

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

RSA No.1821 of 2012 (O&M)

Date of decision : 11.08.2017

Lajwanti

...Appellant

Versus

Bhago (deceased) through her LRs and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. K.S. Sidhu, Sr. Advocate with
Mr. M.S. Brar, Advocate for the appellant.

Mr. Hardeep Singh, Advocate for the respondent(s).

ANIL KSHETARPAL, J.

CM No.9221-C of 2017

Allowed, as prayed for.

Documents namely translated copy of the mutation register and translated copy of the statement of the plaintiff which are part of the trial court record, are permitted to be brought on record, subject to all just exceptions.

CM No.14522-C of 2012

Allowed, as prayed for.

CM No.14523-C of 2012

This is an application filed under Order 41 Rule 27 read with Section 151 CPC for permission to lead additional evidence. The appellant

wants to produce copy of the application submitted to the Tehsildar and a copy of the sale deed executed by plaintiff during the pendency of the present appeal. An application for additional evidence can be allowed only if the appellant is able to satisfy the requirements of Order 41 Rule 27 CPC. A reading of the application would show that the application does not meet with the requirements. Hence, application is dismissed.

Main Case

The defendant-Lajwanti Devi has filed the present Regular Second Appeal against the judgment passed by the learned District Judge, Patiala accepting the appeal filed by the plaintiff.

The facts in brief are that Sant Ram father of the plaintiff and defendant was owner of certain property. Sant Ram did not have son. Sant Ram died in the year 1973. On the death of Sant Ram, mutation was sanctioned by the Revenue Authorities on the basis of the registered Will dated 02.01.1962 in favour of the appellant-defendant-Lajwanti.

Bhago-respondent, who is, now no more, filed a suit for declaration, joint possession and permanent injunction on 01.07.2004. The plaintiff claimed that her father Sant Ram had died interstate. He never executed the registered Will dated 02.01.1962. She further claimed that mutation No.730 is illegal, null and void and not binding on her rights. She claimed that she is a simple lady and defendant use to gave her share in the crops. But when in 2004, she refused to pay her share in the crops, therefore, the plaintiff approached the revenue officials and came to know that the defendant is being wrongly shown as exclusive owner. She asserted that she came to know about the sanction of mutation No.730 dated

19.09.1973 for the first time in the first week of June, 2004, therefore, she claimed that the suit is within limitation.

The defendant-appellant contested the suit and submitted that Lt. Sh. Sant Ram had executed a registered Will in her favour on 02.01.1962. She stated that mutation has been rightly sanctioned by the Revenue Authorities on 19.09.1973. She further pleaded that the defendant had spent her whole life serving her parents. She has stated that she use to live with the parents. She denied the payment of any share to plaintiff. She further stated that Sant Ram remained alive for 10/12 years after execution of the Will. She further claimed that the suit was time barred.

The learned trial Court after examining the pleadings framed following issues:-

- “1. Whether the plaintiff is entitled for declaration as prayed? OPP*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 2A. Whether Sant Ram executed a valid will dated 2.1.1962? OPD*
- 3. Whether the suit is time barred? OPD*
- 4. Whether the suit is not maintainable in the present form?OPD*
- 5. Relief.”*

The learned trial Court held that the Will is not proved because no attesting witnesses have been examined although certified copy of the Will dated 02.01.1962 bearing Jild No.342, Wasika No.1, has been produced and Pushpinder Kaur, Registry Clerk has been examined as DW1. However, in the absence of examination of the attesting witnesses or

compliance of Section 69 of the Evidence Act, the Will is not proved.

However, the learned trial Court recorded that mutation was sanctioned in the name of the defendant-appellant in the year 1973 on the basis of the registered Will. The learned trial Court further found that it is not in dispute that the defendant-appellant continue to be owner in possession in the revenue records as well as at spot. The learned trial Court further recorded that the plaintiff did not raise even the finger during these 31 years. The learned trial Court hence recorded that the suit filed by the plaintiff, which is for declaration, is barred by time.

The first appeal preferred by the plaintiff has been accepted. The learned First Appellate Court has held that the reading of mutation No.730 dated 1973 shows that mutation was not sanctioned on the basis of the registered Will. The learned First Appellate Court has further discussed some precedents to the effect that wherever the plaintiff claims a right on the basis of the inheritance, there is no limitation for filing the suit. Hence, the appeal filed by the plaintiff was allowed.

Learned counsel for the appellant has submitted that the finding of the First Appellate Court to the effect that the mutation is not on the basis of the registered Will, is factually incorrect and is result of misreading of evidence. Counsel for the appellant has drawn my attention to the copy of the mutation which is available on the record. A reading of the mutation does show that mutation has been entered and sanctioned on the basis of the registered Will. The date of Will i.e. 02.01.1962 had been mentioned. It is further mentioned that it is Wasika No.1. A copy of the mutation is Ex.D2 on the trial Court record. Therefore, the findings of the learned First

Appellate Court is clearly result of misreading of evidence.

The learned First Appellate Court has further although discussed the issue of limitation and referred to 2-3 citations. However, no conclusion has been drawn. The appeal has been accepted only on the ground that the original Will has not been produced, even Will has not been proved by leading secondary evidence and mutation, sanctioned in favour of the appellant, is not on the basis of the registered Will.

Learned counsel for the appellant has further submitted that the suit filed by the plaintiff was clearly barred by time as the plaintiff woke up after a period of 31 years. He further submitted that the limitation for filing the suit for declaration is three years from the date the cause of action first accrues, therefore, the suit filed by the plaintiff was barred by limitation.

On the other hand, learned counsel for the respondent(s) has submitted that although the date of registered Will and Wasika has been referred to, but mutation has not been sanctioned on the basis of the registered Will. He has further submitted that the suit filed by the plaintiff is on the basis of the inheritance and, therefore, there is no limitation. He has further submitted that the plaintiff came to know about the mutation for the first time in the year 2004, therefore, the suit is within a period of limitation from the date of knowledge.

I have carefully heard the learned counsel for the parties and with their able assistance gone through the record of the case.

Some facts are not in dispute. Sant Ram, Owner died in the year 1973. It is also not in dispute that defendant use to live with her parents in the same house in the village. It is also not in dispute that the plaintiff was

settled in her matrimonial home at village Islamabad till her death. It is also not in dispute that the plaintiff did not take any action for a period of 31 years before filing the present suit.

I have seen Ex.D2, mutation. The finding of the First Appellate Court that mutation is not sanctioned on the basis of the registered Will is result of misreading of evidence. In the remarks column, there is a reference to Wasika No.1 and date of Will i.e. 01.02.1962. Therefore, it cannot be said that mutation was not sanctioned on the basis of the Will.

The next issue which requires adjudication is that whether the suit filed by the plaintiff was within limitation. In the present case, the suit is for declaration, joint possession and permanent injunction. The main relief is for declaration. Part III of Schedule attached to the Limitation Act, 1963 deals with suits relating to declaration. Articles 56, 57 and 58 fall in Part III, which are extracted as under:-

“PART-III – Suits relating to declarations

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| 56. | <i>To declare the forgery of an instrument issued or registered</i> | <i>Three Years</i> | <i>When the issue or registration becomes known to the plaintiff.</i> |
| 57. | <i>To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place</i> | <i>-do-</i> | <i>When the alleged adoption becomes known to the plaintiff.</i> |
| 58. | <i>To obtain any other declaration</i> | <i>Three years</i> | <i>When the right to sue first accrues.”</i> |

In my opinion, the present suit would fall within Article 58 of the Schedule. Article 58 provides for limitation of three years when the right to suit first accrues. Article 58 does not laid down that the limitation would start from the date of knowledge. The plaintiff had claimed that the cause of

action arose to the plaintiff against the defendant in the first week of June, 2004 when she came to know about the mutation. It is not in dispute that the plaintiff-respondent is settled in her matrimonial home at village Islamabad. She did not bother to check her ownership from the revenue officials or anyone else for a period of 31 years. The revenue record which has presumption of truth shows Lajwanti to be owner in possession. The possession of Lajwanti is not being disputed. The learned trial Court had recorded a finding that the plaintiff failed to prove that any share was being given by the defendant to the plaintiff. The learned First Appellate Court has not reversed that finding. In these circumstances, only conclusion which can be drawn is that the plaintiff although had knowledge but never chose to assert her right during this long time of 31 years.

The learned First Appellate Court has relied upon the judgments passed by the Division Bench reiterated as 1985 PLJ 82. In this case, one Niranjana has died in the year 1949. The mutation on inheritance was sanctioned in favour of Mohinder Singh. Kashmira Singh claiming to be son of Niranjana Singh from second wife had filed a suit for possession of his 1/3rd share. It was in these circumstances, the Court held that since suit for possession by a heir falls under Article 65 of the Limitation Act.

The learned First Appellate Court has also relied upon the judgment reiterated as 2007(5) RCR (Civil) 388 and 2008(4) RCR (Civil) 9.

Judgment reported as 2007(5) RCR (Civil) 388 (Supra) is dealing with the issue of limitation in the context when a son given in adoption was still being shown as legal heir of the original owner. In that context, the learned Single Judge held that sanctioning of mutation of

inheritance does not give rise to cause of action for the plaintiff. The judgment reported as 2008(4) RCR (Civil) 9 is dealing with the case of suit for possession on the basis of inheritance.

Under Article 58, the word “first” has been added and it reads as when the right to sue first accrues.

In this context, the learned trial Court, after appreciating the evidence available on the file recorded a fact that the plaintiff has failed to establish that she did not come to know about the Will, mutation entered or exclusive possession of Lajwanti. The learned Trial Court after appreciating the evidence further recorded a finding of fact that the plaintiff was not able to prove her plea that she was being given a share in the crop by defendant-Lajwanti. The learned First Appellate Court has not set aside the aforesaid findings of fact.

In view of the discussion made above, the suit filed by the plaintiff is held to be time barred and the findings of the learned trial Court to that effect are affirmed.

For the reasons recorded above, judgment and decree passed by the learned First Appellate Court dated 21.03.2012 is set aside.

Regular Second Appeal is allowed.

All the pending miscellaneous applications are disposed of in terms of abovesaid judgment.

11.08.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No