

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

RSA No. 2603 of 2015 (O&M)

Date of decision: 21.09.2015

Kusham and others

... Appellants

versus

Triloknath and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sandeep Kumar Yadav, Advocate for the appellants.

K.Kannan, J.

The plaintiffs lost the suit in a claim that the mutation ordered on 21.05.1990 allowing for the property of Ramji Lal to be transferred in favour of all his sons was bad in law. The suit was being instituted by the grandsons of Ramji Lal claiming the right in the property of the grandfather as having devolved on their mother Gayatri Devi on the basis of a Will executed by the Ramji Lal on 14.01.1986. Ramji Lal had died on 07.07.1986. The mother Gayatri Devi, wife of the son filed a suit against the defendants contending that her husband was given to bad habits and the father-in-law, therefore, purchased the property only to benefit her family and made a bequest in her favour. The suit filed to lay the claim to the property under a Will was however allowed to be dismissed in default and it was not restored to file. The plaintiffs are the sons of Gayatri Devi who claimed the property through the mother and contend that the mutation affected on 21.05.1990 not competent or valid. The trial Court and the Appellate Court have dismissed the suit. The plaintiffs are the appellants.

If the mother had propounded a Will for the exclusive right to the property and failed to prove the same but allowed the suit for dismissal in default, the plaintiffs who claimed under their mother will

be barred under the provisions of Order 9 rule 9 CPC to lay a claim to the same property. The Court below has stated that the claim was barred by *res judicata* but I will apply the correct principle as barred under Order 9 Rule 9 CPC. The plaintiffs were seeking for the challenge to the entry made in the year 1990 through a suit filed in the year 1995 which the Courts below have found to be barred by limitation. Normally the revenue entries cannot decide issue of title and I would not have taken an issue of limitation very seriously if only the plaintiffs had independent right to the property or could establish the same. The said right having been lost as barred by law, there was no question of allowing for the mutation to be challenged after more than a decade.

There is no merit in the regular second appeal and is consequently dismissed.

(K.KANNAN)
JUDGE

21.09.2015

kv