

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

RSA-5780-2019 (O&M)

Date of decision: 14.01.2020

MAJOR KAUR

... Appellant

Versus

PARAMJIT KAUR AND OTHERS

... Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Keshav P. Singh, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against concurrent findings recorded by the Courts whereby suit for declaration to the effect that plaintiffs and defendants No.2 to 4 are joint owners in possession in equal share of land measuring 48 kanals 4 marla situated in Village Bakapur, Tehsil Balachaur, detailed in head note of the plaint by assailing Will dated 30.12.1987 purported to be executed by Tara Singh in favour of defendants No.1 to 3 and revenue entries made on its basis being wrong, illegal, null and void was decreed by the trial Court vide judgment and decree dated 09.11.2015 that came to be affirmed in appeal by the Additional District Judge, Shaheed Bhagat Singh Nagar vide decree dated 09.10.2019.

Counsel for the appellant has not made any submissions to assail findings of the Courts that defendants have failed to produce and prove Will dated 30.12.1987 on the basis whereof sons and widow of

deceased Tara Singh staked their claim for testamentary succession and mutation in this regard was sanctioned. As such, defendants including the appellant have failed to establish their plea that they are entitle to suit land to the exclusion of other class-I heirs of deceased Tara Singh.

The sole submission made by counsel is that suit for declaration filed by the respondents/plaintiffs in the year 2011 to challenge mutation sanctioned in the year 1988 is clearly barred by limitation and liable to be dismissed on this score. He would fairly inform that no issue was framed by the trial Court on the question of limitation nor the Court adverted to the said issue during the course of hearing. However, it has been argued that a specific plea with regard to limitation was raised before the appellate Court and the same was negated in view of observations recorded in paras 25 and 26 of the judgment. It is vehemently argued that even if the respondents/plaintiffs were minors at the time of sanction of mutation in the year 1988, they could institute suit for declaration within three years of their attaining majority but they have not done so. It is further argued that in the mutation proceedings, it has been mentioned that mother, sisters of Jujhar Singh were present and they made a statement on behalf of Paramjit Kaur minor raising no objection for sanction of mutation on the basis of Will. It is further argued that the word 'sisters' mentioned in the mutation proceedings refers to Sarabjit Kaur as well because the third daughter of Tara Singh is Bakshish Kaur arrayed as defendant No.4. According to counsel, Will was produced before the revenue authorities by Jujhar Singh, defendant No.2 and son of the appellant. Major Kaur

transferred her share in the property left behind by Tara Singh in favour of Bahadur Singh in the year 2004 and for that reason, Jujhar Singh nursed grudge against Bahadur Singh and got filed the present suit by Paramjit Kaur and another. The last submission made by counsel is that since Paramjit Kaur was married in the year 2007 subsequent to Major Kaur transferred her share in favour of Bahadur Singh, it is difficult to accept that either she was not aware of transfer of the suit land by appellant or sanction of mutation in the year 1988 on the basis of Will. It is argued with vehemence that as the respondents/plaintiffs filed suit for declaration to unsettle the things which were decided in the year 1988, they are not entitle to indulgence of the Court. In support of his contention, he has relied upon judgment of Lahore High Court **Lajja Ram Vs. Shambhu Nath Ram Sarup and others, AIR 1923 Lahore 252.**

Be that as it may, the respondents/plaintiffs raised a categorical plea that they came to know about sanction of mutation on the basis of Will, in favour of Major Kaur and others in the year 2011 and immediately thereafter they have filed the suit. One of the plaintiffs namely Paramjit Kaur appeared in the witness box and tendered into evidence her duly sworn affidavit by way of examination in chief wherein she reiterated version of the plaintiffs set up in the plaint. She was subject to cross examination at the behest of counsel for defendants No.1 to 4 herein including the appellant. Counsel for the appellant has read cross examination of Paramjit Kaur in extenso. However, he failed to point out, if

it can be gathered therefrom that she or her co-plaintiff was aware of sanction of mutation in 1988 at any time prior to 2011.

Counsel has not disputed that Paramjit Kaur was minor at the time of sanction of mutation and said fact has been duly recorded even in the mutation proceedings. Paramjit Kaur, in the opening lines of her cross examination, would state that she was about 9 years old and Sarabjit Kaur was about 15/16 years at the time of death of her father in the year 1988. There is no challenge to her version with regard to her minority and that of Sarabjit Kaur at the time of sanction of mutation in the year 1988. As such, the appellant cannot derive any advantage to her contention from any statement made on behalf of minor for sanction of mutation on the basis of Will whereby they were excluded from inheritance to their late father Sh. Tara Singh.

As the defendants failed to establish their plea of inheritance on the basis of Will, consequently, estate left behind by Sh. Tara Singh would be inherited by his legal heirs in view of provisions of Hindu Succession Act, 1956.

There is no limitation for an owner to seek declaration to title unless he or she is aware of something which has cast cloud upon his/her right because in that eventuality cause of action to challenge the same and seek declaration would accrue from that day. There is no denial that limitation once starts cannot stop. In the instant case, there is nothing on record suggestive of the fact that respondents/plaintiffs were aware of sanction of mutation of 1988 or transfer of share by Major Kaur in favour

of Bahadur Singh in the year 2004 at any time prior to 2011. That being so, I do not find an error in findings of the appellate Court negating plea of the appellant that suit filed by the respondents/plaintiffs is barred by limitation. In view of the aforesaid discussion, the referred authority has no bearing on the facts of case at hand.

Another submission made by counsel is that even if land left behind by Tara Singh is inherited by his class-I heirs on the basis of natural succession to the extent of 1/6th share each, appellant shall be entitle to more than 8 kanals of land and as such, she was competent to transfer at least her share, therefore, transfer deed dated 17.12.2004 and mutation sanctioned on its basis would hold good to the extent of share of Major Kaur.

Since no prejudice has been caused to the appellant because of setting aside of mutation sanctioned on the basis of transfer deed dated 17.12.2004 and no appeal has been preferred by Bahadur Singh in whose favour transfer was made, the appellant cannot be heard that she is aggrieved because of setting aside of the transfer deed, resulting in reverting the property of her share to he appellant.

No other point has been raised.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

14.01.2020

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No