

RSA No. 3070 of 2014 (O&M)

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

RSA No. 3070 of 2014 (O&M)

Date of Decision: February 18, 2016

Mansa Ram

...Appellant

Versus

Raj Pal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Krishan Singh, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the judgment and decree passed by the Civil Judge (Junior Division), Karnal, dated 03.10.2011, whereby the suit of the appellant-plaintiff for declaration to the effect that the plaintiff is owner in possession of agricultural land measuring 13 kanals 0 marla as detailed in the head note, situated in village Kunjpura, Tehsil and District Karnal and the judgment and decree dated 10.05.1988 passed in Civil Suit No.122 of 1988, by the then Sub-Judge, 1st Class, Karnal, is illegal, null and void and not binding upon the rights of the plaintiff as well as mutation No.2245 sanctioned on the basis of the alleged judgment and decree and subsequent mutations No.3403 and 3674 are also illegal, null and void with consequential relief of permanent injunction

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restraining the respondent-defendants from interfering into his possession has been dismissed, appeal against which preferred by the appellant-plaintiff has also been dismissed by the Additional District Judge, Karnal, vide judgment and decree dated 11.03.2014.

It is the contention of the learned counsel for the appellant that the Courts below although have come to a conclusion that the judgment and decree dated 10.05.1988 in Civil Suit No.122 of 1988 could not have been passed as Ram Piari who was in possession of the entire suit land during her lifetime, had a limited right of maintenance and thus, was not the absolute owner of the property but still the Courts have proceeded to dismiss the suit being barred by limitation. Counsel has placed reliance upon the judgment of this Court in Gurcharan Singh & others Vs. Angrez Kaur & another, 2008 (4) R.C.R. (Civil) 178 to contend that the suit for declaration of title by inheritance does not entail any limitation especially when the decree, Will and family settlement set-up by a party has not been proved to be in the knowledge of the other party claiming itself to be not aware of the same as in the present case. He, thus, contends that the judgments and decree passed by the Courts below cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his able assistance have gone through the impugned judgments but do not find any merit in his

submissions.

The facts in this case are not in dispute. Lajja Ram was the original owner of the property and was the predecessor-in-interest of the parties. He executed a Will dated 05.07.1980 (Ex.P-7), according to which, he had declared his wife Smt. Ram Piari the owner in possession of the suit land during her lifetime and after her death, the land was to be reverted back to the appellant-plaintiff and respondent-defendants 1 to 3 and deceased Des Raj who is predecessor-in-interest of respondent-defendants 4 to 8 as per their respective shares detailed in the plaint. Lajja Ram died on 18.04.1983. As per Section 14 (2) of the Hindu Succession Act, Ram Piari had a limited right to the suit property till her lifetime and she being not the absolute owner of the property could not have either sold it or alienated the same including by way of the decree. On the basis of the Will, mutation No.1872 (Ex.P-9) was sanctioned in favour of Ram Piari showing her to be the owner in possession of the suit land. It is not in dispute that the appellant-plaintiff was aware of the fact that the mutation has been sanctioned in favour of their mother Ram Piari as they had challenged the said mutation in an appeal before the Collector, Karnal, which was dismissed vide order dated 25.01.1988 (Ex.D-1). Suit was filed by the respondent-defendants being Civil suit No.122 of 1988, titled as 'Rajpal etc. Vs. Ram Piari', which was decreed on 10.05.1988. These facts, therefore, were to

the knowledge of the appellant-plaintiff. On the basis of this judgment and decree, mutation was sanctioned in favour of the respondent-defendants i.e. mutation No.2245. Ram Piari died on 12.08.1991.

The suit has been filed by the appellant-plaintiff on 28.02.2007. The date of knowledge when they were dis-entitled of their right/excluded from the suit land even if going by the Will executed by Lajja Ram, could be extended till the death of Ram Piari i.e. 10.08.1991. As per Article 110 of the Limitation Act, the maximum period prescribed for limitation is 12 years for filing a suit to claim legal right or to claim share of a residue bequeathed by a testator from the date it becomes due. Since the claim has not been made within a period of limitation, the suit as preferred by the appellant-plaintiff and instituted on 28.02.2007 i.e. after a period of 15 years from the date of death of Ram Piari, is barred by limitation. The findings, thus, as recorded by the Courts below cannot be faulted with.

The judgment on which reliance has been placed by the learned counsel for the appellant i.e. *Gurcharan Singh's* case (supra) would not be applicable to the present case as in the said judgment, it has been held by this Court that there is no limitation for filing a suit especially when decree, Will and family settlement set up by the defendants are not proved to the knowledge of the plaintiffs. Present

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is a case where the appellant-plaintiff had the knowledge about each and every action and the changes in the revenue records as have been discussed above.

A perusal of the impugned judgments would show that the concurrent findings returned by both the Courts below are based on proper appreciation of the pleadings and the evidence brought on record which do not call for any interference by this Court as there is no misreading or non-consideration of the material on record nor is there any perversity or illegality in the same.

No substantial question of law arises in the present appeal which requires consideration of this Court. Therefore, finding no merit in the appeal, the same stands dismissed.

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In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

February 18, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**