

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

RSA No.6637 of 2016 (O&M)

Date of decision:17.05.2018

Kishan Chand and others

... Appellants

Vs.

Kewal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.S.Mor, Advocate
for the appellants.

AMIT RAWAL J. (Oral)

The appellant-defendants are in Regular Second Appeal against the judgments and decrees of the Courts below, whereby, suit instituted by legal representatives of Lado Devi, i.e., plaintiffs claiming declaration with consequential relief of permanent injunction to the effect that they were owners in possession of the suit land to the extent of 1/6th share fully detailed in plaint by challenging of mutation bearing No.1473, has been decreed by the trial Court and affirmed by the Lower Appellate Court.

The respondent-plaintiffs instituted the suit on the premise that Chhelu was owner of the land measuring 11 kanals 6 marlas. He had one daughter and son namely Lado Devi and Lakhmi Chand, respectively and widow Chhoti Devi. On his demise, the suit land was inherited by Lakhmi Chand, Lado Devi and Chhoti Devi to the extent of 1/3rd share each in equal share. Lado Devi, mother of the plaintiffs died on 12.02.1989 leaving

behind the plaintiffs as her only legal heirs but Lakhmi Chand, father of the defendants by giving wrong information that Lado Devi died issueless got sanctioned the mutation No.1474 in his favour.

The appellant-defendants contested the suit by setting up a counter claim claiming ownership of the suit land. It was stated that suit was barred by law of limitation.

Mr.S.S.Mor, learned counsel appearing on behalf of the appellant-defendants submits that judgments and decrees of the Courts below are not sustainable in the eyes of law, for, suit was barred by law of limitation. No explanation has come forth in challenging the mutation as late as in the year 2013, therefore, by applying the *doctrine of acquiescence*, suit should have been dismissed. Even the counter claim claiming declaration and ownership of the entire suit land mutated in favour of appellants has erroneously been declined, thus, there is gross illegality and perversity. The judgments and decrees of the Courts below are based upon the conjectures and surmises, particularly of the Lower Appellate Court was enjoined upon an obligation to determine/adjudicate the points to be involved for adjudication.

I have heard the learned counsel for the appellant-defendants, 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.Mor, for, concededly, Lado Devi died in the year 1989 and she was survived by the respondent-plaintiffs, i.e., her legal representatives. On demise of Lado Devi, suit land in the absence of any testamentary document was to devolve

upon Lakhmi Chand and LRs of Lado Devi qua their share but Lakhmi Chand got the entire property. In such circumstances, the suit was decreed.

I am of the view that the findings arrived at by the Courts below are totally based upon the law of inheritance and natural succession and counter claim set up by the appellant-defendant claiming declaration and ownership by efflux of time was not maintainable.

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

(AMIT RAWAL)
JUDGE

May 17, 2018
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No