

RSA No.539 of 2016 (O&M)

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

Date of decision: 25.07.2017

RSA No.539 of 2016 (O&M)

Harbhajan Singh

...Appellant

Vs.

Baba Kundan Singh Jathedar Bhikhiwind, Tarna Dal & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: None.

RAJIV NARAIN RAINA, J. (ORAL)

When the instant appeal came up for the first time for preliminary hearing on 21.04.2016 none appeared for the appellant. The position was the same on the next effective date of hearing i.e. 28.07.2016, but in the interest of justice, the case was adjourned. Even on second call today, no one appears to press neither the appeal nor a pass over is sought. Showing any further accommodation to the appellant would a sign of excessive indulgence shown by the Court especially when confronted with an appeal where the plaintiff has lost in both the Courts below in a suit for declaration claiming that he along with defendants 3 to 6 are owners in equal share being legal heirs of Massa Singh son of Harnam Singh resident of Village Khanna, Tehsil Zira of suit land measuring 24 kanal 12 marla as fully described in the head-note of the suit. The claim is based on jamabandi for the year 2000-01. The second prayer is for declaration that the sale deed

RSA No.539 of 2016 (O&M)

dated 02.04.1998 executed by Baba Kundan Singh Jathedar Bikhiwindia Tarna Dal in favour of defendant 2 – Joginder Singh son of Gopal Singh is null and void and has no binding effect on the inheritance rights of the plaintiff and defendants 3 to 6. The consequential relief of possession is also sought over the suit land.

The real prayer in the petition is actually for cancellation of sale deed dated 02.04.1998. The suit was brought on 20.02.2003. The trial Court dismissed the suit inter alia on the ground of bar of limitation. The District Judge in his well reasoned judgment dated 06.07.2015 has examined the case on the facts threadbare on the evidence and dismissed the appeal for good and sufficient reason. The analysis of the case is found in Paras.13 to 15 of the judgment in appeal, which read as follows:

“13. After the death of Massa Singh, the mutation has been sanctioned in favour of defendant No.1. It may be mentioned that the plaintiff has sought to put forth a case to the effect that he came in possession of the suit land after the death of Massa Singh. A categorical plea has been raised in this regard. It is emerging in the cross examination of the plaintiff that he remained in possession of the suit land for a period of 8/9 years and has been forcibly dispossessed. Significantly, the plea as sought to be put forth by the plaintiff with regard to his possession over the property in dispute is not supported with any reliable material and revenue record. Had the plaintiff been in possession of the property in dispute after the death of Massa Singh, this fact would have been reflected in the revenue record. The name of Massa Singh has been recorded as owner in possession of the suit land in the revenue record and after his death, the name of defendant No.1 has been reflected as owner in possession of the suit land.

14. Furthermore, the defendant No.2 has been recorded as owner in possession of the property in dispute in the revenue

record after he has purchased the same from defendant No.1 through his attorney. The property in dispute has been purchased by defendant No.2 vide sale deed for a consideration of Rs.1,54,000/-. In such circumstances, the defendant No.2 is also proved to be the bona fide purchaser of the property in dispute.

15. Massa Singh had died as back as on 20.10.1983 and the mutation No.1732 in favour of defendant No.1 has been sanctioned on 26.11.1990. Subsequently, the sale deed in favour of defendant No.2 was executed on 02.04.1998 and the mutation in his favour was sanctioned on 06.04.1998. A public notice was issued in Daily Ajit before sanctioning of the mutation with regard to the estate of Massa Singh. The plaintiff has displayed inaction and remained silent and never agitated the matter before 17.02.2003 when he instituted the suit. In the plaint, no date has been specified as to when the case of action has accrued to the plaintiff. The said date has been left blank. In such circumstances, it cannot be said that the sanctioning of the mutation in favour of defendant No.1 or execution of the sale deed by him in favour of defendant No.2 and sanctioning of mutation in favour of defendant No.2 was never in the knowledge of the plaintiff. Consequently, the suit of the plaintiff is also barred by limitation. As such, no illegality or irregularity is made out in the judgment and decree of the learned trial Court. The findings of the learned trial Court on all the issues are affirmed.”

The first Appellate Court has returned a finding of fact based on appreciation of evidence holding that the plaintiff could not be heard to say that sanctioning of the mutation in favour of defendant 1 or execution of the sale deed by him in favour of defendant 2 and sanctioning of mutation in favour of defendant 2 was never in the knowledge of the plaintiff. If it was in his knowledge, then it follows *a priori* that the suit was barred by time. I

RSA No.539 of 2016 (O&M)

have no reason to differ with the findings of fact recorded by the Courts below and would dismiss the appeal.

Ordered accordingly.

There is sufficient clarity in the lower Appellate Court judgment and that of the trial Court which obviates adjourning the case still further only to hear out the counsel on a dead case. His appearance in any case would make no difference to the result.

25.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*