

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

**RSA No.505 of 2011(O&M)  
Date of Decision: 12.05.2015**

Mohinder Singh ... Appellant  
Versus

Budh Singh & ors. ... Respondents

**CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. Harsh Aggarwal, Advocate,  
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

**RAJIV NARAIN RAINA, J.**

**C.M. No.1359-C of 2011**

For the reasons stated in the application, the delay in re-filing the appeal is condoned.

**C.M. No.1358-C of 2011**

The application for making good the Court fee is allowed. Proper Court fee has been affixed which will relate back to the date of presentation of the appeal.

**R.S.A. No.505 of 2011(O&M)**

The plaintiff is in second appeal against the concurrent judgments and decrees of the Courts below dismissing the suit. The plaintiff filed a suit for declaration and possession of suit property in which he prayed for permanent injunction against the 16 defendants as well. The challenge in the suit is to the mutation entered in the revenue record on August 14, 1985 Bikrami, which means 1927-1928 AD. The suit was instituted on March 7, 1995. The question was whether the suit is time

barred. The plaintiff claimed the suit was filed on the basis of inheritance and therefore, the question of bar of limitation would not come in to obstruct relief, but to the contrary, the suit was not filed on the basis of inheritance. The suit was filed claiming wrongful deletion of the name of the plaintiff's father Hazura Singh from the revenue record vide mutation No.2297 of 1985. The suit relating to correction of revenue record lies within the restrictions of Article 120 of the Limitation Act, 1963 which prescribes a period of 6 months to bring an action from the date of the cause of action. The right to sue accrue from the date when Hazura Singh's name was deleted in the revenue record. Hazura Singh did not raise any dispute till his death with respect to the deletion of his name from the revenue record. The cause of action pleaded in the suit was that it had arisen in 1975 when defendants 1 to 3 refused to pay for use and occupation of the land by the defendants on the basis of theka or batai. But the Courts have figured out that this theory of theka/batai is forthcoming only from oral evidence with not backed up by documentary evidence to support the assertion and appears highly improbable to believe.

The Courts below read the revenue record which depicted that sale has been effected by Dalip Singh, father of defendants 1 to 3 during his life time and as per the record, Dalip Singh has died in the year 1984. The Courts before thought in these circumstances that when the land was sold much prior to 1985, then the question of plaintiff approaching defendants 1 to 3 to pay him theka and batai does not arise and the cause of action has been doctored for the purpose of the suit and the cause of action to accrue from 1995. The Courts have discredited this stand of the plaintiff that neither him nor his father were connected to the suit property. Hence, it is

not found necessary to enter upon a discussion on the plea of adverse possession taken by the defendants.

The order of the learned Additional District Judge, Barnala, dismissing the appeal by judgment and decree dated December 7, 2009 is a well reasoned judgment, which is not liable to be discarded for any of the grounds taken in the appeal or pressed at the time of hearing. The Court of first appeal has correctly analyzed the evidence and concluded that the testimonies of PW-1 to PW-3 have little significance on their prayers as they had no special means or knowledge to prove the relationship of the father of the plaintiff Hazura Singh son of Hardam Singh and also further in the ascendant family tree beyond Hardam Singh. The roots of genealogy have not been traced by evidence thereby there is no evidence that the plaintiff was owner to the extent of half share to Hazura Singh son of Hardam Singh by failing to prove how was he related to the true owner. The Court of first appeal examined the revenue record connected to the plaintiff and negated the claim of the grandfather of defendants No. 1 to 3 and Hazura Singh to lay hands on half share of the suit corpus. In absence of facts establishing relationship, the appeal fails and is dismissed.

**12.05.2015**  
**monika**

**(RAJIV NARAIN RAINA)**  
**JUDGE**