

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

RSA No. 3830 of 2016 (O&M)

Date of decision : 06.09.2018

Maninderjit Kaur @ Maninder Kaur & anr.Appellants

V/s

Charanjit Kaur @ Satvir Kaur & anr.Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Surinder Garg, Advocate for the appellants.

RAJAN GUPTA J.

Challenge is to judgment and decree passed by lower appellate court whereby findings of trial court have been reversed. Learned counsel for the appellants has argued that impugned judgment is unsustainable in law. The appellate court has failed to appreciate the evidence in correct perspective. Thus, impugned judgment and decree passed by lower appellate court needs to be set-aside.

I have heard learned counsel for the appellants.

Plaintiff-respondent no. 1 instituted a suit for declaration to the effect that she and defendant no. 1 were owner of land measuring 25 Kanals 4 marlas in equal share on the basis of inheritance of deceased Gurpal Singh alternatively for permanent injunction restraining the appellants from alienating any portion of the suit land. It has been averred that father of plaintiff namely Gurpal Singh was owner in possession of the suit land. After death of Gurpal Singh, his wife Maninderjit Kaur (defendant no. 2) performed marriage with Harpal Singh, brother of Gurpal Singh and thus, forfeited her right to the property of Gurpal Singh. Out of said wedlock, defendant no. 3 namely Upkaran Singh was born. It is alleged that

defendants no. 2 & 3 who claimed themselves to be legal heirs of Gurpal Singh got sanctioned mutation of inheritance of Gurpal Singh illegally in their favour. Plaintiff and defendant no. 1 being legal heirs of Gurpal Singh were entitled to said property. Notice of suit was issued to defendants. They resisted the suit contending that they were entitled to share in the suit property, being legal heirs of Gurpal Singh. However, defendant no. 1 did not appear and was proceeded ex-parte. Thereafter issues were framed and both the parties led their respective evidence. On appreciation of evidence, trial court came to the conclusion that though it was established on record that plaintiff-respondent no. 1 and Dalip Kaur (respondent no. 2) were the only legal heirs of Gurpal Singh but it dismissed the suit on the ground that same had been filed beyond the period of limitation and plaintiff had not sought any alternate relief of possession as she was aware that defendants were in possession of the suit land. On an appeal being preferred, lower appellate court set-aside the findings holding that limitation is to start from the date of knowledge of sanction of wrong mutation and hence the suit is within limitation and plaintiff-respondent was entitled to decree of declaration and permanent injunction. On perusal of judgment passed by lower appellate court, I find no legal infirmity with the same. No interference in second appeal is called for. Dismissed.

As the main appeal has been dismissed on merits, no order needs to be passed in the accompanying applications.

September 06, 2018

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No