

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**C.M. No. 10905-C of 2015 &
RSA No. 4006 of 2014**

Date of decision: 09.09.2015

Ramotar and others

...APPELLANTS

VS.

Ishwar @ Ghisu and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K.Chauhan, Advocate,
for the applicant/appellants.

AUGUSTINE GEORGE MASIH, J.

C.M. No. 10905-C of 2015

Prayer in this application is for bringing on record the legal heirs of the deceased Ramotar son of Madan Lal-appellant No. 1, who is stated to have expired on 16.02.2015 leaving behind three legal heirs, details of whom are mentioned in para-2 of the application. The application is supported by an affidavit and the death certificate is also appended along with the application as Annexure A-1.

In view of the above, the present application is allowed and Sh. Dinesh Kumar, Sh. Sanjay Kumar and Sh. Ravinder Kumar sons of Late Sh. Ramotar-appellant No. 1 are impleaded as his legal heirs subject to all just exceptions. The amended Memo of Parties appended along with the application is taken on record. Registry is directed to place the same at the appropriate stage of the case.

RSA No. 4006 of 2014

In this appeal, the appellants-plaintiffs have challenged the

judgment and decree dated 23.01.2012 passed by the Civil Judge (Junior Division), Bhiwani, whereby the suit for declaration and permanent injunction to the effect that the plaintiffs No. 1 and 2 are the owners in possession of 77 ½ share and plaintiffs No. 3 to 9 are the joint owners in possession of 77 ½ share in the agricultural land comprising of 17 Kanal and 3 Marla situated in the revenue estate of Bhiwani, Tehsil and District Bhiwani and further a decree for declaration that the entry in the jamabandi for the year 1972-73 to 2002-03 showing the shares of the parties is wrong, illegal and not binding on the rights and title of the plaintiffs-appellants and the judgment and decree passed in Civil Suit No. 49 of 1977 decided on 31.07.1978 and mutation No. 8022 based on the decree is illegal, null and void and not binding on the rights of the appellants-plaintiffs, stands dismissed and the judgment dated 04.04.2014 passed by the Additional District Judge, Bhiwani confirming and upholding the judgment and decree of the trial Court.

It is the contention of the counsel for the appellants that the judgments and decree passed by the Courts below are not sustainable on the ground that the judgment and decree dated 31.07.1978 were obtained on the basis of the fraud and misrepresentation and, therefore, are unsustainable and that being the situation, there is no limitation prescribed for filing a suit for declaration.

This contention of the counsel for the appellants cannot be accepted in the light of the fact that there is no such a pleading in the plaint. Counsel was called upon during the arguments to point out such a pleading but he was unable to find anything in the plaint with regard to the same. In the absence of such pleadings, challenging the suit on the basis of fraud etc.,

the period for challenging the judgment and decree would be three years whereas the present suit has been filed on 17.09.2007, which is after a period of 28 years from the date of the judgment and decree dated 31.07.1978. Neither the predecessors-in-interest of the appellants nor the appellants had challenged the revenue record as well as the judgment dated 31.07.1978 prior to the filing of the present suit in the year 2007, which, as has been held above, is hopelessly time barred as 28 years had lapsed from the date of coming into existence of the judgment and decree. In the light of the above, it cannot be said that the finding recorded by the Courts below that the suit is barred by limitation, cannot be faulted with.

An argument has been raised by the learned counsel for the appellants that the judgment and decree dated 31.07.1978 is not binding upon the appellants and further that there can be no limitation applicable to the suit for declaration filed by the co-sharers in joint possession but the same cannot be accepted in the light of the fact that in the said suit titled as Ishwar vs. Ram Kishan Ex. D8, the predecessors of the appellants-plaintiffs themselves claim their respective share as per the jamabandi for the year 1972-73 and Madan Lal and Baij Nath, who were predecessors-in-interest of the plaintiffs, were party to the suit wherein, Madan Lal appeared as PW2 and made a statement to that effect. It was, therefore, to the knowledge of both Madan Lal and Baij Nath that their share in the property was as per the jamabandi for the year 1972-73. They did not challenge the judgment and decree during their life time. The cause of action accrued to them on the very date when the decree came into existence. It cannot, therefore, be said that a wrong entry in the jamabandi was not in their knowledge earlier.

Therefore, the assertion of the counsel for the appellants cannot be

accepted.

That apart, as per the jamabandi for the year 1972-73 Ex. P3 where the share of Madan Lal and Baij Nath is recorded as 1 instead of 17 and the appellants have claimed that the jamabandi for the year 1963-64 depicts the correct share but the jamabandi prior to 1967-68 has not been produced which can show share of the predecessors-in-interest of the parties i.e. Musadi, Godha, Madan, Baijnath and Smt. Ankauri. They have not produced any evidence on file, which can show the base of the share mentioned in the jamabandi for the year 1967-68. After coming into existence of jamabandi for the year 1972-73 where the share of Madan Lal and Baij Nath was depicted as 1 share, the suit was filed and on admission of their respective shares as per the jamabandis, the judgment and decree dated 31.07.1978 was passed, which was subsequently reflected in mutation No. 8022. Further in the present suit, appellant No. 1-Ramotar appeared as PW-1 and admitted in his cross-examination that earlier there was a shop, which at the time of partition came into the share of his father Madan Lal. This admission shows that a settlement has taken place and was acted upon, therefore, it cannot be said that the jamabandi for the year 1972-73 does not depict the correct position or that Madan Lal got less share in the land.

There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be just and reasonable, there is no illegality in the impugned judgments passed by the Courts below. Further, there is no substantial question of law in the present appeal, which requires consideration of this Court.

In view of the above, finding no merit in the present appeal, the

same stands dismissed.

September 09, 2015
pj

(AUGUSTINE GEORGE MASIH)
JUDGE