

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

RSA No.3403 of 2009(O&M)

Date of decision:2.5.2016

Ram Singh (deceased) through LR Balbir Singh and another
.....Appellants

VERSUS

Baldev Singh and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. C.B. Goel, Advocate for the appellants.

Mr. S.S. Dinarpur, Advocate for the respondents.

REKHA MITTAL, J.

The unsuccessful defendant is in appeal to assail the consistent findings recorded by the Courts below whereby suit filed by Baldev Singh and others (contesting respondents) claiming themselves to be joint owners in equal share of land measuring 23 kanals 4 marlas being 4/15 share out of total land measuring 87 kanals 1 marla detailed in para 1 of judgment of the learned trial Court was decreed and the findings recorded by the trial Court were affirmed in appeal preferred by the defendants including appellant-Ram Singh.

The present litigation pertains to land left behind by Smt. Jasmero @ Ajmero Devi daughter of Sh. Sardha Ram and mother of plaintiffs-Baldev Singh and others. Sh. Sardha Ram left behind land

measuring 87 kanals 1 marla, inherited by his class I heirs including Smt. Jasmero @ Ajmero Devi to the extent of 23 kanals 4 marlas out of total land measuring 87 kanals 1 marla. On the death of Sh. Sardha Ram, Smt. Jasmero @ Ajmero Devi became co-owner in joint possession of total land measuring 87 kanals 1 marla with her brothers Ram Singh and Shiv Ram (defendants in the suit). Smt. Jasmero @ Ajmero Devi passed away on 02.04.1980. Mutation in regard to inheritance of Smt. Jasmero @ Ajmero Devi on the basis of Will dated 26.12.1979 bearing No.295 was sanctioned in favour of Ram Singh-defendant No.1 in the year 1994. Though in the suit, there was also dispute qua decree dated 26.03.1994 passed in case titled Shiv Ram etc. Vs. Sarupi on the basis whereof mutation No.296 was sanctioned but in the present appeal, the dispute is only qua inheritance to the land left behind by Smt. Jasmero @ Ajmero Devi.

Counsel for the parties have fairly conceded that there is no dispute that Baldev Singh and others (plaintiffs in the suit) are the class I heirs of Smt. Jasmero @ Ajmero Devi. It is also an admitted fact that Ram Singh, represented by his legal representatives, is the brother of Smt. Jasmero @ Ajmero Devi and the maternal uncle of Baldev Singh and others. Mutation No.295 in respect of land left behind by Smt. Jasmero Devi was sanctioned in favour of Ram Singh on the basis of Will dated 26.12.1979 alleged to be executed by Smt. Jasmero @ Ajmero Devi. It is also not disputed that the said Will has not seen the light of day in the present litigation much less having been proved in accordance with law in order to negate plea of the plaintiffs that they have become co-owners of the suit land on the basis of natural succession.

The sole submission made by counsel for the appellant is that the suit instituted by the plaintiffs/respondents is clearly barred by limitation as they have failed to challenge mutation No.295 dated 21.05.1994 within a period of 3 years from the date of sanction. To substantiate the contention, it has been argued with vehemence that plea raised by the respondents/plaintiffs in the suit that they were in possession of the suit land and were dispossessed about 6 months prior to institution of the suit has no legs to stand as there is no material on record to substantiate their plea in this regard. It is further argued that as the respondents have failed to adduce any evidence much less tangible to prove that they were in possession of the suit land at any time much less 6 months prior to institution of the suit, the Courts below have committed a grave error rather illegality in deciding the issue of limitation in favour of the respondents and against the appellant. In support of his contention, he has relied upon judgments of this Court Smt. Sewti Devi vs. Kanti Parshad, AIR 1973 P&H 126 and Ibrahim alias Dharam Vir vs. Smt. Sharifan alias Shanti, 1979 PLJ 469.

Counsel for the contesting respondents, on the contrary, has supported the judgments passed by the Courts below with the submissions that inheritance never remains in abeyance and the plaintiffs/respondents became joint owners with the defendants as soon as Smt. Jasmero @ Ajmero Devi passed away in the year 1980 as Smt. Jasmero @ Ajmero Devi was recorded to be joint owner in joint possession of the entire land left behind by her father Sh. Sardha Ram and inherited by his class I heirs as per Hindu Succession Act, 1956. It is further submitted that as the

plaintiffs/respondents became co-owners in joint possession of the entire land including share of Smt. Jasmero @ Ajmero Devi, they are deemed to be in possession of the entire joint land as has been laid down by this Court in authoritative pronouncement Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Punjab 528, wherein the inter se rights and liabilities of the co-sharers were settled by a Division Bench of this Court. Further reliance has been placed upon judgment of this Court Daulat Singh (Dead) through LRs vs. Dilbagh Singh and others, 2004(1) R.C.R. (Civil) 369.

Counsel has further argued that as the respondents/plaintiffs staked their claim to the suit land on the basis of inheritance i.e. ownership, no period of limitation is prescribed and the suit cannot be said to be barred by limitation unless the defendants are successful to plead and prove that they have perfected their title to the suit property by way of adverse possession. In this context, reference has been made to judgment of this Court Mohinder Singh died and represented by his LRs and another vs. Kashmira Singh, 1985 PLJ 82 and Gurcharan Singh and others vs. Surjit Kaur and others, 2005(3) RCR (Civil) 628.

I have heard counsel for the parties, perused the paper-book, the original records and carefully gone through the judgments cited in support of respective submissions made by counsel for the parties.

In Ibrahim alias Dharam Vir's case (supra), this Court has held in para 8, reads as follows:-

“8. It may be observed at the outset that the word ‘first’ occurring in article 58 of the Act is of no significance at all for deciding the issue of

limitation so far as the facts of the case in hand are concerned as the main point that requires determination is whether mere entry of mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not. There is no dispute that mutation was sanctioned in favour of the defendant after the death of Akbar and in case such an entry furnishes a cause of action, then certainly the suit would be barred by limitation. Even Mr. Aggarwal very fairly conceded this proposition. But what was argued by him was that mere entry of mutation did not furnish any cause of action and in support of his contention he relied on a Division Bench judgment of this Court in *Niamat Singh v. Darbari Singh etc.*, 1956 P.L.R. 461. In our view, the contention of the learned counsel has considerable force. The plaintiff continued to be in possession of the entire property even after the sanction of the mutation in the name of the defendant after the death of her father Akbar or her mother Smt. Nanhi or her uncle Bhiku. The defendant was never given any share in the rent, nor was she given any produce out of the land of her share. In this situation, no cloud was cast on the title of the plaintiff by mere entry of the mutation in the name of the defendant. Further, there is no proof on the record to show that before April, 1969, by any act or assertion of the defendant the right of the plaintiff was ever actually jeopardized. The defendant is occupying a house in the village. The assertion of the plaintiff is that it was given by him to her out of compassion, while the plea of the defendant is that she occupied it as of right. Be that as it may, the fact remains that so far as the agricultural land is concerned, the defendant after the sanction of the mutations never asserted her right to her share in the land in dispute, nor did she ever get any rent or produce and that it was in the year 1969 that she tried to assert her right and interfere with the possession of the plaintiff. In this situation, mere entry of a mutation in the name of the defendant would not furnish any cause of action to the plaintiff. This view of ours finds full support from the judgment of the Division Bench in *Niamat Singh's* case. Thus, we do not agree with the learned Single Judge that the cause of action arose when the mutation was entered in the name of the defendant and consequently, reverse the finding on issue No.4 and hold that the suit filed by the plaintiff is within limitation.”

In Smt. Sewti Devi's case (supra), the Court has held in para

5, reads thus:-

“In the instant case the claim was asserted by Smt. Daropadi in 1945 and her claim was admitted by Sant Lal. Since Sant Lal’s right had been effectively invaded or jeopardized by the assertion of her right by Smt. Daropadi, it was at that time that the cause of action accrued to Sant Lal to file a suit for declaration that he alone was entitled to the estate of Baru after the death of his widow Smt. Raji.”

In the two judgments cited by counsel for the appellant, it was not the point in issue as to what would be the status of a co-owner qua limitation for asserting his right of joint ownership on the basis of inheritance.

On the other hand, this Court in Sant Ram Nagina Ram’s case (supra) has laid down inter alia the following propositions, extracted in the judgment Ashok Bansal and others vs. Gurdas and another, 2002 (3) RCR (Civil) 792:-

- “1. A co-owner has an interest in the whole property and also in every parcel of it.
2. Possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.
3. A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
4. The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of either as, when a co-owner openly asserts his own title and denies that of the other.
5. Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.
6. Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

7. Whether a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to dispute the arrangement without the consent of others except by filing a suit for partition.”

There cannot be any dispute about the settled position in law that inheritance never remains in abeyance. Smt. Jasmero @ Ajmero Devi passed away in the year 1980 and on the basis of natural succession, respondents/plaintiffs stepped into the shoes of Smt. Jasmero @ Ajmero Devi and became joint owners in joint possession of the total land left behind by Sh. Sardha Ram and inherited by his class I heirs including Smt. Jasmero @ Ajmero Devi as reflected in the jamabandi for the year 1988-89 (Ex.P6). Equally settled is that mutation neither creates nor extinguishes title to the property as the same is recorded for fiscal purpose and to straighten the revenue records. As the respondents/plaintiffs became the co-owners in joint possession to the extent of share of Smt. Jasmero @ Ajmero Devi in the joint land on the demise of Smt. Jasmero @ Ajmero Devi in the year 1980, they are deemed to be in possession of every inch of the joint land, sufficient to negate plea of the appellant that suit filed by the plaintiffs is barred by limitation for their failure to challenge the mutation within a period of 3 years from the date of its sanction in the year 1994.

In view of the above, there is no merit in contentions of the appellant nor any justification is made out to differ with the consistent findings recorded by the Courts below when otherwise no substantial question of law arises for adjudication.

No other point has been raised.

In view of what has been discussed hereinabove, finding no merit, the appeal fails and is accordingly dismissed with costs.

MAY 2, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE