

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

RSA No.6828 of 2016 (O&M)

Date of Decision.08.05.2018

Prithvi Singh (now deceased) through LRs and othersAppellants

Vs

Sushil and othersRespondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Sethi, Advocate and
Mr. Arun Biriwal, Advocate
Mr. Pridhi Jaswinder Sandhu, Advocate
Mr. Tushar Gera, Advocate
for the appellants.

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AMIT RAWAL J.(ORAL)

C.M. No.17792-C of 2016

The application for impleading the legal representatives of deceased-Prithvi Singh is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record.

RSA No.6828 of 2016

The appellant-plaintiffs are aggrieved of the concurrent finding of fact whereby their claim in the suit to the effect that plaintiff No.1 to 3 and the pro forma defendant No.19 are absolute owners in possession on the basis of title and also by way of adverse possession of land measuring 235 kanals 1 marla i.e. half share of total agricultural land measuring 940 kanala 5 marlas situated at village Rawat Khera, Tehsil and District Hisar with further relief that revenue entries in the name of deceased Sohan Lal and Harbhaz entered vide mutation No.725 dated

18.11.1954 and subsequent entries being illegal and null and void with consequential relief of permanent injunction qua alienation, mortgaging or creating third party rights had been dismissed by the trial Court and affirmed by the lower Appellate Court.

The plaintiffs are the successors in interest of Hari Ram. As per the case set up in the plaint, it was alleged that Ram Sukh had four sons namely Hari Ram, Jawana, Harbhaj and Sohan Lal. Hari Ram and Jawana by virtue of pre-emption decree dated 23.12.1932 acquired title in the property measuring 383 bighas 5 biswas vide Rapat Roznamcha No.199 dated 15.02.1933. The possession was also recorded in their favour. Resultantly, mutation No.400 dated 23.12.1932 was also sanctioned. Similarly, Jawana also became the owner of land measuring 343 bighas 5 biswas plus 19 bighas 3 biswas by virtue of decree dated 13.08.1934 and possession was also given on 05.10.1934. Even mutation bearing No.429 was also sanctioned. The aforementioned decrees were recorded in the jamabandi for the year 1940-41 Ex.PX5/1. The cause of action accrued to assail the entries made in the revenue record by virtue of mutation bearing No.725 dated 18.11.1954 whereby the Sohan Lal, Harbhaj were also accorded shares in the aforementioned property to the extent of 1/4th share.

Mr. Rajesh Sethi, learned counsel appearing on behalf of the appellants submitted that the defendants in the aforementioned suit raised the plea of maintainability, estoppel and limitation, however, the courts rendered the finding on limitation, which is perverse, as there is no limitation for claiming title but the fact of the matter is that Sohan Lal and

Harbhaj could not be recorded owners to the extent of 1/4th as it was only in respect of the land situated in Village Rawat Khera, in view of the decrees aforementioned. Even the additional evidence brought before the lower Appellate Court also proved the factum of the decrees. Sohan Lal was concededly the Assistant Consolidation Officer, thus, was instrumental in getting the mutation effected. The Courts below have erroneously dismissed the suit by recording the finding of fact that the aforementioned mutation was not effected at the back of Hari Ram or Jawana as they both appeared but did not oppose the same. The title could not have been interfered in the absence of any registration, much less, mutation does not confer any title. All these factors have not been adverted to, therefore, there is gross illegality and perversity.

I have heard learned counsel for the appellants, appraised the paper book and of the view that there is no force and merit. The plaintiffs are none else but the successors-in-interest of Hari Ram and Jawana. The mutation continued in the same manner which was recorded way back in the year 1954. No explanation has come forth in not assailing the same upto 2005. There is no dispute to the proposition that there is no limitation for claiming title but the explanation as noticed above did not come forth. Asserting right in the aforementioned suit, thus, in my view, was hit by doctrine akin to delay and latches. It is a case where the plaintiffs intended to put the clock back i.e. prior 2005. No fraud or misrepresentation having been played upon Hari Ram and Jawana had been proved or pleaded. The ingredient of Order 6 Rule 4 CPC remained unproved.

In view of the aforementioned, the argument of Mr. Sethi has

not been able to bring the case within the realm of illegality and perversity to form an opinion different than the one arrived at by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

May 08, 2018

Pankaj*

(AMIT RAWAL)

JUDGE

Whether reasoned/speaking

Yes

Whether reportable

No