

**RA-RS-8 of 2019 in
RSA No.1193 of 1990(O&M)**

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

**RA-RS-8 of 2019 in
RSA No.1193 of 1990(O&M)
Date of Order: 21.05.2020**

Sher Singh

...Appellant

Versus

Bhup Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Malika Aggarwal, Advocate,
for the applicant-appellant.**

**Mr. Vaibhav Sharma, Advocate
for the respondents.**

**ANIL KSHETARPAL, J.
C.M.No.1256-C-2019**

For the reasons mentioned in the application, which is supported by an affidavit, the delay of 319 days in filing the review application is condoned.

Application stands allowed.

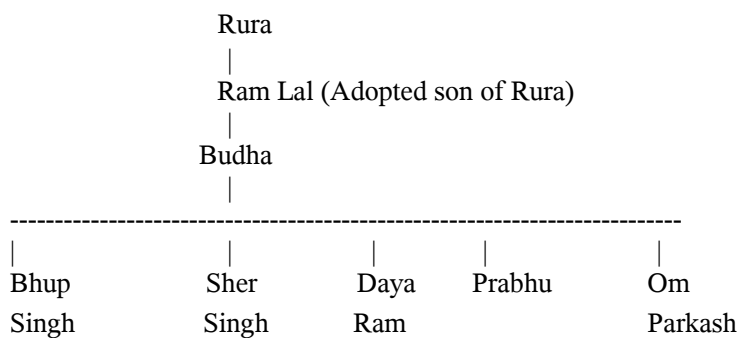
MAIN

This court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the courts below as also the order passed on 08.02.2018.

Although, the application has been filed seeking review of the order dated 08.02.2018, however, keeping in view the fact that the appellant was not represented by a counsel on the day the appeal was disposed of, this court has considered it appropriate to re-hear the appeal itself.

Plaintiff-appellant has filed the regular second appeal against

concurrent findings of fact arrived at by the courts below. Disputed facts are that Budha i.e. defendant no.5 was predecessor-in-interest of the plaintiff as well as defendants no.1 to 4. Relationship between the parties can be noticed from the pedigree table which is extracted as under:-



It is claimed that Budha was owner of ancestral property in villages Baleva, Ahmadpur and Chilnawas. Budha had sold land measuring 37 kanals 13 marlas out of 75 kanals 6 marlas situated in village Chilnawas. A suit filed by the plaintiff Sher Singh claiming superior right of pre-emption under the Punjab Pre-emption Act was decreed on 05.01.1966. Thus, plaintiff became owner of 37 kanals 13 marlas of land pursuant to the decree passed. Late Sh. Budha is alleged to have executed relinquishment deed in favour of defendants no.1 to 4 i.e. his remaining sons excluding the plaintiff on 26.08.1974 (registered on 27.08.1974), distributing his property in favour of defendants no.1 to 4. This relinquishment deed was challenged by the plaintiff on 23.02.1983 by filing a suit for declaration with consequential relief of permanent injunction.

During the pendency of the suit, late Sh. Budha died and the plaintiff amended the suit and prayed for passing a decree for possession of 1/5th share of the agricultural land as well as decree for partition of residential houses by meets and bounds.

Defendants no.1 to 3 contested the suit and pleaded that the

pedigree table given by the plaintiff in the plaint is incomplete as plaintiff has not depicted names of wife and daughter of late Sh. Budha. It was pleaded that the property was not ancestral property in the hands of late Sh. Budha and defendant no.1 executed the relinquishment deed in order to settled the dispute and equally distribute the property between his sons. It was pleaded that the land measuring 37 kanals 13 marlas has been pre-empted by the plaintiff out of joint funds and not by the plaintiff alone. As noticed above, both the courts after noticing the evidence have found no merit in the suit.

Learned senior counsel appearing for the plaintiff-appellant has submitted that both the courts have erred in dismissing the suit filed on the ground that it is barred by limitation. He further submitted that the learned trial court has found that the suit property is ancestral property and therefore, defendant no.1 had no right to alienate the same to the exclusion of the plaintiff.

On the other hand, learned counsel for the respondents has defended the judgments passed by the courts below.

In the present case, the plaintiff filed the present suit on 23.02.1983 challenging correctness of the relinquishment deed executed on 26.08.1974 (registered on 27.08.1974). Primarily, the challenge is on the ground that property is ancestral. It may be noted here that there is a distinction between the suit filed challenging alienation on the ground that the property is ancestral or Joint Hindu Family Coparcenary Property. The concept of property being ancestral is based upon customary law, whereas the suit filed claiming the property to be Joint Hindu Family Coparcenary Property is based upon old Hindu Law. This aspect has been noticed by a

five Judges Bench of this court in Mihaan Singh v. Inder and others AIR 2008 Punjab and Haryana, page 200. In the aforesaid judgment itself, the statement of the Advocate General, Haryana has been noticed to hold that the suit filed on the basis of customary law are maintainable in State of Haryana.

Joint State of Punjab enacted the Punjab Limitation (Custom) Act, 1920 (hereinafter referred to as 'the 1920 Act') in order to amend and consolidate the law governing the limitation of suits relating to alienation of ancestral immovable property and appointments of heirs by persons who follow custom. Under the aforesaid Act, the limitation to file suits on the basis of customs has been specified. A suit for declaration that an alienation of ancestral property, according to custom is not binding on the plaintiff after the death of alienator is governed by Article I. Article II deals with a suit for possession filed claiming that alienation is not binding on the plaintiff according to custom during the life time of alienor and the limitation for filing such suit is 6 years. Article I and II of the Punjab Limitation (Custom) Act, 1920, are extracted as under:-

Article I

A suit for declaration that an alienation of ancestral immovable property will not, according to custom be binding on the plaintiff after the death of the alienator or (if the alienator is female) after her death or forfeiture of her interest in the property	Six years	Firstly , if the alienation is by a registered deed the date of registration of such deed. Secondly , if the alienation is not by a registered deed : (a) if an entry regarding the alienation in the registered of Mutations has been attested by Revenue Officer under the Punjab Land Revenue Act, 1886, the date on which the entry is attested. (b) If such entry has not been attested, the date on which the alienee takes physical possession of the whole or any part of the property alienated in pursuance of such alienation. (c) In all other cases, the date on which the alienation comes to knowledge of the plaintiff.
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Article II

A suit for possession of ancestral immovable property which has been alienated on the ground that the alienation is not binding on the plaintiff according to custom -		
(a) if no declaratory decree of the nature referred to in Article 1 is obtained	Six Years	As above
(b) if such declaratory decree is obtained	Three Years	The date on which the right to sue accrues or the date on which the declaratory decree is obtained, whichever is later.

It is apparent that Article II has been again sub-divided in two parts. In the present case, Article II Part (a) would be applicable. Thus, the limitation is 6 years from the day registered relinquishment deed dated 26.08.1974 was executed. In the present case the suit has been filed after a period of more than 8 years. Thus, both the courts have correctly held that the suit filed by the plaintiff is barred by time. In this regard, reliance can be placed on the judgments in Jagir Singh and others vs. Ajmero and others, (1988) 93(1) PLR, 51 and Sawaran Kaur vs Kishan Singh and others, AIR 1985 P&H 293.

Still further, it is apparent that the plaintiff had also claimed that he is entitled to a share in the residential houses. However, on 31.08.1989, plaintiff had given up claim with respect to residential houses claiming that all the brothers are residing in separate individual houses constructed by everyone separately.

Further, there is also no evidence that the plaintiff had any source of independent income. It is not disputed that Budha had sold 37 kanals 13 marlas of land. Plaintiff claimed superior right of preemption. It is claimed by the defendants that since the amount payable on decree of the suit was

paid out of Joint Hindu Family funds, therefore, the plaintiff was given the land which he got by way of pre-emption. The plaintiff has led no evidence to prove that he had any separate/ independent source of income.

Still further, it is also established that Budha had sold another piece of agriculture land during his life time. None of the children ever challenged or questioned the aforesaid alienations by Budha. The plaintiff has filed this suit based upon custom to the effect that Budha was not entitled to alienate. However, in view of admitted fact that Budha had twice sold the agricultural land and none of the children ever challenged the same due to inalienability of a custom of ancestral property in the family, hence, the suit filed by the plaintiff has correctly been dismissed by the courts below.

Still further, even in equity, the plaintiff-appellant has no case particularly when the plaintiff become owner of 37 kanals 13 marlas of land which is much less than the land received by each of the defendant No.1 to 4 from their father late Sh. Budha.

Keeping in view the aforesaid facts, the review application is ordered to be dismissed.

**21st May, 2020
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**(ANIL KSHETARPAL)
JUDGE**

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