

In the High Court of Punjab and Haryana at Chandigarh

**RSA-1295 of 2017(O&M)
Date of Decision: 3.10.2018**

Ram Piyari

---Appellant

versus

Ram Chander and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Rajesh Kumar Moudgil, Advocate
for the appellant**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings recorded by the courts whereby suit filed by the plaintiff-appellant claiming to be owner in joint possession of 1/4th share in residential house, detailed in para 1 of judgment of the trial court on the basis of natural succession to Hanuman Dass son of Jora Singh, her father has been dismissed by the trial court and appeal preferred by unsuccessful plaintiff did not find favour with the Additional District Judge, Fazilka.

The case set up by the plaintiff-appellant is that unregistered Will dated 10.6.1982 purported to be executed by Sh. Hanuman Dass is false, fabricated and forged, therefore, mutation No. 1027 dated 15.1.1985 sanctioned on the basis of Will has got no bearing on right of the appellant in the suit house. She has also challenged sale deed dated 26.4.1989 executed by Jetha Ram and Ghansham Dass in favour of defendant No. 13

on the basis whereof, mutation was sanctioned.

The courts have accepted plea of the plaintiff-appellant that she is daughter of Sh. Hanuman Dass, erstwhile owner of the suit house. Sh. Hanuman Dass passed away in the year 1983 and mutation in regard to his inheritance was sanctioned in the year 1985. As per law, there is no limitation for an owner to seek declaration qua his/her ownership rights unless the party in possession is able to prove that he/she has become the owner on the basis of adverse possession. At the same time, conduct of a party is relevant and material for deciding the controversy on the basis of preponderance of probabilities. The very fact that the appellant did not assert her claim to the suit property for a period of about 30 years since death of Hanuman Dass as the suit has been instituted in the year 2010 speaks volumes about knowledge of the plaintiff-appellant with regard to existence of Will dated 10.6.1982 on the basis whereof mutation was sanctioned in favour of her brothers.

The plaintiff-appellant appeared in the witness box and the trial court in para 11, 13 and 14 has extracted relevant parts from her cross examination. Counsel for the appellant has not disputed correctness of the facts elicited in cross examination of the plaintiff, taken note of by the trial court. A plain reading of the extracted portions leaves no manner of doubt that the present suit is a proxy litigation initiated by Ram Piari at the behest of her brother Ram Chander, defendant No. 1 who has initiated some litigation with Usha Rani defendant No. 13 in whose favour the sale deed of disputed property was executed in the year 1989. That being so, I do not find an error much less perversity in the consistent findings recorded by the

courts, warranting intervention.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. As the appeal has been decided on merits, application for condonation of delay of 145 days in refiling the appeal is of academic relevance only.

(Rekha Mittal)
Judge

3.10.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No