

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA-6683-2016 (O&M)

Date of Decision: 18.5.2018

Surja Ram and others

....Appellants.

Versus

Smt. Mathri and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL,
ACTING CHIEF JUSTICE.**

PRESENT: Mr. Suresh Kumar Aneja, Advocate for the appellants.

AJAY KUMAR MITTAL, ACJ.

1. This regular second appeal filed by the appellants-defendants No.2, 7 and 9 arises from the judgment and decree dated 5.10.2015 passed by the Additional District Judge, Fazilka, modifying that of the Civil Judge (Junior Division), Abohar dated 9.9.2013 vide which the suit for declaration with consequential relief of permanent injunction and possession qua plaintiffs No.1, was decreed.

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The plaintiffs are the real daughters of Shri Puran and at the time of succession of Shri Puran after his death in the year 1972, only three heirs, i.e. defendants No.1 to 3 were shown as heirs of Shri Puran in mutation No.324. According to the plaintiffs, the said mutation was wrongly attested by the then Naib Tehsildar and Shri Ram Partap

were purchasers of the land in dispute vide mutation Nos. 357 and 435 and that mutation No. 506 vide which defendant No.3 exchanged the land in excess of his share with defendant No.10 was null and void. Further, mutation No. 325 on the basis of sale deed by defendant No.1 in favour of defendant No.2 in excess of his share was null and void. Accordingly, the plaintiffs filed a suit for declaration with consequential relief of permanent injunction. The said suit was contested by defendants No.2, 7 and 9 by filing separate written statements and raising various preliminary objections therein. It was pleaded by defendant No.2 that Shri Puran father of the answering defendant was in possession since long as tenant on batai 1/3rd share and defendant No.2 was cultivating the suit property at the spot and Form J was in the name of Shri Brij Lal and Surja Ram (defendant No.2) and the entire amount had been paid to the Government by Shri Brij Lal from his own pocket and that the plaintiffs had no right and authority to file the suit. Further, the plaintiffs and defendants No.4, 5 and 6 and Smt. Bali Devi had also given their consent at the time of entering and sanctioning of mutation No.324 regarding the suit property and later on Shri Banwari Lal son of Smt. Bali Devi, Shri Mani Ram husband of Smt. Savitri Devi, Shri Uda Ram husband of Smt. Kasturi Devi and defendant No.4 had given their written consent that they had no concern with the suit property or with the possession of the suit property. It was further pleaded that some part of the suit property was sold to defendants No.7 to 9 and some part of the suit property was exchanged with defendant No.3 which was legal, genuine and valid. Similar written statements were filed by defendants No.7 to 9. The other averments made in the plaint were denied and a prayer for dismissal of the suit was made. However, defendants No.1, 3 to 6 and 10 did not appear

before the trial Court and were proceeded against exparte.

3. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the plaintiffs are entitled to declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP
3. Whether the plaintiffs are entitled to possession as prayed for? OPP
4. Whether the plaintiffs have no cause of action to file the present suit? OPD
5. Whether the plaintiffs have concealed true and material facts from the Court, if so, its effect? OPD
6. Relief.

4. The defendants examined plaintiff no.2 Supari Devi as DW1 who tendered into evidence her duly sworn affidavit Ex.D1 by way of examination in chief, wherein, *inter alia* she deposed that in 1977 she had relinquished her share in the inheritance of her father, Sh. Puran and she never demanded any share from his estate. She further stated that the suit had been filed without her consent and by obtaining her thumb impression by cheating her and she does not want to pursue the suit.

5. The trial court on appreciation of the oral as well as the documentary evidence led by the parties held that the mutation of inheritance of deceased Puran was not properly sanctioned in favour of defendants No.1 to 3 and had set aside the same. Accordingly, the trial Court vide judgment and decree dated 9.9.2013 decreed the suit of plaintiff

No.1 and besides setting aside mutation No.324 of inheritance of deceased Puran sanctioned in favour of defendants No.1 to 3, mutation Nos. 357, 435, 506 and 325 were also set aside. Further, the defendants were restrained from alienating 1/9th share of plaintiff No.1 from the suit property. Plaintiff No.1 Mathri Devi was also held entitled to possession of 1/9th share of the suit property subject to deposit of deficient advalorem court fees. However, plaintiff no.2 was not held entitled to any relief in view of statement made in the witness box as DW1, where she had deposed that she did not claim any right in the suit property. Feeling aggrieved, defendants No.2, 7 and 9 filed an appeal and the lower appellate Court vide judgment and decree dated 5.10.2015 set aside the mutations no.324, 357, 435, 506, 325 to the extent of 1/9th share inherited by the plaintiff no.1 from her father and the mutations were ordered to remain intact so far as they do not affect the rights of the plaintiff no.1, to the extent of 1/9th share. With the said modification, the appeal was disposed of. Hence, the present appeal claiming the following substantial questions of law:-

- “1. Whether the impugned judgment and decree of the Ld. courts below are result of mis-reading and mis-appreciation of law and evidence?
2. Whether respondent No.1/plaintiff No.1 is estopped by her own act and conduct and inaction from claiming her right of inheritance from her father?
3. Whether respondent No.1/plaintiff No.1 voluntarily relinquished her right of share from the property of her father at the time of sanctioning of

mutation of inheritance of her father?

4. Whether the judgment and decree of the courts below are erroneous, perverse and not sustainable in the eye of law?"

6. I have heard learned counsel for the appellants and have gone through the judgments and decrees with his assistance.

7. Learned counsel for the appellants has made efforts to persuade this Court to come to a different conclusion than that of the courts below but could not show any material on the basis of which it could be held that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence which may warrant interference by this court in the regular second appeal. The trial court had recorded a finding that deceased Puran was having seven daughters and two sons and the mutation of inheritance in favour of defendants No.1 to 3 was not sanctioned properly. Hence, plaintiff No.1 was held entitled to 1/9th share out of the suit property being class I heir of deceased Puran and the defendants were restrained from selling 1/9th share of plaintiff No.1. Further, no serious attempts have been made to challenge the modification made by the lower appellate court in the findings recorded by the trial court.

8. No question of law, much less a substantial question of law arises in this appeal for consideration of this Court.

9. In view of the above, there is no merit in this appeal.

10. CM-17450-C-2016 has been filed under Section 5 of the Limitation Act, 1963, for condonation of 243 days' delay in filing the appeal. No satisfactory explanation has been furnished for this inordinate delay. Accordingly, application for condonation of delay of 243 days is

dismissed.

11. Consequently, the appeal is dismissed on merits as well as
barred by limitation. No costs.

May 18, 2018
gbs

(AJAY KUMAR MITTAL)
ACTING CHIEF JUSTICE

Speaking/Reasoned	Yes
Whether Reportable	Yes