

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

**RSA No.4050 of 2004 (O&M)
Date of decision : April 25, 2018**

Mahabir Singh and another Appellants

Versus

Shamsher Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Sourav Kumar, Advocate for the appellants.

Mr. V.K. Jain, Senior Advocate with
Mr. Vinod S. Bhardwaj, Advocate for respondent Nos.1 to 8.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

KULDIP SINGH J.

The present regular second appeal is directed against the judgment and decree dated 13.08.2004 passed by learned Addl. District Judge, Fatehabad, vide which in view of the findings recorded on issue Nos.1, 2 and 8, the judgment and decree dated 22.04.2003 passed by learned Civil Judge (Sr. Divn.), Fatehabad, was set aside and suit of the plaintiffs was dismissed.

The plaintiffs filed a suit for possession regarding 4/5th share of the land measuring 183 kanals 0 marla, as per jamabandi for the year 1995-96 and 4/5 share of 160/12600 share in No.308 measuring 2 kanal 15 marlas (Gair Mumkin) and also 98/32400 share in No.485 measuring 4 kanal 14 marlas as per jamabandi for the year 1995-96 situated in village Bangaon, Tehsil and District Fatehabad. The plaintiffs also sought the declaration that

mutation No.2338, dated 26.02.1984, vide which Ramji Lal (now deceased), the predecessor in interest of defendant Nos.1 to 8 got mutated by way of inheritance of Rupa Ram (deceased) on the basis of alleged oral 'Will' is wrong, illegal and liable to be set aside and that the plaintiffs are entitled to take possession of the said land on the basis of inheritance of Rupa Ram (deceased). They have also challenged the mutation No.2633, dated 05.11.1988 sanctioned in favour of defendant Nos.1 to 8 after the death of Sh. Ramjit Lal. They have also sought setting aside of the judgment and decree dated 18.11.1989 passed in Civil Suit No.1036 of 1989 passed by learned Sub Judge 1st Class, Fatehabad, titled as **“Subhash etc. vs Mainawati etc.”** and consequential mutation No.2697, dated 04.09.1990. They have further sought the cancellation of release deed No.548, dated 17.05.2000 executed by Subhash, defendant in favour of his son Tarun Kumar-defendant and also release deed No.608, dated 22.05.2000 executed by Krishan Lal-defednat in favour of his son Karan-defendant, as these were executed by defendant Nos.1 to 8 in collusion with each other to jeopardise the rights of ownership of the plaintiffs and proforma defendant Nos.9to 14. The plaintiffs also claimed that they are also entitled to incorporate the name in the revenue record as per ownership.

The pedigree table set up by the plaintiffs is as under”

		Tulsa		
		↓		
Lekh Ram		Rupa Ram		Hem Raj
		↓		
Khayali	Ramji Lal	Reshmi	Bado	Mohri
↓	↓	↓	↓	↓
Plaintiff	Defendant	Plaintiff	Plaintiff	Plaintiff Nos.21&22
Nos.1-7	Nos.1-8	Nos.8-18	Nos.19 & 20	and proforma defendant Nos.13 & 14

It is claimed that Rupa Ram (deceased) had two sons and three daughters, namely, Khayli, Ramji Lal, Reshmi, Bado and Mohri respectively. All the sons and daughters of Rupa Ram have now died and the plaintiffs and proforma defendant Nos.9 to 14 are the legal representatives of Khayali, Reshmi, Bado and Mohri. It is also claimed that after the death of Rupa Ram, his legal heirs are entitled to ownership of 4/5th share each. Ramji Lal was entitled to only 1/5th share.

Ramji Lal was very clever and cunning person. He fraudulently and suppressingly got the mutation of inheritance of Rupa Ram sanctioned in his favour on the basis of oral Will. The said mutation No.2338, dated 26.02.1984 is illegal and liable to be set aside.

In this way, Khayali Ram, Reshmi, Bado and legal heirs of Mohri are entitled to 4/5th share by way of natural succession. It was claimed that Rupa Ram had not executed any Will regarding the property. The mutation was got entered in collusion with the revenue officers.

It is stated that after the death of Rupa Ram, Ramji Lal, who was the close relative and uncle was allowed to cultivate the whole land. Ramji Lal had been paying the share of the produce to the plaintiffs and after the death of Ramji Lal on 11.07.1988, his sons had been giving the shares of produce to the plaintiffs and proforma defendants. Otherwise also, the land in question was ancestral property. After the death of Ramji Lal, mutation of inheritance bearing No.2633 dated 05.11.1988 was sanctioned in favour of his legal heirs i.e. defendant Nos.1 to 8.

Defendant Nos.1 to 8 in collusion with each other got a fraudulent decree dated 18.11.1989 passed in Civil Suit No.1036 of 1989

from the Court of learned Sub Judge 1st Class, Fatehabad, titled as ***“Subhash etc. vs Mainawati etc.”*** and got sanctioned mutation No.2697, dated 04.09.1990, which is illegal.

Defendant Nos.1 to 8 also tried to transfer the land in favour of their minor children. Subhash-defendant had executed a release deed bearing No.548, dated 17.05.2000 in favour of his minor Tarun Kumar-defendant. Krishan Lal-defendant also executed a release deed bearing No.608, dated 22.05.2000 in favour of his minor son Karan-defendant, which are illegal.

In April, 2000, the plaintiffs and proforma defendants demanded their share of produce from defendant Nos.1 to 8 but they refused to pay the same, claiming full ownership of the suit property. Hence the suit.

Defendant Nos.1 to 4, 6A, 6B, 7 and 8 in their joint written statement made the claim that Rameshwar, Jaipal sons of Jagdish, Balbir, Mahabir son of Reshmi, who were originally plaintiffs in the suit had already withdrawn their suit and now have been impleaded as proforma defendants, which shows that the suit is false and frivolous.

Putting forward their side of the story, it was claimed that Rupa Ram son of Tulsa had land in two villages, namely, Bangaon and Phul. During his life time, Rupa Ram gave his land to his sons and daughters. The land situated in village Phul, Tehsil and District Fatehabad was given to Khayali and his children and the land situated in village Bangaon was given to Ramji Lal and his children. It was done considering the quality and value of the land. Khayali and Ramji Lal and their children had agreed to the said arrangement. It was also decided that the land measuring 29 kanals,

16 marlas, situated in village Phul, which was in the name of sons of Ramji Lal will be transferred in the name of children of Khayali. Khayali and his children were cultivating the land in village Phul and the land situated in village Bangaon was cultivated by Ramji Lal and his children. As per said settlement, the land situated in village Phul, was given to Khayali and his children and the land in Bangaon was given to Ramji Lal and his children.

Accordingly, mutation No.2338, dated 26.02.1984 was sanctioned regarding the land situated in village Bangaon. Ramji Lal died on 11.07.1988. Rupa Ram Lal during his life time had executed a Will in favour of Ramji Lal, in terms of family settlement on the basis of which mutation was entered. Had Khayali and his children and Ramji Lal and his children any objection to the said mutation, they must have raise it at the same time. In fact, Rupa Ram, Ramji Lal, Khayali Ram and their children were fully satisfied with the said family arrangement.

While complying with the family settlement, Shamsheer Singh, Subhash, Krishan Lal sons of Ramji Lal transferred the land measuring 29 kanals 16 marlas situated in village Phul in favour of Rammurti, Krishan Chand, Bharat Singh, Maan Singh sons of Khayali and suffered a decree in their favour in Civil Suit No.876 of 1987 passed by learned Sr. Sub Judge, Fatehabad.

In the said suit, it was specifically alleged that the land owned by the plaintiffs and their father situated in village Bangaon and Phul was Hindu Joint Family Ancestral Property and the plaintiffs were living in village Phul and defendants are living in village Bangaon and cannot look after the land of other village. The suit was filed on 20.10.1987 and

decided on 30.01.1988. The same was also reflected in the revenue record. The three daughters of Rupa Ram, namely, Reshmi, Bado and Mohri, were aware about the family settlement entered between their father, brothers and their children and were agreeing to the same. Therefore, mutation No.2338, dated 26.02.1984 was rightly sanctioned.

The defendants also took the objection that the suit has been filed after 18 years and is barred by limitation. It is bad for non-joinder and mis-joinder of necessary parties and prayed for dismissal of the suit.

In the replication, it was pleaded that all the daughters of Rupa Ram were not present at the time of sanctioning of mutation as Mohri had died on 27.10.1973, whereas the mutation was sanctioned on 26.02.1984.

The Halqa Patwari vide Fard No.1 in the jamabandi for the year 1980-81 has shown the date of mutation as number 2338 as 02.07.1982, whereas in the mutation the date is mentioned as 21.10.1982. Rupa Ram had died on 27.09.1982. The plaintiffs also denied the family settlement. It was held that on the date of mutation, no camp was held at village Begarh and false proceedings were recorded. It was also denied that during his life time, Rupa Ram gave the land to his two sons. Rupa Ram had transferred only 63 kanals 6 marlas through a decree in favour of Khayali. Rupa Ram had ancestral land in village Bangaon. He could not alienate the land measuring 29 kanals 16 marlas to the sons of Ramji Lal. It was stated that price of the same was paid and collusive decree was obtained to avoid the payment of stamp duty. From the money received in lieu of the transfer of the land, Ramji Lal and Shamsheer Singh in the year 1981 had purchased the land in village Basi Bhiwa. Plaintiffs reiterated their case.

Defendant Nos.9 to 12 in their separate written statement took the same stand.

From the pleadings following issues were framed”

“1. Whether plaintiffs are co-sharer to the extent of 4/5 share in the suit property?OPP

2. Whether plaintiffs are entitled to possession of suit property?OPP

3. Whether Rupa Ram Ram has executed a valid Will in favour of Ramji Lal?OPD

4. Whether plaintiffs have no locus standi to file the present suit?OPD

5. Whether suit has not been filed by proper persons?OPD

6. Whether plaintiffs have not come to the court with clean hands?OPD

7. Whether Civil court has no jurisdiction to try the present suit? OPD

8. Whether suit of the plaintiffs is barred by limitation?OPD

9. Whether plaintiffs have not affixed proper court fee?OPD

10. Whether suit of the plaintiff is bad for mi-joinder and non-joinder of necessary parties?OPD

11. Whether defendants are entitled to special cost u/s 35-A CPC?OPD

12. Relief.”

The trial Court took issue No.3 in preference of other issues and decided the same in favour of the plaintiffs. Issue Nos.1 and 2 were taken up together and also decided in favour of the plaintiffs. Issue Nos.4 to 7 were also decided in favour of the plaintiffs and so were issue Nos.9 to 11. Consequently, the suit of the plaintiffs was decreed. Mutation No.2338,

dated 26.02.1984 in favour of Ramji Lal was set aside and it was held that the plaintiffs being the legal heirs of Khayali are entitled to 1/5th share along with legal heirs of Mohri 1/5th share each and that they are entitled to possession of the suit property, accordingly.

Aggrieved by said judgment and decree, the contesting defendants preferred an appeal before the learned Addl. District Judge, Fatehabad. The learned Addl. District Judge, Fatehabad, vide judgment and decree dated 13.08.2004 reversed the findings on the ground of limitation and dismissed the suit holding that the appellants are in hostile, open and uninterrupted continuous possession for the last 12 years and therefore, the suit is time barred and consequently the findings on issue Nos.1 and 2 were also reversed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

Learned counsel for the appellants has vehemently argued that the first appellate Court has taken the view that the defendants are in hostile, open and uninterrupted continuous possession for the last 12 years. Therefore, on that account, suit has been dismissed as barred by limitation.

It is contended that nowhere in the written statement, the contesting defendants have taken the plea that they are in hostile, open and peaceful possession for the last 12 years and that their right has ripen into title.

I have gone through the written statement filed by the contesting defendants. Admittedly, in the written statement, there is no plea that the defendants are in open, peaceful and hostile possession and have

become owners of the suit land by efflux of time. Therefore, the first appellate Court erred in holding that the contesting defendants are in adverse possession of the suit land.

Learned counsel for the appellants has placed reliance upon the following authorities:

- “1. *“Pehalwan Singh vs Laddo Bibi”*, 2001(2) PLJ, 54.
2. *“Annakili vs A. Vedanayagam & Ors.”*, 2007(4) R.C.R. (Civil) 780.
3. *“Hemaji Waghaji Jat vs Bhikhabhai Khengarbhai Harijan & Others”*, 2008(4) R.C.R. (Civil) 401.
4. *“Darshan Singh vs Kashmir Singh and others”*, 2016(3) PLR 194.”

The aforesaid authorities have been considered and this Court agrees that the adverse possession by the contesting defendants are neither pleaded nor proved.

However, while examining the pleadings, it comes out that certain important facts have escaped from the notice of both the Courts below.

In the written statement, the defendants have pleaded a family settlement, claiming that Rupa Ram, common ancestor of the parties had land in two villages, namely Bangaon and Phul. Rupa Ram gave the land of village Phul to Khayali and his children and land of village Bangaon was given to Ramji Lal and his children. It was on this account that sons of Ramji Lal suffered a decree of the land measuring 29 kanals 16 marlas, situated in village Phul in favour of children of Khayali. The said land was in the name of Ramji Lal and was inherited by his legal heirs.

It is to be noted that in the replication, the plaintiffs had denied the said family settlement. Since, both the parties were alive to the said controversy and led evidence thereon, therefore, it will be necessary to decide as to whether any family settlement took place between the parties under which the land of village Phul was given to Khayali and his children and the land of village Bangaon was given to Ramji Lal and his children by Rupa Ram, father of Khayali and Ramji Lal, even if no specific issue was framed on the said point.

It is to be noted that Rupa Ram died on 27.09.1982. The mutation regarding land of village Bangaon was sanctioned in favour of Ramji Lal on 26.02.1984 on the basis of some Will. Admittedly, the said Will could not be proved during the pendency of the present case and is stated to have been lost. The civil suit was originally filed on 15.06.2000 i.e. about 16 years after the said mutation and about 18½ years after the death of Rupa Ram.

Admittedly, Rupa Ram had two sons, namely, Khayali and Ramji Lal and three daughters, namely, Reshmi, Bado and Mohri. Rupa Ram had land in two villages, namely, Phul and Bangaon, Tehsil and District Fatehabad. In village Bangaon, he had land measuring 183 kanals and in village Phul, he had land measuring 190 kanals, 11 marlas. Rupa Ram had got the said land from his father Tulsa.

The jamabandi of village Bangaon for the year 1909-10 shows Tulsa and his brothers Sheo Ram sons of Dhanna to be owner of big chunk of land in village Bangaon. In the jamabandi for the year 1960-61, Rupa Ram son of Tulsa is recorded to be owner of the total land measuring 399

kanals 17 marlas. The jamabandi of the village Phul for the year 1909-10 (Ex.P7) shows that Tulsa and his brother Sheo Ram also owned big chunk of land in village Phul. In the jamabandi for the year 1924-25, Rupa Ram and Hem Raj sons of Tulsa are recorded to be owners of land measuring 985.13, though, it is not mentioned whether the land is in kanals, marlas, biswas or bighas. The same entries were carried in the jamabandis for the year 1932-33 and for the year 1940-41 regarding the land of village Phul. In the jamabandi for the year 1960-61, Rupa Ram son of Tulsa is recorded to be owner of land measuring 333-10. Though, it is not clear whether the land is mentioned in kanals, marlas, bighas or biswas. The subsequent jamabandi also reveals that Rupa Ram had owned land in village Phul also. Therefore, it is established that Rupa Ram had land in village Phul as well as in village Bangaon.

The copy of the judgment and decree (Ex.D33 and D34) shows that Khayali filed a civil suit for declaration against his father Rupa Ram that he is owner in possession of the land measuring 63 kanals 6 marlas situated in village Phul, Tehsil Fatehabad on the basis of family settlement. In the said case, Rupa Ram appeared and admitted the claim of Khayali and the said land measuring 63 kanals 6 marlas was declared to be ownership of Khayali. The said judgment and decree dated 14.09.1979 shows that there was a family settlement for transferring the land measuring 63 kanals, 6 marlas in favour of Khayali.

The copy of the plaint (Ex.D30) shows that a civil suit No.334 of 1979 was filed on 21.08.1979. It was specifically alleged in the plaint that a family settlement has taken place between the parties under which the

said land has fallen the share of Khayali. There is no mention about the other son Ramji Lal. Ramji Lal never raised any objection to the said decree suffered by his father Rupa Ram in favour of his brother Khayali.

Further, a copy of the sale deed (Ex.D28) dated 14.10.1969 shows that Rupa Ram transferred the land measuring 237 kanals 11 marlas of village Phul in favour of his grandsons, namely, Rammurti, Krishan Chand, Bharat Singh, Maan Singh sons of Khayali on the ground that his grandsons were serving him and that Rupa Ram had love and affection for them. Therefore, with his own free will, he transferred the land mentioning the sale consideration of ₹8,817/-. The recital of the sale deed shows that primarily the transfer of the land was on account of love and affection for the sons of Khayali and on account of services rendered by the sons of Khayali. The paltry consideration of ₹8,817/- appears to have been shown just to bring it within the ambit of sale.

However, the recital shows that primarily land was transferred on account of love and affection. It also indicates that the said land measuring 237 kanals 11 marlas was transferred in favour of sons of Khayali by Rupa Ram, vide sale deed dated 14.10.1969 on account of some family settlement.

Another copy of sale deed (Ex.D29) dated 30.03.1972 shows that Rupa Ram sold his land measuring 42 kanals 4 marals, situated in village Phul in favour of Khayali for ₹5,000/-. It shows that virtually whatever land was owned by Rupa Ram in village Phul was transferred by him in favour of Khayali either by suffering a decree in favour of Khayali or executing a sale deed by showing a nominal sale consideration, on account

of love and affection, in favour of sons of Khayali. This decree and sale deeds were never objected to by Ramji Lal during his life time.

Further, it is not denied by the plaintiffs that land measuring 29 kanals 16 marlas was transferred by Shamsheer Singh, Subhash and Krishan Lal sons of Ramji Lal in favour of Rammurti, Krishan Chand, Bharat Singh and Maan Singh sons of Khayali in civil suit No.876 of 1987 in the year 1987. The said land belongs to village Phul. Ramji Lal died on 11.07.1988. In this way, during the life time of Ramji Lal, the entire land in the village Phul, which was owned by Rupa Ram was transferred either in the name of Khayali or in the name of his sons.

The averments made in the plaint in a suit filed by Khayali against Rupa Ram, clearly established that there was a oral family settlement between the parties. Further, the recital of the transfer of land measuring 237 kanals 11 marlas in village Phul in favour of sons of Khayali on account of love and affection also give strong indication of family settlement between the parties.

Rupa Ram expired on 27.09.1982. The mutation regarding land of village Bangaon on the basis of Will of Rupa Ram in favour of Ramji was sanctioned on 26.02.1984 i.e. nearly after 1½ years of his death.

In the present case, since the suit was filed after 16 years of sanctioning of the said mutation, the said Will could not be traced out or proved before the Courts below. It is apparent that the entire land owned by Ramji Lal in village Phul was transferred in favour of Khayali and his sons and therefore, the story of the defendants has to be believed that the land of village Bangaon, measuring 183 kanals 0 marla was mutated in favour of

Ramji Lal on account of family settlement by showing some Will of Rupa Ram.

Admittedly, Khayali was living in village Phul and Ramji was living in village Bangaon. During his life time, Khayali did not object to the transfer of land situated in village Bangaon in favour of his brother Ramji Lal nor any objection was raised by his sisters or children of Khayali. Suddenly, after 16 years sons of Khayali taking advantage of the fact that the Will in the said mutation proceedings is lost, filed the suit claiming their share in the village Bangaon also.

A look at the plaint (Ex.D8) filed by Rammurti etc. sons of Khayali on 20.10.1987 shows that they had claimed in the plaint that on account of family settlement, Shamsher Singh etc. sons of Ramji Lal had given their land measuring 29 kanals 16 marlas situated in village Phul to them. Shamsher Singh etc. sons of Ramji Lal admitted their claim. If there was a family settlement, then it could not be one sided affair that the entire land of village Phul has transferred to Khayali and his sons. Then as a matter of common sense, some land must have been given to Ramji Lal also. Therefore, it is apparent that the land of village Bangaon was given to Ramji Lal and his sons in family settlement.

In this way, from the abovenoted decree suffered by Khayali as well as decree suffered by Shamsher Singh etc. sons of Ramji Lal as discussed above, it is clear that even the plaintiffs claimed that there was a family settlement. The fact of sale deed by Rupa Ram has already been discussed above. It appears that now the plaintiffs have become dishonest and taking advantage of the fact that the Will in favour of Ramji Lal has

been lost, they have filed the suit.

Therefore, I am of the view that since there was a family settlement and the plaintiffs want to deny the said settlement, therefore, the limitation will start from 26.02.1984 when the land of village Bangaon was mutated in the name of Ramji Lal. The plaintiffs remained mum for 16 years. The suit for declaration could be filed within three years and the suit for possession could be filed within 12 years. As such, the suit is patently time barred and is also apparent that defendants Ramji Lal and now his legal heirs have become owner of the land of village Bangaon on the basis of family settlement between the parties. It is also to be noted that in this part of the country, there is a tradition that the ancestral property is divided between the male children. It is for this reason that the sisters of Ramji Lal and Khayali did not raise any objection at any time, until some of their legal heirs joined the plaintiffs to claim their share. It is also to be noted that some of the defendants, who are legal heirs of Reshmi had withdrawn their claim.

Therefore, it is held that there was a family settlement between the parties, as a result of which Ramji Lal now through his legal heirs i.e. defendant Nos.1 to 8 have become the owner of the land at village Bangaon and that on this account, the suit has become time barred, since the mutation of transferring the land in favour of Ramji Lal was not challenged within limitation, whatever may be the ground of transferring the land. The mutation appears to be the result of family settlement. Though, Will was shown to be reason for the mutation.

Therefore, with the abovenoted alteration in the findings, issue No.8 is decided against the plaintiffs and consequently, issues Nos.1 and 2 will also stand decided against the plaintiffs.

As a result of the foregoing discussion, I do not find any merit in the present appeal. As such, the same is dismissed. Since the main appeal has been dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

April 25, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: Yes