

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

RSA No.4990 of 2014 (O&M)

Date of decision: 22.10.2018

Harnam

... Appellant

Versus

Moorti and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vikas Kumar, Advocate
for the appellant.

Mr. Jagdish Manchanda, Advocate
for respondent No.1.

Ms. Bhanvi Sood, Advocate for
Mr. Aditya Jain, Advocate
for respondent No.2.

Mr. Surinder Dagar, Advocate
for respondents No.3 and 4.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgments and decrees dated 04.01.2011 and 16.04.2014 passed by the Courts whereby suit for declaration and consequential relief of permanent injunction filed by Smt. Rewti (since deceased) represented by her LR Harnam, son of Rewti was dismissed by the trial Court on the ground of suit being barred by limitation and findings on the question of limitation have been affirmed by the Appellate Court.

There is no dispute between the parties that Sh. Ram Dayal @ Duli was the owner of land measuring 58 Kanal 1 Marla situated in village Aurangabad, Teshil Hodal, District Palwal. Ram Dayal died in July, 1983 and mutation of inheritance was sanctioned in favour of his sons namely Girdhari, Devi Singh, Desh Raj and Harnam Singh on the basis of registered Will bearing vasika No.79 dated 04.09.1972 vide mutation No.6917 dated 06.04.1995. Sh. Girdhari, one of the sons of Ram Dayal died in November, 1983 and left behind two class-I heirs namely Smt. Rewti, his mother and Smt. Moorti, his widow. On the basis of natural succession to Sh. Girdhari, Rewti and Moorti became entitle to 1/8th share each in 1/4th share inherited by Sh. Girdhari Lal on the death of Ram Dayal. However, mutation qua inheritance of Sh. Girdhari was sanctioned in favour of defendant No.1 to the exclusion of Smt. Rewti. Smt. Moorti performed Kareva Marriage with Sh. Desh Raj, brother of deceased Girdhari.

The plaintiff challenged Mutation No.6918 qua inheritance to Sh. Girdhari, sale deed dated 20.05.1994 executed by defendant No.1 in favour of defendant No.2, mutation sanctioned on its basis, sale deed dated 13.03.1991 executed by defendant No.1 in favour of defendants No.3 and 4 and mutation No.7890 sanctioned on its basis, lease deed dated 05.09.1994 executed by defendant No.1 in favour of defendants No.2 and mutation No.8278 on the premise that the same are illegal, null, void, ineffective and not binding on right, title and interest of the plaintiff and liable to be set

aside as defendant No.1 has wrongly got mutation qua land more than her share.

Smt. Rewti passed away and Harnam, the present appellant was impleaded as her legal representative on the basis of registered Will bearing vasika No.193/3 dated 02.11.2000. It appears that after Harnam was brought on record being legal representative of Smt. Rewti, he amended the plaint to plead the Will aforesaid purportedly executed by Smt. Rewti and on the basis whereof, he has become entitle to movable and immovable properties left behind by the deceased.

Indisputably, Smt. Rewti became entitle to half share in land left behind by Sh. Girdhari on the basis of natural succession under Hindu Succession Act, 1956. The mutation qua inheritance of Sh. Girdhari was sanctioned in favour of Smt. Moorti to the exclusion of Smt. Rewti. One of the issues framed by the trial Court is whether the suit is time barred. The trial Court answered this issue against the plaintiff with the observations, quoted thus:-

“Evidence led by plaintiff is not at all cogent and convincing enough that Sh. Rewati came to know about the disputed entries in the revenue record in favour of defendant No.1 just before filing of the present suit as claimed by her in para No.5 of the plaint. Hence, this Court has no hesitation to hold that since the plaintiff did not challenge the entries of mutation No.6918 and subsequently entries of Jamabandi within a period of three years of incorporation of the same in mutation and subsequent Jamabandi, therefore, relief claimed by her is hit by law of limitation.

So far as the question of validity of the sale deeds and lease deed executed in favour of defendants No.2, 3 and 4 are concerned, the same were executed in favour of defendants on the basis of impugned mutation No.6918 and Jamabandi for the year 1985-86. Since relief claimed by plaintiff Smt. Rewati who had challenged the validity of these revenue entries is held to be hit by law of limitation, therefore, as a consequence thereof plaintiff Harnam is also debarred from challenging the validity of these impugned sale deeds and lease deed.”

The Appellate Court affirmed the findings with the following observations:-

“Deceased Rewati has challenged mutation No.6918 as well as other revenue entries incorporated in favour of defendant no.1 on the basis of mutation after passing of 15 years from the date of its incorporation, which is certainly not maintainable in the eyes of law. Deceased Rewati herself has admitted in her pleadings and even in her examination in chief as PW-3 it has not clearly submitted from when she had come to know about the entries regarding inheritance of 1/4th share of her son Girdhari in the suit property in favour of defendant no.1. Although cross examination of deceased Rewati could not be completed, so her statement was rightly not considered by the lower court. But this fact remained unclear that when Rewati came to know about disputed entries in the revenue record. Even Harnam, who is son of deceased Rewati has not specifically mentioned date, month or year regarding date of knowledge to Rewati and even he has admitted that he had sold 1/4th share of the suit land in the same khewat alongwith defendant no.1. The sale deed dated 13.3.1991 Ex.D-4 and statement of DW-2 Harnam Singh clearly shows that property has been alienated in

favour of Ganga Lal and Saroop Singh. Harnam Singh alleged his age at that time was 14-15 years, but nowhere he has pleaded himself as minor. Lower court rightly assumed that Harnam Singh was having knowledge in the year 1991 that defendant no.1 Moorti was recorded as co-sharer to the extent of 1/4th share in the suit property. Even his other brothers namely Desh Raj, Devi Singh and Harnam were also having knowledge to this effect. Once, Rewati was having knowledge regarding the entry of name of defendant no.1 recorded in the revenue record as co-sharer to the extent of 1/4th share left by her husband Girdhari, but even then Rewati did not challenge the entry for a long period of 15 years. The court has also rightly held that once entries of mutation No.6918 and subsequent entries of jamabandi would have to be challenged within three years of incorporation of the same in mutation and subsequent jamabandi. So, certainly the claim of plaintiff-appellant is hit by law of limitation. Rewati has challenged the validity of these entries after passing of period of about 15 years, so it cannot be said that mutation no.6918 and jamabandi for the year 1985-86 are wrong and illegal or liable to be set aside. The other fact regarding execution of Will is concerned that has also been properly decided by the lower court stating that the contents of the Will scribed by the deed writer and then the same were read over and explained to Rewati as well as other attesting witnesses and after admitting the same they had put their thumb impression over the Will without any due pressure or influence and the signatures on the Will etc. have also been admitted. Even in examination of scribe Jhangi Ram has categorically deposed that endorsement over Ex.PW-5/B was made by him as per instructions of Rewati, who had prepared Will Ex.PW-5/A and same was entered in his vasika register. In this way, due execution of Will dated 2.11.2000 by Rewati

in favour of Harnam Singh has been duly proved on the record and legal heirs of Harnam could not be held entitled to claim any right in the suit property on the basis of Will dated 2.11.2000.”

Counsel for the appellant has submitted that findings of the Courts that suit filed by Smt. Rewti is barred by limitation are not based upon correct appreciation of legal position, thus, suffer from perversity and cannot be allowed to sustain. In support of his contention, he he has relied upon judgments of this Court **Ibrahim Vs. Smt. Sharifan, AIR 1980 P&H 25, Mohinder Singh and others Vs. Shangara Singh and another, 2007 (2) Civil Court Cases 760 and Balwant Singh Vs. Khushal Singh and another, 2003(3) PLR 439.**

Counsel representing the respondents, on the contrary, has supported judgments passed by the Courts upholding plea of the defendants that suit filed by Smt. Rewti is barred by limitation. It is argued that as Smt. Moorti executed two sale deeds and a lease deed for 99 years in the years 1991 and 1994 and the same amounts to threat to title of the suitor, therefore, cause of action, if any, accrued to the plaintiff/appellant at least in the years 1991 and 1994 and the present suit instituted in the year 2000 is clearly beyond the prescribed period of limitation of three years. According to counsel, no such plea has been raised by the plaintiff as to when she came to know about wrong revenue entries qua mutation No.6918 in regard to inheritance to Sh. Girdhari or the sale deeds and lease deed sought to be declared illegal, null, void and not binding qua right of

Smt. Rewti to the extent of $\frac{1}{2}$ share in estate left behind by Sh. Girdhari.

I have heard counsel for the parties, perused the paper book and records.

Counsel for the appellant has failed to point out any averments in the plaint as to the time when Smt. Rewti came to know about wrong revenue entries or the registered sale deeds and lease deed executed by Smt. Moorti on the basis of mutation qua inheritance to Sh. Girdhari. Smt. Rewti appeared in the witness box but before she could be cross examined, unfortunately she passed away and her testimony remained incomplete and has rightly been ignored by the Courts. Harnam, legal representative of deceased Rewti appeared in the witness box. He was one of the vendors in sale deed dated 13.03.1991 executed by Smt. Moorti, widow of Sh. Girdhari and other three sons of Ram Dayal @ Duli. He cannot show ignorance about claim made by Smt. Moorti to the extent of $\frac{1}{4}$ th in land left behind by Ram Dayal.

There is no quarrel with the proposition laid down in the cited judgments that cause of action to assert right of ownership would not accrue from the date of sanction of mutation but the same would arise when there is exigency/threat to title of the suitor but as in the case at hand, the title of suitor was threatened when Smt. Moorti, claiming herself to be exclusive owner of estate of Sh. Girdhari, executed the sale deeds and lease deed, cause of action for the suit initially accrued in the year 1991 and thereafter in 1994. As has been rightly argued by counsel for the

respondents, no plea was raised by Smt. Rewti that she came to know about the wrong revenue entries or the sale deeds and lease deed within a period of three years before institution of the suit. As such, suit filed by the plaintiff/appellant is clearly barred by limitation. Though the reasoning adopted by the Courts to non suit the plaintiff on the ground of limitation is not detailed and complete but in view of discussions made hereinbefore, conclusions on the question of limitation are liable to be affirmed. No sooner the suit is held to be barred by limitation, the appellant cannot get any relief even if her claim is otherwise meritorious and legally tenable.

For the foregoing reasons, the appeal fails and is accordingly dismissed with costs.

22.10.2018
ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No