

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

RSA No.683 of 2015

Date of Decision: 18.04.2018

State of Punjab and Others

.....Appellants

Vs.

Kaneez Fatima (deceased) through her LRs Sultana Begum and ors.

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Ms.Aakanksha, AAG, Punjab.

Mr.Rakesh Gupta, Advocate, for the respondents.

RITU BAHRI, J. (ORAL)

State of Punjab and others have come in appeal against the order of learned trial Court dated 24.01.2014 and learned appellant Court dated 18.11.2014 whereby the suit filed by the Kaneez Fatima D/o Gulam Mohammad Khan has been decreed that she is only legal heirs of Gulam Mohammad Khan who is owner of the land owned by her father in village Jhill as per details given in the plaint and defendants were directed to allot land of measuring equivalent area or to pay plaintiff compensation at the prevalent rate of land which would have been allotted to Gulam Mohammad in lieu of the suit property post consolidation, within three months of judgment and decree.

The brief facts of the case are that on account of the setting of the Dominions of Indian and Pakistan and on account of civil disturbances or the fear of such disturbances in August, 1947, and before that thousands of people belonging to Mohammedan community migrated to Pakistan and

similarly Hindus migrated to India. Defendants took the possession of the land belonging to the father of the plaintiff treating it as evacuee and custodian property and allotted to the same to different allottees. The entries made in column No.5 of the Jamabandi for the year 1956-57. shows that the land in dispute has been allotted to some persons, but in column No.4 of the said Jamabandi, name of father of plaintiff has been shown as owner of the land in question.

Both the Court after going through the suit of the plaintiffs, returned to the concurrent findings of fact that there is no notification/notice proved or placed on file by the defendants to show that any proceedings were ever initiated to declare the property in question as evacuee property which later on vested in custodian. Further, the death certificate of Gulam Mohammad Khan issued by Registrar, Birth and Death, Malerkotla, District Sangrur and the death certificate issued by Municipal Council, Malerkotla was proved on record as Ex.PW1/C and the perusal of the same shows that the death of Ghulam Mohammed Khan was registered on 02.11.1947 and thus it is clearly proved that he died at Malerkotla. The plaintiffs examined the death certificate which was proved by RW-1 Tarsem Sharma Naib Tehsildar. He also proved the jamabandi of the years 1956-57 Ex.D1 in which Gulam Mohammad Khan son of Kasim Khan is owner of the property in dispute. The plaintiff also examined Farook Ahmad as PW1 who deposed as attorney of plaintiff Kaneez Fatima. He deposed that Gulam Mohammad Khan was the father of the plaintiff and was resident of village Jhill. He further deposed that he was owner of the property in dispute as per jamabandi of the years 1956-57 and only Kaneez Fatima was the surviving daughter and legal heir of Gulam Mohammad Khan. He further deposed no

notification was ever issued declaring the property as evacuee property nor any rapt was recorded in the rapat roznamcha. Darshan Singh, Assistant Office Kanungo was examined as PW7. He duly proved on record jamabandi of the years 1956-57 as Ex.PW3/1 which showed old khasra numbers and new khasra numbers which were allotted to the disputed land. The ownership of the property, the plaintiff was rightly held to be owner of the property. In view of the said evidence, it is clear that the respondents duly proved revenue record to show that Gulam Mohammad Khan was owner of the said property in dispute and Kaneez Fatima was his sole legal heir. Since her father had died in 1947 itself and for all these year she was not aware of the land of the father. As per judgment of the Hon'ble Supreme Court in the case of Rajendra Prakash Sharma v. Gyan Chandra & others, reported as 1980 AIR (SC) 1206 whereby, once the property is never declared as evacuee property, therefore, the jurisdiction of the Civil Court is not barred. In the present case, no evidence was led by the present appellants before the trial court to show that any proceedings were initiated under Section 7 of the Administration of Evacuee Property Act, 1950 declaring it to be a evacuee property and Hence, the Civil Court had nor jurisdiction to entertain the suit. It is well settled proposition of law that no limitation is prescribed for filing the suit for declaration on the basis of title. Thus the suit cannot be dismissed being barred by limitation. Moreover, the father of the plaintiff died immediately after partition and thus he could not have challenged the action of the custodian after the peace had returned. The trial Court rightly directed appellants to allot the land measuring to equivalent area or to pay plaintiff compensation at the prevalent rate of land

property post consolidation within three months. In view of the same, both the courts below had rightly decreed the suit in favour of plaintiff/respondent.

So in the light of the discussion, the orders of the Courts below do not reflect any material irregularity or perversity which warrant interference. Hence the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

18.04.2018
anil

Whether speaking/reasoned Yes/No

Whether reportable Yes/No