

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

RSA No.5018 of 2017 (O&M)

Date of decision:10.04.2019

Lal Singh (since deceased) through LRs ... Appellant

Vs.

Hari Singh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. B.S.Rathee, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The present regular second appeal is directed against the concurrent findings of fact and law whereby suit of the appellant-plaintiff claiming declaration on the premise that he alongwith proforma defendants no.3 to 6 were the owners in possession of suit property to the extent of ½ share by laying challenge to the judgment and decree dated 04.01.1975 passed in civil suit no.466 titled as Hari Singh vs. Sarti alias Moharli etc.

It was alleged that except three entries from 1952-61, recording the ownership of the suit property in favour of Murti, Bhagwani and their mother Moharli, all the other revenue record reflected the ownership between two sisters Murti and Bhagwani in equal shares. By taking the benefit of incorrect entry, beneficiary obtained consented decree from Moharli qua 1/3 share vide impugned judgment and decree which was perpetuated out of fraud and mis-representation as Moharli had no share in

the property. The mistake of the revenue entry only came to the knowledge of the plaintiff only in 2006, therefore, the suit was filed in 2007.

Defendants no.1 and 2 raised numerous preliminary objections and stated that suit was barred by law of limitation as since 1975, defendant no.1 was in continuous possession as owner in possession of the suit property to the extent of 1/3 share, therefore, declaration for partition was not maintainable. It was further averred that Bhagwani sold her entire share in the suit property in favour of one Sanwal Ram son of Meena and others, Bishamber, Ram Kumar and Om Dutt and Udmi Ram son of Mangal Singh vide registered sale deeds dated 04.09.1972 and 22.02.1989.

The plaintiff in support of the aforementioned pleadings examined PW1-Devender, son of deceased plaintiff and brought on record Ex.P1 to Ex.P28, Ex.P28/A, Ex.P28B, Mark PA and Mark PB, jamabandi, mutations, judgments, statement of Moharli and Hari Singh. On the other hand, defendants examined DW1-Ram Chander Nambardar, DW2-Sarjeet Singh, record clerk and DW3-Hari Singh, defendant no.1 and brought on record Ex.D1 to Ex.D33, Mark DA, Mark DB, Mark DC, Mark DD, Mark DE. In rebuttal, plaintiff brought on record Ex.P29 to Ex.P43, Mark PC and Mark PD.

Learned counsel appearing on behalf of the appellant submitted that entire genesis of the judgment was that Bhagwani had already assailed the right in correction of the revenue entries by filing the suit but the same was dismissed as withdrawn and thereafter, remained silent and suit in 2007 could not have been filed. Hari Singh is none else but husband of Murti who

in collusion with Moharli, his mother-in-law obtained the decree which required registration. The defendants also propounded the gift deed of 2002 but the Court negated the same in the absence of any title or right.

I am afraid the aforementioned arguments are not sustainable, for, Bhagwani had accepted the revenue record as correct for not laying challenge until her death. The revenue record continued till the civil suit, decree and till 2006 and no effort was made. The law of limitation on the basis of inheritance is no longer res integra. The cause of action accrues only when title or possession is threatened. Hari Singh after the decree continued to enjoy the possession and title of the property which was in the knowledge of the plaintiff but no steps were taken. The provisions of Article 58 of the Limitation Act, in such circumstances would come into place and not Article 59.

As an upshot of my findings, arguments of Mr. Rathee, have not been able to bring the case within the realm of illegality and perversity to form a different opinion than the one arrived at by the Courts below. No substantial question of law arises for adjudication of the present appeal.

Resultantly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 10, 2019
savita

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