IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1123 of 2000 (O&M)
Date of Order:03.12.2018

Banwari and others **..Appellants**

Versus

Smt. Bhagwani and others
..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Advocate,
for the appellants.

Mr. N.D.Achint, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Defendants-appellants are in the regular second appeal against the judgment passed by the learned first appellate court reversing the judgment of the trial court resulting into decree of declaration and permanent injunction in favour of plaintiff who is successor in interest of late Sh. Chhote Singh (died in the year 1985).

Undisputed facts are that Chhote Singh was owner of 2/3rd share in a joint khewat which came to 1 kanal little bit more than 5 marlas in his share. He sold a plot measuring 1 kanal to father of defendant nos.1 to 5, vide sale deed dated 17.08.1979. However, revenue authorities committed an error while mutating entire 2/3rd share of Chhote Singh in favour of predecessor-in-interest of defendants no.1 to 5. Hence, the plaintiffs filed the suit.

Defendants claim that they are owner in possession of land measuring 1 kanal 6 marlas since the time of private partition which was entered in the revenue record on 02.03.1985, the entire land fell to their share.

Learned counsel for the appellants does not dispute that predecessor-in-interest of the appellants had only purchased 1 kanal of land from late Sh. Chhote Singh on 17.08.1979 and mutation entry in favour of predecessor-in-interest of the appellants was wrong. However, learned counsel submitted that the suit filed by the plaintiff was barred by time as in 1985 when Chhote Singh died, plaintiffs came to know of the wrong mutation and therefore, the suit should have been filed within 3 years from the date of death or at least from the date of mutation. He further submitted that since the relief of possession has not been sought, therefore, as per proviso to Section 34 of the Specific Relief Act, 1963, suit is barred.

This court has considered the submissions and with able assistance of learned counsel for the parties have gone through the judgments passed by both the courts below and the record.

As regards first argument, it may be noticed that the mutation is entered into by the revenue authorities for fiscal purpose and that also for updating the record. Sanction of mutation neither gives rise to any cause of action nor it can be taken as a starting point for limitation. In fact, entries in the record do not take away title in the immovable property. Hence, the limitation cannot be held to have begun to run from 1985.

As regard second argument, it may be noticed that all the parties were co-sharers. Predecessor of the defendants (appellants herein) on purchase of undivided share to the extent of 1 kanal became co-sharers. Plaintiffs could not have sought possession without seeking partition. All the parties had become co-sharers/co-owners and, therefore, remedy for possession can only be through partition of the joint land. Hence, this court does not find any substance in the second submission of learned counsel for the appellants.

In view thereof, this court does not find any good ground to interfere.

The regular second appeal is dismissed.

The miscellaneous applications, if any, are disposed of in view of the judgment passed above.

December, 03, 2018 **(ANIL KSHETARPAL)**
nt **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No