

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

RSA No.507 of 2011 (O&M)

Date of decision : 21.11.2016

Ram Chander and others

...Appellants

Versus

Baru and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. R.C. Tacoria, Advocate for the appellants.

Mr. Rishav Jain, Advocate for respondent Nos.1 to 4.

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**AMIT RAWAL, J. (Oral)**

**CM No.1364-C of 2011**

For the reasons stated in the application, which is duly supported by an affidavit, delay of 217 days in refiling the appeal is condoned.

Application stands allowed, subject to all just exceptions.

**Main Case**

The appellants-plaintiffs are aggrieved of the concurrent findings of fact, whereby suit claiming following relief filed in the year 2000, has been dismissed:-

*“Suit for declaration to the effect that plaintiffs and proforma defendants are owners in possession to the extent of 5/6<sup>th</sup> share in the agricultural land comprised in khewat No.179, Khatoni No.215, measuring 145 kanals 1 marla, situated in Village Nidana, Tehsil and District Jind as per the jamabandi for the year 1992-93 and to entries in the*

*revenue record showing the defendant to be exclusive owners of this land is against law and facts and the plaintiffs are entitled to get the revenue records corrected and record themselves to be owner in possession of 5/6<sup>th</sup> share in the record of rights.”*

Mr. R.C. Tacoria, learned counsel appearing on behalf of appellants-plaintiffs submits that Gauri Dutt was the owner of the property and was survived by three sons namely Ganga Man, Jassa and Assa. There is no dispute with regard to the estate of Jassa, as he had only one son namely Hardwari, whereas Ganga Man had four sons namely Shadi Ram, Kirpa, Kanhiya and Joga. Assa Singh was having son namely Dharma who died in the year 1936 and his share/estate devolved upon Giano wife of Dharma. After demise of Giano, Devat Ram son of Shadi Ram son of Ganga Man got the mutation of entire land, vide mutation dated 23.12.1963 whereas it should have also gone to the children of Jassa ( $\frac{1}{2}$  share) and collaterals of Gangaman (namely Shadi and Kirpa) ( $\frac{1}{2}$  share) as Kanhiya and Joga died issueless being collaterals. The aforementioned mutation was cancelled and on the same date, another mutation bearing No.470 dated 23.12.1963 was got sanctioned in favour of Baru Ram son of Hari Kishan son of Devat Ram. There is no limitation qua inheritance as the property was joint in possession and, therefore, the declaration was sought, as nature and character of the property being agricultural. Civil Court, as per the provisions of Section 158 of the Punjab Land Revenue Act, would not have the jurisdiction to order for partition, thus, the findings rendered by both the Courts below holding the suit to be barred by law of limitation are totally erroneous and perverse. There is no limitation to challenge the mutation, it

is only, when there is perceptible threat to the possession or cloud on title, cause of action arises. Cause of action accrued only in the year 2000 and, therefore, the suit was well within the period of limitation.

Mr. Rishav Jain, learned counsel appearing on behalf of respondents Nos.1 to 4 submits that concurrent findings of fact cannot be interfered with, as plaintiffs have not been able to prove the possession of the property. Even though they are claiming to be co-sharers but yet to bring the suit within a period of limitation, particularly under Article 110 of the Limitation Act, the suit was hopelessly held to be barred by law of limitation.

It has been brought to the notice of this Court that Baru Ram was in possession since 1963, whereas suit was filed in the year 2000, therefore, there is no illegality and perversity in dismissal of the suit.

I have heard learned counsel for the parties and appraised the paper book.

Article 110 of the Limitation Act, provides the period of limitation to claim a right by person who is excluded from possession of joint family property when exclusion comes to known to the plaintiffs. There would have been force in the submission of Mr. Tacoria, that exclusion came into the knowledge in the year 2000 or 12 years prior thereto, but the fact remains that revenue record brought on record shows the possession to be of Baru Ram. The provision of Article 58 of the Limitation Act, came to be debated upon by the Hon'ble Division Bench of this Court in *Ibrahim alias Dharam Vir Vs. Smt. Sharifan alias Shanti*, 1979 *PLJ 469*, as to whether the cause of action would arise in favour of a party

in case of entry of mutation or not, the answer was that limitation to be reckoned from the date of cloud on the title, much less, threat to possession. There is no evidence either documentary or oral evidence, much less, corroborative to establish that the plaintiffs were excluded from the estate of Giano to bring the suit within the provisions of Article 110 of the Limitation Act.

Exclusion was way back in the year 1963. Mutation was in the knowledge of the whole world. It is not case of plaintiffs that they were ignorant of the law and, therefore, did not press for their claim. Since, Baru Ram was in possession and this fact was in their knowledge, yet, date when the mutation was effected was the reckoning date for assailing the findings of revenue record but plaintiffs kept silent for almost more than 30 years. It would be too late in a day to put the clock back claiming the relief aforementioned, rightly so, the Courts below on the basis of the oral and documentary evidence, declined to interfere.

I do not intend to differ with the findings rendered by both the Courts below, much less, no substantial questions of law arises for determination by this Court.

No ground for interference is made out.

Accordingly, present appeal is dismissed.

**21.11.2016**

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**(AMIT RAWAL)  
JUDGE**

**Whether speaking/reasoned:-**

**Yes/No**

**Whether reportable:-**

**Yes/No**