

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

**RSA No.5118 of 2016 (O&M)
Date of Decision.11.01.2019**

Surjeet Kaur and others

...Appellants

Vs

Jangir Kaur and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. PKS Phoolka, Advocate
for the appellants.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is preferred at the instance of the appellant-defendant against the concurrent finding of fact whereby suit of the respondent-plaintiff for according her the declaration as owner to the extent of half share out of total land measuring 50 kanals 9 marlas by laying challenge to the oral Will dated 9.11.1973 and as well as mutation entered in the jamabandi has been decreed.

Plaintiff alleged that Gajjan Singh was her father. He died intestate on 25.03.1975 whereas the defendant alleged to be owner of the property on the basis of the oral Will and erroneously obtained mutation No.5809 dated 10.02.1978, which continued to reflect in the subsequent jamabandi for the year 1979-80 to 2004-2005.

Defendants opposed the suit and relied upon the oral

Will dated 09.11.1973 and raised the objection of limitation of the suit. It was alleged that plaintiff was aware of the aforementioned mutation but did not assail the aforementioned fact and filed the suit only in the year 2010.

Mr. PKS Phoolka, learned counsel appearing on behalf of the appellants submitted that once the mutation was entered in the year 1978 and the suit was filed in the year 2010, the suit was ex facie barred by law of limitation. The plaintiff had knowledge of possession and entries but did not assail the same, thus, defendants had become owners. The aforementioned mutation was on the basis of oral Will, which had the trapping of implied consent of the testator.

I am afraid aforementioned argument is not sustainable as there is no limitation qua inheritance. It was only when certain overt act is adopted by the opposite party, cause of action can be invoked. The aforementioned view of mine is derived from *Ibrahim @ Dharam Vir Vs. Sharifan @ Shnati 1980 AIR Pb 25*. The defendants have not been able to prove the oral Will as no application for secondary evidence was moved vis-à-vis the plaintiff, who had inherent right being daughter of Gajjan Singh. The plaintiff being the first class heir would have definite right as per Section 8 of the Hindu Succession Act. That is what has been the import of judgments and decrees of Courts below.

In view of such circumstances, I do not subscribe to the arguments of Mr. Phoolka to form a different opinion than the one already arrived by the Courts below, much less, no substantial

question of law arises for determination by this Court. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

January 11, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No