

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

RSA No.5292 of 2014 (O&M)

Date of Decision.26.07.2016

Rajbir and others

.....Appellants

Vs.

Udaibir Singh and others

.....Respondents

Present: Mr. Vishal Aggarwal, Advocate
for the appellants.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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AMIT RAWAL J. (ORAL)

C.M. No.12492-C of 2014

For the reasons stated in the application, delay of 82 days in
refiling the appeal is condoned.

Application is allowed.

RSA No.5292 of 2014

The appellants-plaintiffs are aggrieved of the dismissal of the
suit claiming declaration as referred thereto on the account that the entire
property was to be divided in equal shares i.e. half of the share to the
predecessors of the appellants-plaintiffs and half share to the defendants.

Mr. Vishal Aggarwal, learned counsel for the appellants
submits that the mutation bearing No.544 dated 22.07.1971 was effected
vide which the defendants got more share than what was to be given to them
and therefore, there was a shortfall of 18 kanals with regard to the share of

the appellants-plaintiffs. The plea of the other side was not able to cut the ice before the Courts below, yet the Courts below have dismissed the suit inasmuch as the plea taken was that owing to the family settlement, they got the land which was of a less potential i.e. what the appellants-plaintiffs had got. The counsel for the appellants-plaintiffs submits that as per the revenue record, cultivable land was actually given more to the respondents-defendants instead of plaintiffs. The Courts below have dismissed the suit on the ground of limitation, although for claiming title, there is no limitation and thus, urges this Court for formulation of substantial questions of law as drawn in the memorandum of appeal.

I have heard learned counsel for the appellant, appraised the paper book and of the view that the predecessor-in-interest of the appellants-plaintiffs was aware of the aforementioned *rapat raznamcha*/mutation but did not assert the right as has been done by the successor-in-interest of the plaintiffs. No explanation has come forth for not challenging the mutation entered in the year 1971. No doubt, there is no limitation for challenging or claiming title but the fact remains that once the property was mutated as per the family arrangement between the parties and mutation continued in favour of the defendants, the appellants-plaintiffs have not been able to produce any documentary evidence to show that the mutation was not effected in accordance with law. Moreover, they could have challenged the same within a reasonable period i.e. within a period of three years but no explanation has come forth for filing the suit in the year 2008.

In view of the aforementioned facts, the Courts below have rightly dismissed the suit of the plaintiffs and I do not find any reason to

differ with the finding rendered by the Courts below as the same has been founded on correct appreciation of documentary and oral evidence, much less, there is no substantial question of law arises for consideration. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

July 26, 2016
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No