

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

RSA No. 455 of 2013 (O&M)

Date of decision : January 23, 2018

Atam Ram and others,

..... Appellants

v.

Smt. Chhoti and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Radhe Shyam Sharma, Advocate
for the appellants.

None for the respondents.

Ajay Tewari, J (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit filed by the appellants.

The admitted facts are that the land originally belonged to Salu who had two sons Jiwan and Raju. Jiwan was married to Kanwari and Raju was married to Dakhan. From the marriage between Jiwan and Kanwari, Khiyali was born and from the wedlock between Raju and Dakhan, Pema was born. After the birth of Pema, Jiwan died and his wife Kanwari solemnized kareva marriage with Raju as per the prevalent custom. From this wedlock, Kalu was born. Share of Jiwan in Salu's property was mutated in favour of Khiyali and there is no dispute about that. On the death of Raju, his share in Salu's property was mutated in favour of Pema and Kalu. Kalu, who was unmarried and issueless, died on 10.3.1970. On his death, his

share in Raju's inheritance was mutated in favour of his mother Kanwari by mutation No.941 Ex.P1, and subsequently when Kanwari died, the property she had inherited from her younger son Kalu (from Raju) was mutated in favour of her elder son Khiyali (from Jiwan) by mutation No.998. It is not disputed that the appellants and their predecessors-in-interest had challenged the subsequent mutation No.998 unsuccessfully in earlier proceedings which came upto this Court. In the present suit, for the first time they have challenged the earlier mutation No.941. Both the Courts held that even if the respondents were not able to prove the kareva marriage of Kanwari with Raju yet once the appellants and their predecessors-in-interest never challenged the mutation of Kalu's inheritance in favour of Kanwari in the previous proceedings, challenge to that mutation in the present suit would be barred by Order 2 Rule 2 of the CPC and that is why the suit was dismissed on this technical ground by both the Courts below. Counsel for the appellants has not been able to show how this finding is vitiated. Once the appellants did not dispute the inheritance of the mother (Kanwari) in the previous proceedings, they cannot now turn around and challenge it by way of the present suit. The findings of the Courts below are upheld and the appeal is dismissed.

Since the main case has been decided, the pending C.Ms, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

January 23, 2018
'kk'

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No