

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 6910-C of 2013 &
RSA No. 2603 of 2013 (O&M)

Date of decision: February 03, 2016

Kartar Singh

...APPELLANT

Versus

Jamna Devi and others

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Abhinav Sood, Advocate,
for Mr. Vikram Singh,
for the appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division), Mukerian dated 07.10.2011, whereby the suit for declaration to the effect that respondent No. 1-plaintiff is owner in possession of land measuring 48 Kanals 07 Marlas, as detailed in the head note, situated in Village Tohlu, Hadbast No. 607, Tehsil Mukerian, District Hoshiarpur and the entries in the Jamabandis are null, void, illegal, ineffective and, therefore, liable to be set aside and ignored for all purposes and to be corrected in the name of the plaintiff with an alternative suit for joint possession of the land, stated above, has been decreed by holding her to be the daughter of Amru and, therefore, the suit has been decreed to the effect that the plaintiff is owner in joint possession

of land measuring 48 Kanals 07 Marlas out of 167 Kanals 19 Marlas and the Jamabandis are null and void, ineffective and liable to be corrected. The appeal, which was preferred by the appellant-defendant has been dismissed by the Additional District Judge, Hoshiarpur on 04.02.2013.

2. It is the contention of the learned counsel for the appellant that the finding recorded by the Courts below that respondent No. 1-plaintiff-Jamna Devi is the daughter of Amru @ Amar Singh is not correct as the birth certificate, which has been produced by the respondents, as also the register in support thereof is not properly maintained and, therefore, could not have been relied upon to return such a finding. He asserts that respondent No. 1-plaintiff has been sleeping over her claim and the suit itself is barred and in any case, the possession of the appellant-defendant is open and hostile against the respondents-plaintiff since the year 1974 and, therefore, in the light of the said fact that they are in adverse possession over the property, are now the owners of the same. Assertion has also been made that the present appeal be allowed by setting aside the impugned judgments and decree passed by the Courts below.

3. I have considered the submissions made by the learned counsel for the appellant but find myself not in agreement with, what has been asserted by the counsel.

4. As regards the first assertion of the counsel for the appellant that the birth certificate of respondent No. 1-plaintiff Ex. PW7/12 and its translated version Ex. PW7/13 is not a genuine document as the same is only supported by the production of the register maintained in the office of the Civil Surgeon/Registrar, Births and Deaths, Hoshiarpur and, therefore, no presumption can be attached thereto, cannot be accepted in the light of

the fact that not only the birth certificate depicts the date of birth of Jamna Devi as 04.06.1935 but the register, which has been produced from proper custody of the competent authority i.e.Civil Surgeon/Registrar, Births and Deaths, Hoshiarpur and that too, by PW7 Tarsem Lal, Multipurpose Health Worker also depicts the same. It is apparent that the document is more than 30 years old and, therefore, the presumption with regard to truth thereof has rightly been attached with it in the light of Section 90 of the Evidence Act. Counsel for the appellant has asserted that the said register has not been properly maintained as it has been admitted by PW7 Tarsem Lal that the register brought by him for evidence, has been rebound and there is no certificate of any officer to that effect nor has it been page marked. The mere lacuna with regard to it being not certified by any officer would be of no value keeping in view the admitted fact that the entries made have been found to be in seriatim. It is not the case of the appellant-defendants that the entry has been manipulated or it is a forged and fabricated one and even if that would have been so, there is no evidence to that effect. The finding, thus, recorded by the Courts below in this regard that the birth certificate of Jamna Devi is a genuine one, is fully justified and based upon proper appreciation of the pleadings and evidence brought on record.

5. As regards the contention of the learned counsel for the appellant that the appellant-defendant is the owner of the property by way of adverse possession since the year 1974, the said plea cannot be accepted in the light of the fact that respondent No. 1-plaintiff is not only asserting herself to be the owner of the property but is also claiming to be a joint owner in possession with the appellant-defendant. The factum that Amru @ Amar Singh was the owner of the suit property has been admitted by the

appellant-defendant and it has been proved on record that Jamna Devi is only daughter of Amru. She, therefore, holds the title of the suit property. Admittedly, the property was a joint property and continues to be so, therefore, she, for all intents and purposes is a co-sharer in the property. Apart from the entries in the Jamabandis, there is nothing more which would support the case of the appellant-defendants with regard to they being in adverse possession of the property. The findings, thus, recorded by the Courts below, on this count, are also justified and do not call for interference.

6. As regards the contention of the learned counsel for the appellant that the suit of the respondents-plaintiff is time barred and, therefore, should have been dismissed on that ground itself, cannot be accepted in the light of the fact that it is, by now, a settled preposition of law that there is no limitation for claiming possession on the basis of title and more so, when it is based upon inheritance as in the present case where the title is not disputed. The Court below has rightly relied upon the judgment of this Court in **Swarna Devi and others vs. Mahant Nath Ram Sharma**, 2005 (2) Civil Court Cases, 484, where it has been held that there is no limitation prescribed when a suit is filed on the basis of a title. The judgments and decree, as passed by the Courts below, thus, cannot be faulted with.

7. There being concurrent findings recorded by the Courts below on the facts of the case, which have been found to be based on proper appreciation of the pleadings and the evidence produced by the parties, 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.

8. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In the light of the dismissal of the main appeal, no separate orders are required to be passed in this application for stay and, therefore, the same stands dismissed.

February 03, 2016

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**