

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

**Regular Second Appeal No.5121 of 2013 (O&M)
Date of Decision: 04.09.2017**

Hari Om and others

..... Appellants

Versus

Naseeb and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. N.S.Shekhawat, Advocate for the appellants.

JASWANT SINGH, J. (Oral)

The plaintiffs are in appeal, directed against the judgment of reversal dated 19.08.2013, passed by the learned District Judge, Bhiwani, whereby the suit of the plaintiffs has been dismissed, while setting aside the judgment and decree dated 05.05.2011, passed by the learned Civil Judge (Junior Division), Charkhi Dadri.

The admitted facts, in brief, are that Raje Ram (common ancestor of the parties) was the owner in half share of two separate parcels of agriculture land with his brother, situated in Villages Neemri and Malkosh. He had four sons, namely, Jugti, Ganga Bishan, Balu and Sudhan. The fourth son-Sudhan died issueless in 1935, leaving behind his 1/8th share in favour of his widow-Smt. Sariya, qua which mutation was effected on 18.03.1935 in her favour. Smt. Sariya, vide a collusive decree dated 10.08.1984 relinquished her property in Village Malkosh in favour of defendant Nos.1 to 3, who are the descendants of the first brother-Jugti.

The mutation in favour of the descendants was effected on 08.10.1984.

The plaintiffs are the descendants of the third son-Balu s/o Raje Ram and claiming themselves to be owners in possession filed a suit for declaration of ownership in possession on 13.03.2004 qua their share in the property of Smt. Sariya qua agriculture land, situated in Village Malkosh. Consequently, relief of setting aside the collusive decree dated 10.08.1984 was also prayed for. The claim of the plaintiffs was that Smt. Sariya had performed *Karewa* marriage with Jugti, who was already married to Nimbo, who is none else than the sister of Smt. Sariya. Smt. Sariya, on performance of *Karewa* marriage in the year 1939, had forfeited her limited right qua the property inherited by her from her late husband-Sudhan. Therefore, the entire property belonging to Sudhan had to devolve in equal shares upon his brothers, namely, Jugti, Ganga Bishan and Balu. It was asserted that the fact of *Karewa* marriage and relinquishment of her limited right qua agriculture land, situated in Village Neemri stood established in view of the mutation entered in favour of three brothers in the year 1940.

On the other hand, the defendants' claim that no *Karewa* marriage had been performed and Smt. Sariya being the sister of Nimbo w/o Jugti had stayed with the family of Jugti and Nimbo till her death and, therefore, out of love and affection had bequeathed her property qua Village Malkosh by way of the decree in favour of the descendants of Jugti.

The learned trial Court as well as the Appellate Court held that the alleged *Karewa* marriage was not proved merely on the basis of a mutation entry and the evidence of two witnesses, who were born much after the period of the alleged *Karewa* marriage. However, the learned trial Court decreed the suit of the plaintiffs on the ground that since the

required registration and that having not been done so, no right had vested in the defendants qua the suit property, therefore, the property had to vest as per the natural succession.

The Appellate Court reversed the findings by holding that Smt. Sariya on the enforcement of the Hindu Succession Act, 1956 (for short “the Act”) had become the absolute owner of the suit property in view of Section 14 of the Act (as *Karewa* marriage was not proved), therefore, she was fully competent to dispose of the suit property and the collusive decree based on a family settlement between the members of the family did not require any registration. The suit was also held to be barred by limitation as a mutation, based on the collusive decree, was entered on 08.10.1984 and was subsequently reflected in the revenue records. Thus, it was in the knowledge of the plaintiffs that the defendants had been bequeathed the suit property. The suit having been filed on 13.03.2004, after a delay of more than 19 years, was thus barred by limitation.

After hearing learned Counsel for the appellants at length, this Court finds no substantial question of law is involved in the present appeal.

Accordingly, the present regular second appeal is dismissed.

September 04, 2017

Gagan

(JASWANT SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No