

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

RSA-5694-2018(O&M)

Date of Decision: July 05, 2023

MAHABIR (DECEASED) THRU LRS

.....Appellants

Versus

ISHWAR AND ORS.

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Jagram Singh Cooner, Advocate for the appellants.

HARKESH MANUJA, J. (ORAL)

1. By way of present appeal, challenge has been made to the judgment and decree dated 14.05.2018 passed by the Court of Addl. District Judge, Sonipat whereby judgment and decree dated 23.09.2015 passed by the Ld. Civil Judge Jr. Division Sonipat came to be reversed in a suit for declaration and permanent injunction filed at the instance of respondents-plaintiffs.

2. Very briefly, facts as pleaded in the plaint are that the land in question was jointly purchased by Gur Dayal Singh and Sher Singh in equal shares. The share of Gur Dayal Singh was inherited by his two sons namely Sheo Chand and Jug Lal; whereas the predecessor-in-interest of the respondents-plaintiffs Tara Chand being the only son of Sheo Chand inherited his share being 1/4th in the joint property and the other 1/4th share was inherited by Jug Lal, to whom appellants/defendants succeeded. It was further pleaded that on account of certain errors committed by the revenue authorities, the entries in the Jamabandi for the year 1931-32 were wrongly recorded to the extent of showing Tara Chand as owner of 1/8th share out of the total joint property instead of 1/4th inherited by him and aggrieved thereof the respondents-plaintiffs filed the present suit seeking

declaration qua ownership as well as permanent injunction regarding alienation etc.

3. In response, the appellants-defendants filed their written statement, contesting the suit stating it to be barred by limitation besides on merits as well. The trial Court vide its judgment and decree dated 23.09.2015 dismissed the suit inter alia on the ground that the same was barred by limitation besides the fact that the predecessor-in-interest of the respondents-plaintiffs, namely, Tara Chand never challenged the revenue entries during his life time. Aggrieved thereof, the respondents-plaintiffs filed First Appeal which came to be allowed vide judgment and decree dated 14.05.2018 passed by the Court of Addl. District Judge, Sonipat which has been impugned by way of present appeal.

4. Learned counsel for the appellants vehemently submits that the First Appellate Court has committed an error of law while interfering with the well-reasoned judgment recorded by the trial Court, wherein the respondents-plaintiffs were non-suited rightly on the ground that during the lifetime their predecessor-in-interest namely Tara Chand never challenged the revenue entries besides the same having been challenged beyond limitation.

5. I have heard learned counsel for the appellants and gone through the records.

6. Admittedly, Gur Dayal Singh was owner to the extent of half share of the joint land which after his death devolved upon Sheo Chand and Jug Lal in equal shares thereby making them entitled for 1/4th share each in the joint property and the 1/4th share of Sheo Chand was later always remained joint between the co-owners i.e. Gur Dayal Singh and

Sher Singh and the same was never partitioned amongst them and thus the respondents-plaintiffs through their predecessors remained in joint possession of the same and therefore unless their possession was disturbed, there was no cause of action for them to have challenged the revenue entries. As per settled law, mere entering of mutation never effected substantial rights of the respondents-plaintiffs in the suit land as there was neither threat to their possession nor any other overt act was committed at the instance of defendants-appellants or their predecessors, based upon the changed revenue entries may be carried out long back. Based on the similar reasoning, the findings have been recorded by the First Appellate Court. Relevant Para 16 thereof is reproduced hereunder:-

“16. Facing with the aforesaid situation, the learned counsel for the defendants has contended that Tara Chand did not challenge the wrong entries during his life time and it cannot be presumed that a person never got to know during his life time that his share has been wrongly mentioned in the revenue record. However, in this regard, it is submitted that in a suit for declaration, the cause of action does not arise on sanction of mutation of inheritance. The entry in the revenue record does not provide any cause of action. The cause of action arises only when there is any threat to the title of the suitor. Moreover, DW-1 has specifically admitted that there is joint khewat of suit land and every cosharer is jointly cultivating the land. This observation has been held in the case titled as **Mohinder Singh & others Vs Shangara Singh and another 2007(5) RCR (Civil) 389**. In the present case also, it is an admitted fact that the suit property has not been partitioned and therefore, each co-sharers is presumed to be owner in possession of the suit land to the extent of their respective shares. The parties are in joint possession and the shares have not been separated. A wrong mutation has been entered and even if entries in the revenue record are wrong and a party can choose to ignore the same till a real threat to title is apprehended. Reference in this regard may be made to the decision of a Division Bench of the Hon'ble Punjab & Haryana High Court in **Ibrahim Vs Smt. Sharifan, AIR 1980 P&H 25**, wherein it has been observed that at the outset that the word “first” occurring in Article 58 of the Act is of no significance at all

for deciding the issue of limitation so far as the facts of the case in hand are concerned as the main point which requires determination is where mere entry of a mutation in the name of defendants would furnish a cause of action to the plaintiffs to file a suit for declaration or not. It was further held that where no cloud is cast on the title of the plaintiffs, mere entry of mutation in the name of the defendants in absence of any other act of the defendant, cause of action does not accrue to the plaintiffs for purpose of Article 58 of the Schedule of the Limitation Act. Reference may also be made to the decision of **Privy Council in Mt. Bolo Vs Mt. Koklan, AIR 1930 Privy Council 270 and Harendra Chandra Nath Vs. Bijy Krishna Nath, AIR 1993 Gauhati 52, and Manti and others Vs Sarawati Devi and others, VO. CXXXVI (2004-1) The Punjab Law Reporter 397.**”

7. In view of the discussions made hereinabove and the findings recorded by the First Appellate Court on the point of limitation, I do not find any illegality or perversity with the impugned judgment. No other point has been argued on behalf of the appellants.

8. Thus finding no merits in the present appeal, the same is hereby dismissed, there being no question of law much less substantial question of law required to be adjudicated upon by this Court in the same.

05.07.2023
tejwinder

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No
