

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

**RSA No.532 of 2016 (O&M)
Date of decision:15.05.2018**

Gurmeet Kaur

... Appellant

Vs.

Khushial Singh (since deceased) through LRs and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Kanwal Goyal, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff No.2 is in Regular Second Appeal against the concurrent findings of facts and law, whereby, the suit challenging mutation bearing No.25435 decided on 16.1.1995 regarding the inheritance of Puran Kaur wife of Kushial Singh vis-a-vis land measuring 8 bighas to the effect that plaintiffs, defendants and proforma defendant were owner in possession to the extent of 1/7th share each in the agricultural land measuring 37-01 situated in the revenue estate of village Ramgarh alias Butta Singh Walla, Tehsil Rajpura, declaring them to be illegal, null and void and liable to be created in favour of the plaintiffs as the suit property was ancestral; with consequential relief of permanent injunction restraining defendant No.1 from selling, alienating and encumbering the suit property to any person in any manner, has been dismissed by the trial Court and

affirmed by the Lower Appellate Court.

The appellant-plaintiff No.2 instituted the suit claiming aforementioned relief on the premise that mutation in respect of land measuring 8 bighas belonging to Puran Kaur was effected in favour of defendants without taking care of plaintiff's interest being daughter. The mutation was effected on the basis of alleged Will of Puran Kaur. It was averred that property at the hands of Khushial Singh was ancestral and therefore, he could not have executed the Will dated 24.09.2002. On the basis of the Will, defendants had executed a transfer deed in favour of Gurdev Singh, who further executed a registered sale deed dated 7.11.2008 in favour of defendants No.4 and 5.

The suit was contested by the defendants and admitted that the property was co-parcenary. It was alleged that Will dated 24.09.2002 was genuine and mutation in favour of defendants No.2 and 3 was legal one and Khushial Singh duly executed a Will in favour of defendants No.2 and 3.

Since both the parties were at variance, the trial Court framed as many as seven issues including the issue of Relief. In support of their case, the plaintiffs examined six witnesses, whereas, defendants, examined five witnesses. Both the Courts below dismissed the suit on the following grounds:-

- i) The simpliciter suit seeking injunction without claiming joint possession was not maintainable.
- ii) The daughter cannot claim the right in the suit property

of Khushial Singh as per Section 6 of the amended Hindu Succession Act, 1956 for, Khushial Singh had executed a Will in the year 2002 and transfer deed had been effected after mutation of inheritance by virtue of the Will.

Mr. Kanwal Goyal, learned counsel appearing on behalf of the appellant-plaintiffs submits that the findings of facts and law are not based upon the preponderance of evidence, thus, there is illegality and perversity, for, there is no limitation for claiming inheritance vis-a-vis estate of Puran Kaur, for, mutation of 1995 was effected by the defendants on the basis of the sale deed dated 07.11.2008 which has not seen the light of day. Since the other Will has been proved on record but karta of co-parcenary property could not execute the Will except for legal necessity and in this regard, excerpt report Ex.PW6/A has been proved on record. The defendants had also admitted the nature and character of the property as ancestral.

He further submits that during the pendency of the appeal, an application for amendment of the plaint for claiming relief of joint possession was sought but the said application remained un-decided and thus, in view of the law laid down by the Hon'ble Supreme Court in Appeal (Civil) 2785 of 2008 titled as **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by LRs, decided on 11.04.2008**, the matter requires to be revisited by the Lower Appellate Court.

I have heard the learned counsel for appellant-plaintiff No.2, appraised the judgments and decrees of the Courts below and of the view

that there is no force and merit in the submissions of Mr. Goyal, for, it is not a case of appellant-plaintiff No.2 that mutation of 1995 qua estate of Puran Kaur was effected at her back and she did not assail the findings, thus, the suit was filed as late as in the year 2005. The amendment has been caused in Section 6 of Hindu Succession Act on 09.09.2005, effected from 09.09.2005. Excerpt report, Ex.PW6/A did not decipher the inheritance of land at the hands of Khushial Singh from three generations or two generations so the plaintiff can be stated to be fourth generation, therefore, mere admission of defendants would not clothe the status of the property as ancestral and co-parcenary.

Vis-a-vis non-decision of the application filed under Order 6 Rule 17 CPC, I am of the view that no useful purpose would be served for claiming joint possession, for, plaintiff miserably failed to prove her share in the estate of Puran Kaur, for, challenge to the aforementioned mutation was hit by *doctrine akin to delay and latches*, much less **Doctrine of Acquiescence**.

The findings of the Courts below based upon the appreciation of oral and documentary evidence, much less arguments of Mr. Kanwal Goyal, have not been able to bring the case within the expression illegality and perversity enabling this Court to form a different opinion than the one arrived at by Courts below, much less, no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

May 15, 2018

savita

(AMIT RAWAL)
JUDGE

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