

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

**RSA No.5521 of 2017 (O&M)
Date of decision:28.11.2018**

Atma Singh

... Appellant

Vs.

Mehar Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S.K.Chawla, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present Regular Second Appeal is directed against the concurrent findings of facts and law, whereby, the plaintiff has not been successful before the trial Court as well as before the Lower Appellate Court.

The plaintiff claimed the declaration by asserting the right in the land belonging to Bachan Singh, maternal uncle of the plaintiff, who was owner of the suit land and had not been heard for the last more than 30-35 years. Bachan Singh had only one daughter Santo from whom the plaintiff was born, therefore, he being grandson/collateral had a right to succeed.

The defendants in connivance with the revenue officials obtained the mutation in their favour which was liable to be set aside and the subsequent transfers.

The defendants opposed the suit regarding maintainability and as well as applicability of provisions of Section 29 of Hindu Succession Act. It was alleged that Bachan Singh had mortgaged the possession of the suit property in favour of Gurnam Singh, vide mortgage deed dated 4.6.1951.

Learned counsel appearing on behalf of the appellant submitted that it has been established on record that Santo was sister of Bachan Singh and plaintiff is the son of Santo. The defendants have not been able to establish the possession as mortgagees. The finding qua non-suiting the plaintiff that redemption of the property cannot be sought being 30 years old, is not sustainable, in view of the law laid down by the Hon'ble Supreme Court in **Singh Ram (D) through LRs Vs. Sheo Ram and others 2014 AIR SC 3447** wherein, it has been held that there is no limitation prescribed to file the suit for redemption.

I am afraid the aforementioned argument is not sustainable, for, in order to bring the case for redemption, it was obligatory and incumbent upon the plaintiff to establish that Santo was the daughter of Bachan Singh. No evidence as per the provisions of Section 50 of Indian Evidence Act in this regard has been led. Thus, the plaintiff miserably failed to establish the relationship with Bachan Singh. Had the aforementioned fact been proved, there would have been occasion for this Court to comment upon the redemption of the mortgage.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees under challenge which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed. Consequently, the application seeking condonation of delay of 433 days in re-filing the appeal is also dismissed.

(AMIT RAWAL)
JUDGE

November 28, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No