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

**RSA-3489-2016 (O&M)
Date of decision : 08.11.2016**

Mam Kaur (deceased through LRs)

... Appellant

Versus

Bhota (deceased through LRs) and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Keshav Pratap Singh, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

CM-9153-C-2016

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 23 days in filing the appeal is condoned.

CM stands disposed of.

RSA-3489-2015

The appellant-plaintiff is aggrieved of the judgment and decree of the lower Appellate Court, whereby the suit seeking declaration with joint possession and permanent injunction, has been dismissed, in essence, the judgment and decree of the trial Court has been set aside.

Mr. Keshav Pratap Singh, learned counsel appearing on behalf of the appellant-plaintiff submits that Bhikhan, father of the plaintiff, father-in-law of defendant No.1, great grandfather of defendant No.3 used to be owner in joint possession of ½ share of agricultural land mentioned in the

suit. On 29.04.1976, Bhikhan Singh died intestate and leaving behind Smt. Mirto widow, plaintiff-Mam Kaur, Chander daughter, Hukam Chand and Sukhbir sons as legal heirs, who succeeded his estate in equal shares but the property in the name of Bhikhan Singh was wrongly, illegally and fraudulently got mutated vide mutation No.1015, on 01.06.1997, by sons Hukam Chand and Sukhbir on the basis of the alleged Will dated 09.03.1976. The aforementioned exercise was done in collusion with the revenue staff as Bhikhan Singh had never executed the Will and therefore, the aforementioned mutation was also challenged.

He further submits that Mirto died in the year 1978 leaving behind the plaintiff, Chander daughter, Hukam Chand and Sukhbir sons as as legal heirs, who all inherited $\frac{1}{5}$ th share out of $\frac{1}{2}$ share of her husband Bhikan Singh. In this way, the plaintiff, Chander, Hukam Chand and Sukhbir became joint owners of $\frac{1}{20}$ th share each of Mirto, their mother. Hukam Singh, during his lifetime, according to the custom, adopted Ajit Singh son of Sukhbir and treated as adopted son, thereafter, transferred his share as well as $\frac{1}{2}$ share of plaintiff and $\frac{1}{2}$ share of Chander wrongly and illegally vide collusive decree, in a Civil Suit bearing No.656 of 1987 and the sanctioning of the mutation bearing No.1306 in the name of Ajit Singh, was also wrong, illegal and invalid.

He further submits that the sale deeds dated 11.06.1990, 13.07.1991 and 29.01.2007 were also liable to be set aside. The plaintiff acquired the knowledge only on 01.10.2005 and her right as well that of Chander and Mirto, of inheritance of land left by their father, husband Bhikan Singh was not sanctioned in their names, but collusively mutated in the name of the Hukam Chand and Sukhbir on the basis of the alleged Will.

The lower Appellate Court has failed to take into consideration the material evidence on record in fact that Bhikhan Singh, who died on 29.04.1976, was the owner in possession of the suit property as his property was not inherited on the basis of the succession, rather on the basis of the oral Will which was alleged to have been executed before 1½ month of his death. The defendants have failed to prove such Will, as onus is always on propounder, thus, all the mutations were liable to be set aside.

He further submits that the property of Bhikhan Singh was liable to be inherited on the basis of natural succession and not on the basis of oral Will, which was allegedly executed before 1½ month of his death. The revenue authorities did not take on record the Will while sanctioning the mutation bearing No.1015 of 1976. The trial Court on the basis of the oral and documentary evidence decreed the suit but the lower Appellate Court has committed illegality and perversity. The suit could not be dismissed for want of limitation as there is no limitation seeking title on the basis of inheritance. During pendency of the appeal, an application for additional evidence under Order 41 Rule 27 CPC was filed enabling the Court to decide the controversy, but the same has erroneously been dismissed. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Division Bench of Delhi High Court in **“Sunita Shivadasani V/s Geeta Gidwani and another” 2008 (1) RCR (Civil) 589** and the judgment of this Court in **“Mam Kauri V/s Lachmi Devi and others” 1992 (2) PLR 657** to contend that the Will has to be in writing and cannot be oral, thus, urges this Court for setting aside the judgment and decree under challenge as there is a gross illegality and perversity.

I have heard the learned counsel for the appellant-plaintiff and

appraised the paper book and of the view that there is no merit and force in the submissions of Mr. Keshav Pratap Singh, for, the mutation bearing No.1015 (Ex.P-15) and (Ex.D-1) was duly sanctioned in the month of May 1976 & June 1976 in favour of Hukam Singh and Sukhbir i.e. after demise of Bhikhan Singh, but the fact remains that it was sanctioned in the presence of Mirto and Mam Kaur, Chander, Sukhbir and Hukam Chand. This fact has been admitted by PW-2, Jai Singh, Patwari. They were also identified by one Kanwar Singh, Numberdar. Nirmala daughter of Mam Kaur appeared in the witness-box as PW-1, also admitted, in cross-examination, that mutation was entered/sanctioned in the year 1976 and her mother did not prefer any appeal. She also admitted the factum of possession of the person, who had purchased the land during the pendency of the appeal and regarding the sale of land vide various sale deeds. All these factors have not been noticed by the trial Court but the lower Appellate Court being the last court of fact and law appreciated the aforementioned facts and rightly dismissed the suit. Once the possession was in favour of the defendants, nothing prevented the appellant-plaintiff to assail the right as the suit had been filed in the year 2006. In my view, the filing of the suit is nothing, but an act of aggrandizement. Even if there is no oral Will, but the facts remains, that, it has been mutated in favour of Hukam Singh and Sukhbir. It is too late in a day to put clock back as the out of the major chunk of land, some portion of the land had already exchanged hands way back in the year 1991, 1993 and 2005 and so on and so forth, whereas the suit has been instituted only in the year 2006. It would be very onerous for the subsequent vendees, in case the sale deeds are set aside. In my view the appellant-plaintiff is estopped to challenge the mutation when they acquiesced the

mutation in favour of Hukam Chand and Sukhbir. Even the additional evidence would not help the plaintiff as it was only with regard to the property having allegedly exchanged.

For the foregoing reasons, I do not find any illegality and perversity in the judgment and decree passed by the lower Appellate Court as the same is based upon correct appreciation of documentary as well as oral evidence, much less, no substantial question of law arises for consideration and accordingly, the appeal is dismissed.

08.11.2016

Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned

Yes/ No

✓

Whether Reportable

Yes/ No