

105.

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

Regular Second Appeal No.3733 of 2014 (O&M)

Date of decision:19.10.2015

Surat Singh and others

... Appellants

versus

Chhaju Ram and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Akshay Kumar Goel, Advocate,
for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (*Oral*)

1. The appeal is at the instance of the plaintiffs who sought for a declaration that the mutations showing the plaintiffs as being entitled only to 2/5th share and showing the defendants as entitled to 3/5th share was null and void. The claim was with reference to the property that was held in the hands of a common ancestor Ram Sahai. The plaintiffs were children born to the first wife Mam Kaur and the defendants were the representatives of the children born to the second wife Lado. Ram Sahai died in the year 1929 and the mutations had been entered in the plaintiffs being shown as each

entitled to 1/5th share and the defendants as being entitled to a similar 1/5th share. The mutations had been effected on a per capita distribution amongst the surviving lineal descendants of Ram Sahai.

2. The plaintiffs were pleading for a custom that in the place where the property was situate at Bhiwani, the law allowed for a distribution of the estate to be operative *per stirpes* in such a way that the children of the respective widows would each be taken to constitute a fresh stock of descendant and each widow would be taken as having a half share mutually to transmit to the respective lineal descendants. Since the plaintiffs were pleading for a custom which was different from how the normal custom established under the Mitakshara system that allowed for a division of all the properties of Hindu families to devolve upon the lineal descendants per capita, the plaintiffs were required to prove such custom. However, there was no weighty evidence placed in that regard and apart from *ipse dixit* of the plaintiffs, there was nothing substantial for the court to act and to give a direction against the entries made as early as in the year 1930. The claim was also hopefully barred by laches that the plaintiffs were trying to seek for a larger share by plea of customs more than 5 decades after the initial entries had been made. The court found that the plaintiffs had not made a case for securing the relief and the appellate court confirmed the same.

3. I find no defect in the judgments of the courts below to make any intervention. The judgments of the courts below are confirmed and the second appeal is dismissed.

(K.KANNAN)
JUDGE

19.10.2015
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