

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

RSA No. 1689 of 2013 (O&M)

Date of Decision: November 05, 2015

Baldev Singh

.... Appellant

vs.

Janak Dulari and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Amit Mehta, Advocate for the appellant.

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present regular second appeal is the judgment and decree dated 05.11.2012 passed by learned Addl. District Judge (Adhoc), Fast Track Court, Hoshiarpur, affirming the judgment and decree dated 03.03.2009 passed by learned Addl. Civil Judge (Sr. Divn.), Dasuya-cum-Presiding Officer, Mobile Court at Village Jandwal, whereby the suit of the plaintiff was dismissed.

The Brief controversy is that the plaintiff Baldev Singh filed a suit for declaration to the effect that he is exclusive owner in possession of land measuring 180 kanals 18 marlas, situated in village Bharath HB No.368, Tehsil Mukerian, District Hoshiarpur. According to him, his grand father Amar Singh was the owner of the land. He had four sons, namely, Shankar Singh, Udham Singh, Ram Chand and Saran Dass. Udham Singh was given in adoption to

Ganda Singh son of Jawahar Singh. Udham Singh succeeded the estate of Ganda Singh by filing of the civil suit claiming the ownership rights. After the death of Amar Singh, which took place in the year 1918. The mutation No.61 was sanctioned on 07.03.1918 in favour of all the four sons in equal shares to the extent of 1/4th share. As Sarna @ Saran Dass one of the sons of Amar Singh was dead at the time of sanctioning the mutation, therefore, his share was mutated in favour of his widow Gur Devi. Gur Devi, later on, remarried to Shankar Singh son of Amar Singh. Therefore, vide mutation No.59, dated 27.05.1920, her share was also mutated in favour of Udham Singh, Shankar Singh and Ram Chand in equal shares.

The claim of the plaintiff is that now defendants have filed application for partition before A.C. Ist Grade Mekerian of the suit land and that the land was wrongly mutated in favour of Udham Singh, father of the defendants. Udham Singh is now dead. Lower court took the view that adoption took place before enforcement of the Hindu Adoption and Maintenance Act, 1956 (in short 'the Act'). Therefore, it is governed by customary law. A reliance was placed upon the authority of this Court delivered in case of ***“Raghbir Singh vs Satpal and others”*, 2005(3) Civil Court Cases 546 (P&H).**

It was held that he can succeed in natural father also. The judgment was affirmed in appeal.

I have heard learned counsel for the appellants and have also carefully gone through the case file.

It comes out that the succession of Amar Singh opened in

the year 1918. The share of Gur Devi wife of Sarna @ Saran Dass S/o Amar Singh was mutated in faovur of his three remaining sons in the year 1920. These heirs of the plaintiff remained mute spectator and woke up only in the year 2001 to file the suit claiming the title only after the death of Udham Singh. During the life time of Udham Singh, no controversy was raised that Udham Singh wrongly succeeded his natural father Amar Singh. In the plaint, the date of adoption is also not mentioned, which is before the enforcement the Act.

In these circumstances, in addition to the findings of the lower court, the suit is also patently time barred. The land was succeeded by Udham Singh in the year 1918 and some part was succeeded in the year 1920. Therefore, after more than 80 years, declaration could not be sought against his legal heirs as sought to be done by the plaintiff.

Hence, the present regular second appeal stands dismissed.

November 05, 2015
sarita

(KULDIP SINGH)
JUDGE