

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

**RSA No.6329 of 2016 (O&M)
Date of decision:07.12.2016**

Kartar Kaur (since died) through LRs ... Appellant

Vs.

Prem Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Goel, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

Appellant-plaintiff is aggrieved of the impugned judgments and decrees of the Courts below, whereby, suit seeking declaration of setting aside the sale deed dated 7.5.1999 executed on the basis of the mutation entered in view of the registered Will dated 20.10.1996, has been dismissed.

Mr. Ashok Goel, learned counsel for the appellant-plaintiff submits that the defendants propounded the Will, aforementioned, but failed to examine any witness, much less attesting witness as the attesting witnesses died. No effort has been made to lead evidence as per the provisions of Section 69 of the Indian Evidence Act. No witness has been examined except brother of scribe, who was not attesting witness. Even no person from the office of the Sub-Registrar, has been examined, therefore, the Courts below have not taken into consideration material facts. The suit was not barred by law of limitation as one of the witnesses, namely, Milkha Singh - PW1, supported the case. The cause of action to institute the suit in

the year 2008 arose when the defendants stopped paying the share/batai and therefore, the rigours of Article 59 of the Limitation Act would not come in the way. The finding on issue no.8 is not sustainable and liable to be set aside.

I have heard learned counsel for the appellant-plaintiff, appraised the judgments and decrees of the Courts below and of the view that suit was hopelessly barred by law of limitation as mutation was effected long time back, i.e., after the death of Sohan Singh and even sale deed dated 07.05.1999 has been executed, whereby, other defendants, who have acquired the right and title, in fact, are bonafide purchasers. No doubt, the mutation would not give a cause of action to the party to file the suit within limitation but as and when there is threat on the title or possession, cause of action arises. The relief sought is also of symbolic possession, in essence, the possession is not of the plaintiff.

No steps have been taken till filing of the suit as to how the cause of action arose. The allegation of non-payment of share/batai is neither here nor there as the same is not backed by any direct and cogent evidence. It was incumbent upon the appellant-plaintiff to lead evidence to bring the case to wriggle out of the provisions of Section 59 of Limitation Act. Having failed to lead such evidence, I am of the view that the findings rendered by both the Courts below do not call for any interference which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination of this Court.

There is also an application seeking condonation of delay of 623 days in re-filing the appeal which is not supported by reasons, much less cogent reasons. The appeal is dismissed on the limitation as well as on merits.

(AMIT RAWAL)
JUDGE

December 07, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No