

**RA-RS No.80-C of 2018 (O&M) in
RSA No.1999 of 2011**

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

**RA-RS No.80-C of 2018 (O&M) in
RSA No.1999 of 2011
Date of Decision.24.05.2019**

Paramjit Singh @ Premjit Singh and another ...Appellants

Vs

Kartar Kaur and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Gupta, Advocate
for the applicant-appellants.

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AMIT RAWAL J. (ORAL)

The appellants-plaintiffs sought review of the judgment dated 09.03.2018 after having availed remedy of Special Leave Petition bearing No.15885 of 2018, which was withdrawn with liberty to file review raising the issue of custom qua jat community as dealt with by Hon'ble Supreme Court in *Ass Kaur (Smt) deceased by LRs Vs. Kartar Singh (dead) by LRs and others (2007) 5 SCC 561*.

Mr. Ashok Gupta, learned counsel appearing on behalf of the applicant submitted that along with regular second appeal, application bearing No.5581-C of 2011 under Order 6 Rule 17 read with Section 151 CPC was moved for adding para 8-A pleading custom, as Gainy Singh died on 5.7.1954 whereas the Hindu Succession Act came into force on 17.6.1956 and prior to enforcement of this Act, as per custom daughter was not entitled to inheritance of the father:-

*“8-A. That since Gainy Singh died on 5.7.1954 leaving
behind him two children Baldev Singh and Kartar*

Kaur, therefore, the mutation of the inheritance of Gainy Singh ought to have been sanctioned in the name of Baldev Singh alone exclusively excluding Kartar Kaur because since Gainy Singh died prior to the enforcement of Hindu Succession Act, 1956, which was enforced w.e.f. 17.6.1956 and prior to the enforcement of this Act, the daughters were not entitled to the inheritance of their fathers. Though Gainy Singh died in 1954 yet the mutation of his inheritance was sanctioned on 26.5.1965 by Assistant Collector Grade IIInd whereas it should have been recorded and sanctioned in the name of only son Baldev Singh immediately after the death of Gainy Singh which took place on 5.7.1954. The sanctioning of the mutation of the inheritance of Gainy Singh was not done till 26.5.1965 because of the omission of the revenue officials. Moreover no body could pursue it because Baldev Singh was hardly 4 years old and respondent No.1 was only 2 years old and respondent No.1 was only 2 years old when his father Gainy Singh died. Though mutation was wrongly sanctioned yet in the jamabandies for the years 1969-70 to 1999-2000 the entries in the column of ownership remained in the name of Baldev Singh. These entries which were clearly recorded and that too corrected were changed on the basis of an illegal 'fard badar' order dated

15.7.2001 passed by Collector Dhuri which cannot be done. Correction in record of Rights by Fard Badar cannot be done. The Collector had no jurisdiction. Jamabandies entries can only be changed by filing a civil suit in the civil court which has not done.”

In fact, mutation of inheritance did not change till 1965 whereas it should have been sanctioned in favour of his son Baldev Singh, appellant.

I am afraid aforementioned argument would not be sustainable, as aforementioned application for amendment in review and even in regular second appeal would not be maintainable in the absence of additional evidence as it would tantamount to *de novo* trial. The judgment referred to in the order withdrawing SLP as well, as during the course of hearing, i.e. Ass Kaur's case (supra) pertain to succession of ancestral property whereas evidence with regard to custom was not only pleaded but proved. It is also matter of record that prior to coming into force of the Hindu Succession Act, 1956, the Hindu Women's Right to Property Act, 1937 was in vogue wherein inheritance of any interest by Hindu widow had a limited interest. All these questions were required to be established which cannot be permitted in the review petition. It is also matter of record that review petition had been filed by the appellant by changing the counsel. The change of counsel is not ground for review, in view of the ratio decidendi culled out by Hon'ble Supreme Court in Tamil Nadu Electricity Board Vs. N. Raju Reddiar and another 1997(9) SCC

736.

The review application is also accompanied by an application for condonation of delay of 122 days in filing of the application. The explanation given is not reasonable and plausible.

No ground for interference is made out. The review application is dismissed on the ground of delay as well as on merit.

**(AMIT RAWAL)
JUDGE**

May 24, 2019
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No