

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

1. RSA No.3434 of 1998 (O&M)
Date of decision : 19.11.2018

Mohd. Suleman and others ...Appellants

Versus

Mohd. Jamil and others ...Respondents

2. RSA No.3439 of 1998 (O&M)
Date of decision : 19.11.2018

Mohd. Suleman and others ...Appellants

Versus

Mohd. Jamil and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.N. Malik, Advocate for the appellants.

Mr. M.L. Saggar, Sr. Advocate with
Mr. Rohit Joshi, Advocate and
Mr. Vivek Arora, Advocate for
Mr. Mohd. Salim, Advocate for respondent Nos.1 and 2.

ANIL KSHETARPAL, J. (ORAL)

By this judgment, two appeals bearing RSA Nos.3434 and 3439
of 1998 shall stand decided.

Two suits were filed, one for declaration and second for decree of
permanent injunction.

Dispute in the present case is with respect to inheritance of estate
of late Sh. Buta. The plaintiffs who were three in number are daughters of late
Sh. Buta. The suits were filed against their brother and sister by the plaintiffs
i.e. son of Buta as well as one daughter. It was claimed that on the death of
Buta, the plaintiffs as well as defendant No.2 i.e. all the daughters had

cumulatively become owner of 2/3rd share whereas defendant No.1 i.e. son had become owner of 1/3rd share and, therefore, the mutation of the land exclusively in favour of defendant No.1 (son) was illegal.

The suit was contested on the ground that Buta had died 20/21 years back and defendant No.1-predecessor of the appellants has succeeded to the property as per law and custom. It was claimed that the plaintiffs as well as defendant No.2 have no right.

Learned trial Court on appreciation of the evidence, held that defendant No.1 has failed to prove any custom giving the property to son only. However, learned trial Court dismissed the suit on the ground that the suit is barred by time.

Defendant No.1 did not challenge the findings of the trial Court with regard to issue No.10 i.e. applicability of any custom. Learned First Appellate Court taking note of the fact that the dispute is with regard to inheritance, held that the trial Court wrongly held that the suit was barred by limitation as Article 100 of the Limitation Act would have no applicability.

During the pendency of the present appeal, this Court has been informed that appellant Nos.5, 6, 7, and 11 have already settled their dispute with respondent Nos.1 and 2. Learned First Appellate Court has noticed that Ramzanan had given up her claim whereas Fatma and Khairi have not filed any appeal, therefore, the legal heirs of Rehmi, daughter of Buta would be entitled to 1/6th share in the property left by Buta.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the judgments passed by both the Courts below and the record.

Learned counsel appearing for the appellants submitted that the

suit filed by the plaintiffs was barred by time as the succession opened on 23.12.1967 when Buta died whereas the suit was filed after a period of 20 years i.e. in the year 1987.

This Court has considered the submissions. However, find no substance therein.

It is well settled that the succession never remains in abeyance and the mutation of the property neither confers any right nor give rise to a cause of action to file the suit. The mutation is only entered for updating the revenue record for fiscal purpose. In such circumstances on the death of Buta, his son and daughters became owners of their respective shares. Their share cannot be defeated being barred by limitation on the ground that the suit has been filed after a period of 20 years. The suit based on inheritance with consequential relief of possession ordinarily cannot be said to be barred by time unless some overt act is pleaded and proved. Although, it is correct that defendant No.1-appellant had also taken a plea of adverse possession, however, he failed to prove that by leading cogent evidence. Still further, all the legal heirs became co-sharers on the death of Buta.

Such being the position, this Court does not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

Both the Regular Second Appeals are dismissed.

All the miscellaneous applications, if any, shall stand disposed of, as the counsels have not pressed these applications.

19.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No