

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Regular Second Appeal No.1283 of 2014 (O&M)

Date of Decision: January 25, 2016.

Satpal

.....APPELLANT(s).

VERSUS

Raj Kumar

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Plaintiffs Raj Kumar and others being son and daughters of Savitri daughter of Ram Chander filed suit for declaration seeking their share in the suit land left by Ram Chander father of Savitri who died on 23.07.1993.

As per the case of plaintiffs, Ram Chander left behind five daughters, three sons and wife. However, mutation No.8738 regarding the suit land was sanctioned on 05.06.2003 in favour of 8 heirs of Ram Chander excluding Savitri, who died on 10.02.1994 leaving behind plaintiffs as her legal heirs.

Defendant No.2 i.e. appellant Satpal contested the claim of plaintiffs denying the status of Savitri as daughter of Ram Chander. Defendants No.1, 3 and 7, however, admitted that Savitri and defendants are legal heirs of Ram Chander, after whose death, she had also inherited 1/27 share in the suit land.

Learned Civil Judge (Senior Division), Nuh on the basis of

revenue entries did not accept the claim of the plaintiffs that Savitri was daughter of Ram Chander and dismissed the suit with the observations that it was also barred by limitation.

The first Appellate Court, on appraisal of evidence, particularly the testimony of the brothers and sisters including the mother i.e. wife of Ram Chander, held that Savitri was daughter of Ram Chander. The suit based on title was also held to be not barred by limitation and on setting aside judgment and decree passed by the Civil Judge (Senior Division), decreed the suit of the plaintiffs.

Not satisfied, defendant No.2-Satpal has filed this appeal challenging the judgment and decree passed by the first Appellate Court.

I have heard learned counsel for the appellant-defendant No.2 and have perused the paper book with his assistance.

Learned counsel for the appellant has not assailed finding of first Appellate Court so far as the relationship of Savitri with deceased Ram Chander is concerned, however, he has vehemently argued that the suit filed by plaintiffs, who are heirs of Savitri, is barred by limitation. The first Appellate Court has given no reason while setting aside the finding of learned lower Court on this point. He has argued that Ram Chander died on 23.07.1993 while Savitri died on 10.02.1994. The suit was filed on 17.07.2007 i.e. after about 14 years of cause of action that had accrued to Savitri to claim her right in the property left by Ram Chander. The plaintiffs could seek the declaration of their title or challenge the mutation within a period of three years under Articles 58 and 113 of Limitation Act. The suit filed after a lapse of period of about 14 years of the accrual of cause of

action is apparently barred by limitation.

On perusal of the record and judgments of the Courts below, I find that this fact is duly proved that Savitri being daughter of Ram Chander had $1/9^{\text{th}}$ share out of $1/3^{\text{rd}}$ share of her father in the entire suit land. The claim of the plaintiffs is based on title and the claim based on title is not barred by limitation until or unless the contesting party is successful in proving that it has matured its claim by way of adverse possession or in some other manner permissible under law so as to defeat the title of the real owner. The claim of the plaintiffs is not to challenge the mutation entries but to stake their claim to the property of father of their mother. The entries in the mutation record is only for the purpose of rectifying the record of right maintained by the revenue authorities and is not a proof of title of the parties. This argument of learned counsel for the appellant that suit was filed after three years of the sanctioning of mutation is of no avail.

This argument that the cause of action had accrued to the plaintiffs on the death of Ram Chander on 23.07.1993 and the suit filed 13/14 years thereafter is barred by limitation is also without any basis. It was continuous cause of action in favour of plaintiffs and the findings of first appellate Court suffer from no legal or factual infirmity therein, calling for any interference and are affirmed.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

January 25, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE