in favour of defendant No.1. All the sales out of suit land are bonafide, for consideration with notice and implied consent of

Ripudaman Kaur and thus all the defendants claimed protection as envisaged under Section 41 of the Transfer of Property Act, 1882.

He further submitted that the alleged threat extended to Ripudaman Kaur in the year 1959 was nothing but a concocted pleading in order to bring the suit within limitation. In case, Ripudaman Kaur had become owner of the property there was no occasion for her to claim partition of 554 Bighas 15 biswas.

Mr. Vikas Bahl, learned Senior Counsel assisted by Mr. Kanwal Goel, Advocate, in rebuttal submitted that the sale deeds were in respect of land measuring 138 Bighas and as per Section 14 (1) of the Hindu Succession Act, 1956, Ripudaman Kaur was not required to take a declaration viz-a-viz absolute ownership, much less, it is deemed fiction that she acquired absolute ownership as per the decree. He had drawn attention of this Court to the statement of Gurdev Kaur Ex.P-6, P-8 as well as P-9 to show that Ripudaman Kaur was in possession of land including measuring 40 Kanals 7 Biswas through out her life till the date of death which was forcibly taken into possession by the defendants.

He further submits that following substantial question of law arise for determination by this Court.

- i) Whether the finding given by the learned lower appellate court is perverse, being without any evidence on record and therefore, liable to be set aside.
- ii) Whether the suit land given by Atma Singh to Ripudaman Kaur in lieu of maintenance which was possessed by her on coming into force of Hindu

Succession Act, 1956, made Ripudaman Kaur the absolute owner u/s 14 (1) of the 1956 Act and whether there can be any estoppel against the mandate of Section 14 (1) of the 1956 Act.

- iii) Whether the suit filed by the appellant can be held to be barred by principle of res judicata/Order 2 Rule 2 CPC.
- iv) Whether the facts and circumstances of the instant case, a title suit which is governed by Section 65 of the Limitation Act can be said to be barred by limitation.
- v) Whether the transfers/alienations by the contesting respondents, without any title, can be said to be legal and binding on Ripudaman Kaur/appellant.

Mr. M. L. Sarin, learned Senior counsel assisted by Mr. Kabir Sarin, appearing on behalf of respondent Nos. 1 and 2 submitted that the lower appellate court has not committed illegality and perversity in not deciding the findings issue wise and in support of his contentions relied upon the judgment of this Court in **Harjit Grewal and others Vs. Dr. Vinod Kumar Batra and others 2010(5) RCR (Civil) 340** to contend that in the aforesaid judgment the lower appellate court did not decide the issue which was framed later on, therefore, the ratio decidendi culled out in the aforementioned judgment would not apply to the present case.

Rather the point of determination, as per the provisions of Order 41 Rule 31 CPC, for the lower appellate court was only to determine as to whether as per the provisions of Section 14 (1) of 1956 Act. Ripudaman Kaur had become absolute owner of the property or not and the lower appellate court after detailed deliberation, being the last court of fact and law, found that it was her

limited right in the estate, therefore, she had not become absolute owner.

The trial Court on the basis of aforementioned evidence decreed the suit. However, the lower appellate court reversed the same. It is in these circumstances the appellants are in Regular Second Appeal before this Court.

I have heard learned counsel for the appellants, appraised the paper book as well as records of the courts below as well as case law cited.

The foremost question to be decided by this Court is as to “whether Ripudaman Kaur, keeping in view the peculiar facts and circumstances, had become absolute owner of the property given to her in lieu of maintenance” or “whether it was her restricted estate/right.”

It would be apt to reproduce Section 14(1) (2) of the Hindu Succession Act, 1956.

*"14(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*

*Explanation.---In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or device, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner what- ever, and also any such property held by her*

*as stridharas immediately before the commencement of this Act.*

*(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."*

The Hon'ble Supreme Court in Vaddeboyina Tulasamma and other Vs. Vaddeboyina Sesha Reddi (dead) by L.Rs 1977 AIR (SC)1944 had an occasion to ponder upon the aforementioned provisions and after detailed deliberation culled out the following principles:-

*(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any*

*new title but merely endorses or confirms the pre-existing rights.*

*(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms. and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends, sought to be achieved by this long needed legislation.*

*(3) Sub-section (2) of s. 14 is in the nature of a proviso and has a field of its own without interfering with the operation of s. 14(1) materially. The proviso. should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by s. 14(1) or in a way so as to become totally inconsistent with the main provision.*

*(4) Sub-section (2) of s. 14 applies to instruments, decrees, awards, gifts etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise preexisting rights. In such cases a restricted estate in favour of a female is legally permissible and s. 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into. an absolute one by force of s. 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub- s. (2) and would be governed by s. 14(1) despite any restrictions placed on*

*the powers of the transferee.*

*(5) The use of express terms like "property acquired by a female Hindu at a partition", "or in lieu of maintenance" "or arrears of maintenance" etc. in the Explanation to s. 14(1) clearly makes sub-s. (2) inapplicable to these categories which have been expressly excepted from the operation of sub-s. (2).*

*(6) The words "possessed by" used by the Legislature in s. 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same: Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of s. 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.*

*(7) That the words "restricted estate" used in s. 4(2) are wider than limited interest as indicated in s. 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."*

Mr. Vikas Bahl, vehemently/strenuously relied upon principle No.4, to contend that once Atma Singh had given the property measuring 558 Bighas to Ripudaman Kaur she had become absolute owner of the aforementioned property and therefore the plaintiffs who are successor-in-interest would have a right to succeed and the aforementioned principles, still hold field in view the ratio

decidendi culled out in Balwant Singh,s case(supra) and Sri Ramakrishna Mutt.rep.by Manager's case(supra). In the aforementioned judgment, the Hon'ble Supreme Court after discussing the aforementioned principles, noticed that the dispute was with regard to whether Kumud wife of Kanna acquired absolute ownership/estate given to her as per the aforementioned documents or not. *Thus, it would be apt to reproduce the relevant portion of the decree which would enable this Court to decide whether Ripudamand Kaur had acquired absolute ownership or not.*

*“Keeping in view the amount of subsistence it has been decided that instead of paying the said subsistence amount to the plaintiff every month, it has been decided to give the 1/3<sup>rd</sup> share of the agricultural land to Smt. Balwant Kanwar and land comprising in No.1/107-108, No.9/166-167, No.9/169-170 10 Bigha by the Hon'ble court No.6/103-104, No.9/176-177, 9/179-181, No. 9/180, No.9/188 to 192 No.9/196,No. 9/212-203, 206, 207,209 to 211 and 213,214, 179, 217 to 219 situated at Burj Baghel Singh wala as described in the fard of mutation has been given to the above plaintiff. With the income of which the plaintiff will get her subsistence. So long as she is alive she will get the total produce of the land and in this produce of Balwant Kanwar, one share of Smt. Jagdev Kanwar is also included. The plaintiff will comply with the orders and will raise no objection. She will be responsible for the marriage of Jagdev kaur, daughter. In case if the above plaintiff is died before the marriage of daughter Jagdev Kaur, then the said land will remain in the possession of the*

*land will be of the defendants and the defendant will get produce out of the above land. But the defendant will not be entitled to sell or transfer or mortgage the above land in any manners and will use the land only for substance (Guzara) out of the produce.”*

In case, this Court arrives at a conclusion that Ripudaman Kaur had become absolute owner then the entire sale deeds effected subsequently would be rendered null and void and if converse, then the plaintiffs cannot claim right to succeed her estate .

In order to appreciate the aforementioned controversy, I would now refer to the facts and record to, decide as to whether Ripudaman Kaur had acquired absolute ownership or not.

(i) Ripudaman Kaur had filed a suit for permanent injunction and also claimed partition in respect of area measuring 556 bighas 6 biswas. However, the trial court vide judgment and decree, which is already extracted above, enjoined the defendants therein, till her death and refused to grant the relief with regard to partition. The said judgment and decree was assailed by Ripudaman Kaur, but did not succeed.

(ii) Had Ripudaman Kaur acquired the absolute ownership, she would have contested the decree dated 3.6.1972 effected by Pritpal Kaur in favour of her children-plaintiff Nos. 2 and 3.

(iii) Ripudaman Kaur did not claim any declaration during her life time as to whether she had become owner viz-a-viz the property given to her in lieu of subsistence during her life time.

(iv) The compromise envisaged, that she would not sell or mortgage the property during her life time. In essence, Ripudaman Kaur had restricted right in the property till her life time. Thus, the title would not devolve upon her as per the provisions of Section 14(1) of 1956 Act.

(v) The arrangement, which resulted into passing of decree in favour of Ripudaman Kaur effected by Atma Singh, would be an estoppel against the present plaintiffs to claim that she had acquired full ownership under Section 14(1) of the Act. Thus, the plea of Mr. Vikas Bahl, that there is no requirement of law to seek declaration for claiming absolute ownership under Section 14(1) of the Act i.e. in view of the deemed fiction, for the reason, that had it been so, there was no occasion for the plaintiff to file the suit as Ripudaman Kaur had already, according to the plaintiffs, become the absolute owner has no force.

(vi) During the life time of Ripudaman Kaur, many sales had taken place, in essence, the property exchanged many hands and she did not point or raise any finger, much less, challenged the same. Had she got any suspicion viz-a-viz her right, she could have claimed the right immediately, on the demise that Atma Singh who admittedly died on 1.10.1956.

(vii) The government had acquired 9/10 bighas of land for the purpose of carving out a drain. The compensation was accepted by all the legal heirs and not only by Ripudaman Kaur.

(viii) The Will of Ripudaman Kaur does not prescribe any area bequeathing her share, in essence, bequeathed

only 1/8<sup>th</sup> share which she succeeded on demise of Atma Singh.

(ix) However, it is a settled law that there is no limitation for claiming possession on the basis of title, but the present case does not fall within the aforementioned settled law, for the reason that the registered documents and many other acts in respect of 1/4<sup>th</sup> share of Pritpal Kaur in favour of plaintiff Nos. 2 and 3 had been effected and the same have not challenged and for that reason the plaintiffs' astudneous cannot go un-noticed as the sale deeds had not been challenged, fully knowing, that the suit ex facie would be thrown out being barred by limitation.

(x) The alleged possession, of Ripudaman Kaur, as vehemently been argued, on behalf of the appellants, would not entail absolute ownership, inasmuch as that, on demise of Atma Singh the property was inherited by all legal heirs, i.e. as per natural succession. No doubt, the mutation would not give the cause of action to the effected party to seek the relief by way of declaration and the cause of action would arise only title is brought under shadow. The facts and circumstances of the present case, would reveal that the property had exchanged many hands and even the collusive decree has been passed in favour of plaintiff Nos. 2 and 3 and no body raised a finger till the demise of Ripudaman Kaur. Ripudaman Kaur ultimately died on 2.2.1994 and the suit was filed in 1995.

xi) The decree dated 29.1.1960 leaves no manner of doubt that the propety given by Atma Singh by way of compromise resulted in passing of the decree dated 29.1.1960.

(xii) The suit filed by Ripudaman Kaur claiming permanent and partition further leave no manner of doubt that the restriction was imposed upon Ripudaman Kaur to enjoy the fruit of the property till her life time, as she was restricted from mortgaging or selling the land, which she got in lieu of maintenance. Once restriction had been imposed upon Ripudaman Kaur the principle No.4 culled out in **Vaddeboyina Tulasamma and other's case (supra)** would not apply to the facts and circumstances of the present case, particularly, as per the decree of the year 1960, the defendants, therein, were injuncted not to dis-possess till her death and the said decree has attained finality.

(xiii)The plaintiffs cannot be permitted to put the clock back and claim that Ripudaman Kaur, had, by ignoring the aforementioned myriad circumstances, signed mutation No.276 dated 29.9.1957 (Ex.DW-3/16) recording inheritance of Atma Singh, whereby Krishan Avtar Singh inherited 1/4<sup>th</sup> share, Pritpal Kaur and Surinder Pal Kaur inherited 1/2 share in equal shares and Ripudaman Kaur and Gurdev Kaur inherited in equal shares 1/4<sup>th</sup> share and till her death, thus, it is irresistably been concluded that the property given to her, in view of the compromise/decreed, was only as maintenance during her life time and not as an absolute ownership as there was a restriction with regard to the **sale and mortgage** etc.

(xiv) The mutation bearing 469 dated 29.7.1973 Ex.DW/15 in pursuance to the decree dated 3.6.1972 was sanctioned in presence of Ripudaman Kaur on 20.7.1973, had it

been so, Ripudaman Kaur could have objected to the aforementioned decree and should not have got the property mutated, being, absolute owner.

(xv) Copy of Jamabandi for the year 1983-84 Ex.D-6 and 1993-94 Ex.D-32 show the cultivating possession of other co-sharers since the date of sanctioning of mutation No.276 dated 29.9.1957 and the possession of Ripudaman Kaur was shown only to the extent of 1/8<sup>th</sup> share.

(xvi) Rachhpal Kaur widow of Krishan Avtar Singh son of Pritpal Kaur daughter of Ripudiman Kaur inherited 1/6<sup>th</sup> share on death of Krishan Avtar Singh, who died in the year 1960. She sold her 1/6<sup>th</sup> share vide sale deed Ex.DW-7/A to Sukhwinder Singh-defendant No.8.

(xvii) The plea of Mr. Vikas Bahl, that sale deed was not out of land measuring 556 bighas 6 biswas has not been proved, as nothing has been brought to the notice of the court by referring to the aforementioned sale deed viz-a-viz the area and description/identification of the khasra number.

(xix) Defendant No.7-Gurdev Singh also sold the land measuring 18 bighas 8 biswas to defendant No.14 vide sale deed dated 5.11.1981 Ex.DW6/C.

(xx) Defendant No.6-Reetmohinder Singh sold the land measuring 40 bighas 18 biswas which came to him through civil court decree dated 24.4.1972 from his mother Surinderpal Kaur to defendant No.9 Jagpal Singh vide sale deed Ex.DW5/E.

The aforementioned facts, irresistibly lead only to

one answer that Ripudaman Kaur did not become absolute owner by virtue of provisions of Section 14(1) of the 1956 Act.

(xxi) In my view, the suit of the appellants-plaintiffs is also “time barred” as the title in the property had already been transferred by way of different sale deeds and therefore the mutation would not give cause of action to claim declaration, the ratio decidendi of the judgments, relied would not apply, for, it has been held therein that when the title is under cloud a right or cause of action would accrue, in my view, it accrued when the sale deed had been effected long time back, whereas the suit has been filed in the year 1995.

In my view the judgments and decrees of the courts below does not suffer from any illegality and perversity as the only point for determination, which has been determined by lower appellate court was as to whether Ripudaman Kaur had acquired absolute ownership under the provisions of Section 14 (1) of the 1956 Act or not, which is, as per aforementioned observation, has been answered against the appellants/plaintiffs. The plaintiffs have also not been able to prove execution/possession.

In view of the ultimate analysis I hold that the substantial questions of law as mentioned above are answered against the appellants/plaintiffs and in favour of the respondents/defendants.

Consequently, the appeal sans merit and accordingly the same is dismissed.

**(AMIT RAWAL)**  
**JUDGE**

**October 8, 2015**  
**archana**