

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

RSA No.1391 of 2016 (O&M)

Date of decision:15.11.2018

Ratna (since deceased) through LRs

... Appellant

Vs.

Yudhvesh and others

... Respondents

RSA No.2215 of 2016 (O&M)

Sudhir and another

... Appellants

Vs.

Yudhvesh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Tewatia, Advocate
for the appellant (in RSA No.1391 of 2016).

Mr. Jangvir Singh Hooda, Advocate
for the appellants (in RSA No.2215 of 2016).

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two Regular Second Appeals bearing No.1391 of 2016 and 2215 of 2016 arising out of same suit no.915/1 tiled as “Sudhir and others Vs. Yudhvesh and others” claiming declaration and permanent injunction.

Since common question of facts and law are involved, therefore, both appeals are decided together. Two plaintiffs have separately chosen to file the present Regular Second Appeals.

The suit was based upon the pedigree table carved out in para 1

of the plaint alleging that Nathi, daughter of Hira Singh son of Radha Kishan along with her brother Teji had ½ share in the estate of Hira Singh and the plaintiffs are none-else but children of brother of Nathi, who had a right in the estate of Nathi as it was ancestral in nature.

Nathi had executed a Will dated 05.12.1969, therefore, she could not have suffered the decree qua her share on 08.04.1995 in favour of defendant, i.e., another son of Teji which was without any legal necessity, for, the plaintiffs had right in the property by birth. In order to lay support to the aforementioned averment in the plaint, despite opposition by the defendants, brought on record Ex.P1 to Ex.P22, various revenue record to establish the nature and character of the property being ancestral. The defendants also brought on record Ex.D1 to Ex.D4. In rebuttal, two more documents i.e. Ex.P23 and Ex.P24 were also brought on record.

Learned counsels appearing on behalf of the appellants submitted that the Courts below ought not to have dismissed the suit being barred by law of limitation as the earlier suit did not culminate into decision as it was dismissed as withdrawn, therefore, the period spent in that suit could have been taken out, as per the provisions of Section 14 of the Limitation Act. Even otherwise, there is no limitation claiming the right in the property on the basis of inheritance. Jamabandis noticed above proved the nature and character of the property as ancestral at the hands of Nathi, therefore, decree of 1995 was not sustainable.

I am afraid the aforementioned argument is not sustainable in the eyes of law, for, previous suit was instituted on 12.04.1999 and was

dismissed as withdrawn on 24.10.2007 but the present suit was not filed with an application under Section 14 of the Limitation Act.

Be that as it may, in order to lay claim in the aforementioned property on the basis of having been ancestral, it was obligatory upon the plaintiffs to bring on record the revenue excerpt to establish that they are fourth generation in lineage. No such evidence has been placed on record. In the absence of the same, Will of 1969 pales into insignificance. Having no title in the property, the suit could not have been filed. All these factors have been taken into consideration by both the Courts below.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence.

Resultantly, the appeals are dismissed.

(AMIT RAWAL)
JUDGE

November 15, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No