

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

**RSA No.2683 of 1998 (O&M)
Date of Order:15.03.2019**

Mam Chand

..Appellant

Versus

Amar Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. A.S.Virk, Advocate,
for respondent no.1.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-appellant is in the regular second appeal against the concurrent findings of fact arrived at by the courts below.

Dispute in the present case is “Whether plaintiff-respondent was adopted before or after he inherited the property from his natural father i.e. Chunia.”

It has come in evidence that on the death of Chunia, property came to be inherited by his 2 sons plaintiff and defendant no.1. The factum of inheritance was noticed in mutation no.359 dated 14.03.1941, Ex.P1 incorporated in the jamabandies for the years 1954-55, 1958-59 and 1963-64, Ex.P2, Ex.P3, and Ex.P4. Later on, the plaintiff was adopted vide adoption deed dated 21.06.1965. Thus, before the plaintiff was given in adoption he had already become owner of half of the property owned by the natural father. Defendant no.1 also gifted 10 bighas land to plaintiff on

10.09.1968. Later on defendant got changed the entry in the revenue record in his own name. This was subject matter of challenge by the plaintiff.

Both the courts after appreciation of evidence have decided that on the death of Chunia, the plaintiff and defendant no.1 had become owners in equal share and therefore the entry in the revenue record which was subsequently changed is incorrect.

Learned counsel appearing for the appellant has proposed following substantial questions of law:-

- “1. Whether the respondent (plaintiff) was estopped and precluded in law to challenge the said mutation no.855 dated 21.03.1968 in the instant suit by virtue of which the appellant became the owner of the entire suit land especially once the plaintiff himself accepted the gift of 10 bighas of land in exchange of said mutation no.855 dated 21.03.1968 in favour of appellant?*
- 2. Whether the plaintiff was precluded and estopped in law from filing the present suit after a gap of 22 years?*
- 3. Whether the plaintiff could have instituted the present suit after a gap of 22 years without filing any application for condonation of delay?*
- 4. Whether the doctrine of acquiescence would be applicable in the present case in view of the candid admissions on the part of the plaintiff during his cross examination conducted on 30.09.1993 wherein the plaintiff himself conceded that the appellant had been cultivating the suit land (meaning thereby the plaintiff*

apart from the 10 bighas of land gifted by the appellant never came into the possession of any of suit land)?”

As regards question no.1, it may be noted that the learned counsel is basing its claim on the basis of estoppel. The rule of estoppel can be invoked only after on the representation of one party other party has changed its position. In the present case, gift of 10 bighas land is out of joint land inherited by plaintiff and defendant no.1, therefore, it cannot be said that by accepting the gift the plaintiff had in any manner acknowledged defendant no.1 to be exclusive owner of the entire property or resulted in the defendant having changed his position on the representation of the plaintiff.

As regards questions no.2 and 3, it may be noted that the plaintiff claims that he is owner in possession of the property. He felt aggrieved by a change in the revenue record which was without jurisdiction. The change in entry does not give rise to a cause of action. The suit for declaration is based upon a cause of action. The revenue entry is entered and update only for fiscal purpose and does not necessarily give rise to cause of action. Hence, the suit filed by the plaintiff cannot be said to be barred by limitation.

Question no.4 is in fact covered by question no.1 because question no.4 again based on doctrine of acquiescence. However, as noticed above, the doctrine of acquiescence normally cannot be made basis to divest of ownership of immovable property. Still further in the question of law only admission pointed out by the learned counsel is with regard to possession of defendant no.1 with respect to remaining land apart from 10 bighas. The ownership of the defendant has not been admitted.

In view thereof, this court does not find any good ground to interfere with the concurrent findings of fact arrived at by the courts below

The regular second appeal is dismissed.

C.M.No.8194-C-2018

Prayer in this application is for bringing on record the legal representatives of Mam Chand, the appellant.

For the reasons mentioned in the application, which is supported by an affidavit, the application is allowed, subject to just exceptions. The legal representatives mentioned in paragraph 4 of the application are brought on record for the purpose of prosecuting this appeal only.

Amended memorandum of parties filed along with the application is taken on record.

March 15, 2019
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(ANIL KSHETARPAL)
JUDGE

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