

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

Regular Second Appeal No.5699 of 2014 (O&M)
Date of decision: 15.10.2015

Krishan Kumar and others ... Appellants

versus

Smt. Sheela and others Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikram Singh, 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 plaintiffs, who are the sons of Balbir, attempted to get over the dismissal of the suit filed by Balbir against his brother Ramswarup-the second defendant by modifying the prayer in suit that mutation entered in the year 1983 treating Balbir and Ramswarup as owners was not valid. Balbir had filed the suit against Ramswarup contending that he was the owner of the property as a sole heir of Bihari and Ramswarup his brother had actually been given in adoption to Bakhtawari by adoption deed dated 03.09.1958. The suit was dismissed for default and Balbir did not take any steps to have the suit restored. Instead, the plaintiffs

filed the suit even during the lifetime of the father contending that mutation entered in the year 1983 treating the second defendant Ramswarup also as a heir was incompetent and bad. The contention in defence was that the plaintiffs did not have a locus standi since Balbir was still alive and that the prayer in the suit was barred by limitation.

2. I notice that the suit had been filed in 2004 for challenging the mutation effected in the year 1983. The plaintiffs, who complained that mutation had been wrongly entered, were required to prove their entitlement to the property. The plaintiffs could not have any right to the property when their father was alive and the court was justified in finding that the plaintiffs had no locus standi. The father had died during the pendency of suit and if the issue of whether the plaintiffs could pursue their claim as heir at law to the first defendant Balbir, then the bar of prosecution of such a claim through the instant suit operated against the plaintiffs by virtue of the fact that Balbir had himself filed a suit and had allowed for the suit to be dismissed for default. The bar for institution of a fresh suit operated under Order 9 Rule 9 CPC and the plaintiffs as persons claiming under their father were likewise barred even if the plaintiffs were to be taken as having obtained a right after the lifetime of the father. By the fact of death of their father the right would still be available if only the father had the right, if the father

had himself lost the case by dismissal of the suit against the second defendant and that dismissal would operate against the plaintiffs as well.

3. Looking from any direction, it is not possible to secure to the plaintiffs any right as canvassed by them. The suit and the appeal were right dismissed and I find no scope for interference in second appeal. Second appeal is dismissed.

(K.KANNAN)
JUDGE

15.10.2015
sanjeev