

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

RSA No. 3562 of 2009 (O&M)

Date of decision: March 28, 2019

Amar Nath and others

...Appellants

Versus

Vijay Kumar and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.S. Dhaliwal, Advocate,
for the appellants.

None for respondents No. 1 to 3.

Mr. Lakhvinder Singh, Advocate,
for respondents No. 4 to 15.

JAISHREE THAKUR, J.

1. The instant Regular Second Appeal has been filed by the appellants against the judgment and decree dated 22.4.2009 passed by the Additional District Judge, Barnala, vide which the judgment and decree dated 16.10.2008 passed by the trial court dismissing the civil suit filed by the plaintiff/appellants herein for declaration was upheld.

2. The facts, in brief, are that the plaintiffs/appellants herein filed a suit for declaration to the effect that they are owners in possession of the suit land to the extent described in the head note of the plaint. It was pleaded that Kundan Lal, predecessor of respondents 1 to 3 was the owner of the suit land to the extent of 1/3rd share i.e. measuring 65 kanals 3 marlas

(earlier the land was 38 bighas 3 biswas but after consolidation, it is 65

kanals 3 marlas). The said Kundan Lal was having 1/3rd share in the suit property and he had sold the said property to the predecessors of respondents 4 to 15, vide sale deed dated 22.11.1958.

3. The predecessors of appellants i.e. Budh Ram and Jeona Ram filed a suit on the basis of pre-emption with regard to the transaction dated 22.11.1958 and the suit was decreed on 14.4.1960 with the condition that the parties would pay to the defendants a sum of ₹4000/-. Thereafter, Jeona Ram and Budh Ram, after paying the conditional amount filed an execution application on the basis of the above said decree. In the execution, possession was handed over to the said Jeona Ram and Budh Ram and receipt dated 1.6.1990 was also executed in this regard. The execution application was withdrawn as fully satisfied. However, inadvertently, the entries in the name of Kundan Lal was not deleted; nor the land was got mutated in favour of the predecessors of the appellants. Taking advantage of the entry in the name of Kundan Lal and the sale deed dated 22.11.1958, respondents 1 to 3 started interfering into the peaceful possession of the property in dispute, which was in possession of the appellants on the basis of the decree dated 14.4.1960. Therefore, under the compelling circumstances, the instant suit for declaration was filed.

4. Defendants 1 to 3 were proceeded exparte in the present case. Defendants 4 to 15 contested the suit by filing the written statement. They contended that they have been intentionally made party in the present suit. However, they admitted the factum regarding inheritance and also admitted that Jeona Ram and Budh Ram had become owners of the property on the basis of the decree dated 14.4.1960. On completion of the pleadings, the

following issues were framed:-

1. *Whether plaintiffs are owner in possession of the suit property on the strength of decree dated 14.4.1960 passed in Civil Suit No. 186 of 19.11.1959? OPP*
2. *Whether the plaintiffs are entitled for permanent injunction as prayed for? OPP*
3. *Whether plaintiffs are entitled for permanent injunction as prayed for? OPP*
4. *Whether suit is bad for mis-joinder of parties? OPD*
5. *Relief.*

5. The plaintiffs/appellants in support of their case examined Babu Ram one of the plaintiffs as PW1 and closed their evidence. The respondents/defendants on the other hand, examined Joginder Singh one of the defendants as DW1 and closed their evidence.

6. The trial court, after scrutiny of the evidence brought on record, dismissed the the suit. The appeal preferred by the appellants met the same fate. Hence, the present appeal.

7. Learned counsel for the appellants submits that both the courts below have gone wrong in dismissing the civil suit filed by the appellants. It is submitted that the plaintiffs/appellants are already in possession of the suit property and the said fact is quite evident from the certified copy of the zimni order Ex. P24, passed in the execution proceedings. It is further submitted that the case of the plaintiffs/appellants as set up has been admitted by the respondents/defendants in their written statement. It is submitted that by way of present suit, the plaintiffs/appellants only wanted to get the correction effected in the jamabandi so that the name of the plaintiffs are recorded in the jamabandi, so as to set the record straight. It is

further submitted that though possession of the plaintiffs over the suit land, judgment and decree dated 14.4.1960, execution thereof and other record to connect the property with the plaintiffs/appellants have been proved, yet both the courts below dismissed the suit on the sole ground that the appellants have approached the court after lapse of 40 years and no explanation is coming forward as to why mutation was not got sanctioned. It is submitted that in a suit for declaration, mere adverse mutation entry does not cast any obligation upon a person in possession of the property to challenge the same. It is only when there is a real threat to his possession, a cause of action arises for filing a suit for declaration and permanent injunction and the limitation for such suit shall commence from the date of real threat to the possession, as provided under Article 58 and 113 of the Limitation Act. In support of his submission, he relies upon the judgment rendered in **Manti and others Versus Sarwati Devi and others 2004 (1) P.L.R. 397.**

8. On the other hand, learned counsel appearing on behalf of respondents 4 to 15, while supporting the impugned judgments and decree passed by the courts below, submits that both the courts below have rightly dismissed the suit of the plaintiffs/appellants, as no serious efforts were made by the predecessor in interest of the plaintiffs/appellants to get the land transferred in their name, when consolidation proceedings had been conducted, nor any document has been placed on the record by the plaintiffs/appellants to show that their predecessor in interest had participated in the consolidation proceedings.

9. I have heard learned counsel for the parties and have perused

the record carefully.

10. The substantial question that arises for consideration in the instant appeal is:-

When the limitation in terms of Article 58 of the Limitation Act will commence, i.e. from the date of the decree dated 14.4.1960 or from the date when there was a threat to the title/possession of the plaintiffs/appellants?

11. Learned counsel appearing on behalf of the appellants herein would contend that both the courts below have dismissed the suit only on the ground of limitation. It is argued that a preemptory suit filed by the predecessors of the appellants/plaintiffs against the predecessors of the defendants/respondents was decreed and preemptory money was deposited by the preemptors and in pursuance of that possession of the suit land was delivered to the predecessors of the appellants in execution but despite this fact the suit of the appellants for declaration to the effect that they are owners in possession to the extent claimed in the plaint has been dismissed. It is further argued that this fact as stated regarding delivery of possession pursuant to the preemptory decree has also been admitted by the defendants appearing before the trial court and there is a clear cut admission in favour of the appellants. Therefore, the suit could not have been dismissed. It is argued that the cause of action would arise only when such possession is threatened and in all these years the defendants had not threatened the possession and, therefore, there was no cause to file the suit. Reliance in this regard has been placed on **Manti and others Versus Sarwati Devi and others 2003 (4) R.C.R. (Civil) 677**, where it has been held that Article 58

would govern the limitation and cause of action would only arise when title is threatened.

12. Admittedly, a suit was filed by the appellants herein seeking a suit for declaration to the effect that they are owners in possession of the suit land to the extent described in the head note of the plaint. The plaintiffs have sought correction of the entry in the jamabandi, which is record of right. There is no dispute that the predecessors in interest of the appellants filed a suit for pre-emption against the predecessors in interest of the defendants, which suit was decreed, wherein they were directed to pay an amount of ₹4,000/- to Mukhtiar Singh, Kartar Singh, Dial Singh and Kirpal Singh. An execution was filed and the same was dismissed as satisfied, vide order Ex. P24, wherein it was incorporated that the possession has been delivered. Both the courts below have erred in not taking the account admission of the defendants/respondents in the written statement regarding the fact that the possession had been handed over in the execution proceedings on the basis of the judgment and decree passed in the suit for pre-emption. The suit has been dismissed primarily on the ground as to why the predecessors-in-interest of the plaintiffs remained silent for a period of 40 years and not getting the mutation sanctioned and necessary entries incorporated in the jamabandi which is right of record. The facts of the judgment in **Manti and others's case (supra)** are fully applicable to the facts of the case wherein a question was framed whether mere mutation entry or making of gift-deed to the knowledge of the plaintiffs amounts to ouster of plaintiff and furnish cause of action which amounts to starting point of limitation. While answering the question so framed, this Court held

as under:-

*“I have considered the rival submission and perused the record. There is no serious dispute about the substantive rights of the parties. Even learned counsel for the appellants does not dispute that Mata Chand having pre-deceased Dalip Chand, heirs of Mata Chand will not be entitled to the share of Dalip Chand in view of Entry II of Class II of the Schedule to the Hindu Succession Act read with Section 8 of the said Act. Only question is of limitation. I am of the view that Article 58 of the Schedule to the Limitation Act will govern the limitation and the lower appellate court was in error in observing that Article 58 of the Act cannot apply. Learned counsel for the respondents is not able to show that any other Article will apply. Even so, contention of the learned counsel for the appellants that the suit is barred by limitation, cannot be accepted. Though, limitation is three years, the time from which this period begins to run is when the right to sue first accrues. It is not possible to accept that right to sue accrued in the year 1966 when mutation was sanctioned, as rightly held by the lower appellate Court nor it accrued when gift of part of land was made. The parties were in joint possession and it is not shown that their shares were separated. Though learned counsel for the appellants mentioned that there was separation of joint holding, there is no material on record to indicate separation of shares and date of separation, if any. Even if entries in revenue record are wrong, a party can choose to ignore the same till a real threat to title is apprehended. Reference in this regard may be made to the decision of a Division Bench of this Court in **Ibrahim v. Smt. Sharifan, AIR 1980 P&H 25**. It was observed: “It may be observed at the outset that the word 'first' occurring in Article 58 of the Act is of no significance at all for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main*

*point which requires determination is whether mere entry of a mutation in the name of the defendant would furnish a cause of action to the plaintiff to file a suit for declaration or not.” It was further held that where no cloud is cast on the title of plaintiff, mere entry of mutation in the name of the defendant in absence of any other act of the defendant, cause of action does not accrue to the plaintiff for purpose of Article 58 of the Schedule to the Limitation Act. Reference may also be made to the decison of the Privy Council in **Mt. Bolo v. Mt. Koklan and others, AIR 1930 Privy Council 270** and **Harendra Chandra Nath and others v. Bijy Krishna Nath and others, AIR 1993 Gauhati 52.”***

13. In the instant case, the need for filing the suit arose only when the posession of the appellants' land came to be threatened. It is then that they came to know that their predecisors had not got their name entered in the revenue and owner on the basis of suit has been decreed on 14.4.1960. It is only when the posession was threatened that a need arose to file the suit seeking a declaration as prayed for. Therefore, once there is an admision on the part of the defendants themselves that there is a civil suit decreed in favour of the predecisors of the appellants, both the courts below erred in dismissing the suit.

14. Consequently, the appeal is allowed. The judgments and decree passed by the courts below are set aside and the civil suit filed by the plaintiffs/appellants is decreed. The parties to bear their own costs.

March 28, 2019
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No