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Hindu Law – Family Settlement – Limitation – In the absence of any evidence proving a family settlement, the transfer of the suit property under the said alleged family settlement and the consequent mutation entries – Cannot be sustained – Suit filed by grandson – There is no limitation for such suits – No period of limitation is prescribed for filing a suit for possession on the basis of inheritance – Limitation would not commence on mere mutation entries but rather when there is a real threat to the possession of the plaintiff-appellant based on such actions that the cause of action would be stated to have arisen.

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(2023-1)209 PLR 060

PUNJAB AND HARYANA HIGH COURT

Before: Mrs. Justice Alka Sarin.

RAM CHANDER – Appellant,

Versus

PRITO and others – Respondents.

RSA No.5086 of 2012 (O&M)

Cases referred to:-

1. (2008-2)150 PLR 714, *Gurcharan Ram v. Tejwant Singh (Died) through LRs.*

2. (2008-2)150 P.L.R. 624, *Ganpat v. Lachhman.*

3. 1985 RRR 339, *Mohinder Singh (died) & Rep. by his LRs & Anr. v. Kashmira Singh.*

4. (2007-2)146 PLR 18, *Mohinder Singh v. Shangara Singh.*

5. (2008-4)152 PLR 595, *Gurcharan Singh v. Angrez Kaur.*

6. (2002-2)131 PLR 804, *Ashok Bansal v. Gurdas.*

7. (2008-1)149 PLR 67, *Jagat Singh v. Sri Kishan Dass.*

8. (2005-3)141 PLR 164, *Sultan v. Smt. Kasturi.*

9. (2007-2)146 PLR 735, *Banarsi Dass v. Neel Kanth.*

10. (2007-3)147 PLR 2057, *Gian Singh v. Atma Singh.*

11. 2000(3) RCR (Civil) 738, *Ram Niwas v. Jai Ram alias Tej Ram.*

12. 2016(6) SCC 157, *Pankajakshi (dead) through LR's v. Chandrika.*

Mr. Vijay Jindal, Senior Advocate with Mr. Akshay Jindal, for the appellant. *Mr. Ashok Kuamr Khubber,* for respondent nos.4 to 8.

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Alka Sarin, J. – *(Reserved on : 24.08.2022 Date of Decision: 20.09.2022)* – The plaintiff has preferred the present regular second appeal against the judgments and decrees passed by both the Courts below whereby his suit for declaration with consequential relief of permanent injunction has been dismissed.

2. The brief facts relevant to the present lis are that the plaintiff-appellant filed the present suit alleging herein that Bakhtawar son of Kirpa son of Jamna died intestate on 20.06.1979/21.06.1979 leaving behind agricultural land and residential houses as detailed in the headnote of the plaint. It was averred in the plaint that the plaintiff-appellant along with defendant-respondent nos.16 to 19 herein are entitled to inherit 1/5th share of total land/residential property left by Bakhtawar being LR of Parvati daughter of Bakhtawar. It was further averred that Prithvi son of Bakhtawar, who died on 26.03.1988 leaving behind two widows namely Prito and Roshni, had fraudulently and dishonestly with the help of revenue authorities and with the help of forged documents got mutation nos.332 and 893 sanctioned in his favour without knowledge and consent of the other legal representatives of deceased Bakhtawar and had further got prepared jamabandis in the years 1981-82, 1986-87, 1991-92 and 1996-97 of village Dodha Kheri and further got the forged jamabandis prepared in the years 1982-83, 1987-88, 1992-93 of village Darra Khurd Thanesar without knowledge and consent of the plaintiff-appellant. It was further averred that Prithvi also got entries in the jamabandis prepared qua 1/4th share of 32 kanals and 12 marlas of land comprised in khewat no.11, Kitta 8 of village Dodha Kheri in jamabandi for the year 1976-77 without any mutation in his favour in the jamabandi for the year 1981-82. It was further averred that the widows of Prithvi (defendant-respondent nos.1 and 2 herein) had got mutation nos.1277 and 449 sanctioned in their names and got prepared jamabandis for the year 1991-92 and 1996-97 and forged jamabandi for the year 1992-93 without consent and knowledge of the other legal representatives of Bakhtawar. Hence, declaration was sought that the plaintiff and defendant-respondent nos.16 to 19 herein were owners and in joint possession to the extent of 1/5th share in the suit land left by deceased Bakhtawar as also the declaration to the effect that mutation nos.893 and 1277 of village Darra Khurd Thanesar and jamabandis for the years 1982-83, 1987-88, 1992-93 of Darra Khurd Thanesar and mutation nos.332 and 449 of village Dodha Kheri along with jamabandis for the years 1981-82, 1986-87, 1991-92 and 1996-97 of village Dodha Kheri were null and void and not binding on the rights of plaintiff-appellant and defendant-respondent nos.16 to 19 herein as also for consequential relief of permanent injunction restraining the defendant nos.1 and 2 herein from alienating, selling, transferring, leasing, mortgaging any part of the suit property forcibly and illegally.

3. The suit was contested by defendant nos.1 to 5. Defendant nos.6 to 10 were proceeded against ex parte and defendant nos.11 to 58 were given up on 03.05.1999. The suit was contested on the grounds that the properties in the hands of Bakhtawar was ancestral and joint Hindu family properties and Bakhtawar constituted a joint Hindu family with Prithvi and defendant nos.1 and 2 and that the plaintiff and defendant nos.6 to 10 (defendant-respondent nos.16 to 19 herein) had no right to inherit the suit property. It was further the stand taken by the contesting defendants that Bakhtawar during his life time, in a family settlement with the consent of all the family members, had transferred the property in favour of Prithvi and on the said basis the mutation of the estate of Bakhtawar was entered in favour of Prithvi. It was further the stand taken that Prithvi remained in possession of the suit property since 1978-79 as exclusive owner without any obstruction adverse to the interest of the mother of plaintiff-appellant and defendant nos.6 to 10 (defendant-respondent nos.16 to 19 herein). The plaintiff filed a replication reiterating the contents of the plaint.

4. The relevant pedigree table is reproduced as under :

Bakhtawar

|

_____

| | | | |

Parvati – Baljit Shanti Roshni – Prithvi – Prito Chalti Bhagirathi

(Husband) (Def. No.3) (wife) (wife) (Def. No.4) (Def. No.5)

(D.R.-2) (D.R.-1)

| | |

_____ _____ _____

| | | |

16) iff) 17) 18) 19) 6) 5) 4) 7 8
9 10 11 12

Appellant)

Note: D.R. – Defendant-respondent

Def. – Defendant

5. On the basis of the pleadings of parties, the following issues were framed :

1. Whether the plaintiff along with defendants no.6 to 10 are owners in joint possession to the extent of 1/5 share in the suit land left by deceased Bakhtawar as alleged in the plaint ? OPP

2. If issue no.1 is proved in affirmative, whether the mutation nos.332, 893, 1277 and 449 are illegal and fraudulent and liable to be set aside along with jamabandi entries ? OPP

3. Whether suit is not maintainable in the present form ? OPD

4. Whether plaintiff has suppressed the true and material facts from the court, if so its effect? OPD

5. Whether suit is time barred ? OPD

6. Whether suit is bad for mis-joinder and nonjoinder of necessary parties ? OPD

7. Relief.

6. The Trial Court dismissed the suit vide judgment and decree dated 25.11.2009. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-appellant which was also dismissed vide judgment and decree dated 17.09.2012. Hence, the present regular second appeal.

7. Learned counsel for the plaintiff-appellant would contend that there is not an iota of evidence on the record to show that there was any family settlement on the basis of which the suit property had been mutated in favour of Prithvi. It is further contended that in a suit for title there is no limitation. It is further the contention that there is no evidence on the record to show that the property in dispute was ancestral in nature. In support of his contentions, learned counsel for the plaintiff-appellant has relied upon judgments of this Court in cases of *Gurcharan Ram v. Tejwant Singh (Died) through LRs & Anr.* [1] [(2008-2)150 PLR 714]; *Ganpat v. Lachhman & Ors.* [2] [(2008-2)150 P.L.R. 624]; *Mohinder Singh (died) & Rep. by his LRs & Anr. v. Kashmira Singh* [3] [1985 RRR 339]; *Mohinder Singh v. Shangara Singh & Anr.* [4] [(2007-2)146 PLR 18]; *Gurcharan Singh & Ors. v. Angrez Kaur & Anr.* [5] [(2008-4)152 PLR 595]; *Ashok Bansal v. Gurdas & Anr.* [6] [(2002-2)131 PLR 804]; *Jagat Singh v. Sri Kishan Dass* [7] [(2008-1)149 PLR 67]; *Sultan v. Smt. Kasturi & Ors.* [8] [(2005-3)141 PLR 164]; *Banarsi Dass v. Neel Kanth & Ors.* [9] [(2007-2)146 PLR 735]; *Gian Singh v. Atma Singh*

& Ors. [10] [(2007-3)147 PLR 205]; and *Ram Niwas v. Jai Ram alias Tej Ram* [11] [2000 (3) RCR (Civil) 738].

8. *Per contra* learned counsel for respondent nos.4 to 8 has contended that the judgments and decrees passed by both the Courts below cannot be faulted with and that it stood amply proved that the property was ancestral property of Bakhtawar Singh which had been inherited by Prithvi and the daughters had no right to inherit the same. Bakhtawar during his lifetime in a family settlement with the consent of the family had transferred the property in the name of Prithvi. It was also argued that the concurrent findings of fact recorded by the Courts below ought not to be disturbed by this Court.

9. I have heard learned counsel for the parties.

10. As per the law laid down by a Constitution Bench of the Hon'ble Supreme Court in case of *Pankajakshi (dead) through LR's & Ors. v. Chandrika & Ors.* [12] [2016 (6) SCC 157] there is no requirement for framing of substantial question of law.

11. In the present case the plaintiff staked his 1/5th claim to the suit property being the grandson of Bakhtawar. The defendant nos.1 to 5 denied this claim by contending that Bakhtawar had during his lifetime transferred the property to Prithvi in a family settlement. Ownership of Prithvi by way of adverse possession was also set-up. The lower Appellate Court has held against the plaintiff-appellant on inter-alia the ground that the mother of the plaintiff-appellant (Smt.Parvati) never objected to the mutation entries in favour of her brother, Prithvi, during her lifetime and that the suit was beyond limitation. The Courts below also held against the plaintiff-appellant on the ground that though he was aware about the mutation entries in favour of Prithvi in 1986 but filed the present suit in 1999.

12. There is no evidence available on the record to prove that any family settlement ever took place whereby Bakhtawar transferred the suit property in favour of Prithvi. In the absence of evidence, the Courts below have erred in holding that Prithvi had become owner of the suit property on the basis of a family settlement or with the consent of all the legal heirs of Bakhtawar. Learned counsel for respondent nos.4 to 8 has not been able to show any evidence on the record which would prove the family settlement on the basis of which the impugned mutations are alleged to have been sanctioned. Merely because mutations had been sanctioned it cannot be held that the suit property was rightly transferred in the name of Prithvi. No family settlement nor any other evidence has come on the record to prove that the suit property was ancestral in nature and rightly mutated in the name of Prithvi. In the absence of this material evidence, all the heirs of Bakhtawar would be entitled to an equal share since there is no dispute that the suit property was owned by Bakhtawar. None of the daughters of Bakhtawar stepped into the witness box to depose in favour of any family settlement.

13. Further, it is trite that limitation would not commence on mere mutation entries but rather when there is a real threat to the possession of the plaintiff-appellant based on such actions that the cause of action would be stated to have arisen.

14. In the case of *Mohinder Singh* (supra), a Division Bench of this Court has held as under :

“5. On the other hand, the learned counsel for the respondent submitted that no period was prescribed under the Limitation Act, for filing a suit for possession on the basis of inheritance and that a suit for possession on the basis of title is governed by Article 65 of the Limitation Act, 1963, the relevant portion of which reads as under :

Description of Suit	Period of limitation	Time form which period begins to run
65. For possession of immovable property or any int	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

After hearing the learned counsel for the parties, I find force in the contention of the learned counsel for the respondent. It is well established principle of law that inheritance does not remain in abeyance and the heirs after the death of the last male holder succeed to the property of the deceased in accordance with law, Kashmira Singh, being the son of Niranjan Singh deceased, was entitled to 1/3rd share in the land in dispute. After the death of Niranjan Singh, he was not required to file any suit for possession on the basis of inheritance. He had become full owner of his share in the property on the death of the last male holder. For establishing his right as an heir, he was not required to file a suit. However, a situation may arise when the heir is not in possession of the property inherited. In that event a suit for possession may have to be filed and on contest the same may fail on the defendant proving that he has perfected his title by adverse possession. It is such type of suit which is governed by the provisions of Article 65 of the Limitation Act. In this view of the matter, with respect, I find that the view taken by R. N. Mittal, J. in *Naginder Singh’s case* (1983 Cur LJ (Civ & Cri) 432) (supra) that it is well settled that a suit for possession on the ground of inheritance should be filed within a period of twelve years from the date when the inheritance opens, does not lay down any such rule. On the other hand, in all those decisions it was the plea of adverse possession of the defendants which was upheld.

Thus I hold that no period of limitation is prescribed for filing a suit for possession on the basis of inheritance.”

15. In the case of *Ganpat* (supra), it was held as under :

“9. The Division Bench of this Court in *Kashmira Singh’s case* (supra) where similar issues was involved, has, in para 6 of its judgment, laid down as under :

“After hearing the learned Counsel for the parties, I find force in the contention of the learned Counsel for the respondent. It is well established principle of law that inheritance does not remain in abeyance and heirs after the death of the last male holder succeed to the property of the deceased in accordance with law. Kashmira Singh, being the son of Niranjan Singh, deceased, was entitled to 1/3rd share in the land in dispute. After the death of Niranjan Singh, he was not required to file any suit for possession on the basis of inheritance. He had become full owner of his share in the property on the death of the last male-holder. For establishing his right as an heir, he was not required to file a suit. However, a situation may arise when the heir is not in possession of the property inherited. In that event a suit for possession may have to be filed and on contest the same may fail on

the defendant proving that he has perfected his title by adverse possession. It is such type of suit which is governed by the provisions of Article 65 of the Limitation Act. In this view of the matter, with respect, I find that the view taken by R.N. Mittal, J. in *Naginder Singh's case* (supra) that it is well settled that a suit for possession on the ground of inheritance should be filed within a period of twelve years from the date when the inheritance opens, does not lay down correct law. The decisions to which reference has been made in para 9 of the judgment by the learned judge, do not lay down any such rule. On the other hand, in all those decisions it was the plea of adverse possession of the defendants which was upheld. Thus, I hold that no period of limitation is prescribed for filing a suit for possession on the basis of inheritance."

In view of the above, the findings recorded by the courts below that the suit for possession on the basis of inheritance filed by the plaintiffs was time-barred are erroneous as there is no period of limitation prescribed for filing of such suit. The courts below were not right in dismissing the suit as barred by time. The substantial question of law is, accordingly, answered in favour of the plaintiff-appellants and the judgment and decree passed by the courts below are set aside and the present appeal is allowed. Resultantly, the suit of the plaintiff appellants is hereby decreed. No costs."

16. In case of *Shangara Singh* (supra), it was held as under :

"9. It is well settled that entries in the revenue record does not by title give rise to a cause of action. Reference may be made to *Ibrahim v. Smt. Sharifan,* AIR 1980 Punjab & Haryana 25 and *Balwant Singh v. Khushal Singh and another,* (2003-3)135 Punjab Law Reporter 439. The Division Bench in *Ibrahim's case* (supra) has held that entry in the revenue record by itself does not provide any cause of action. The cause of action arises only when there is any threat to the title of the suitor."

17. No judgment to the contrary has been cited by learned counsel for respondent nos.4 to 8.

18. In the absence of any evidence proving a family settlement, the transfer of the suit property in favour of Prithvi under the said alleged family settlement and the consequent mutation entries in his favour cannot be sustained. As per the case law discussed above, the suit of the plaintiff-appellant cannot be held to be barred by limitation. The relationship of the plaintiff-appellant with Bakhtawar is not in dispute he being the grandson of Bakhtawar. Consequently, the judgments and decrees passed by both the Courts below deserve to be set aside.

In view of the above, the present regular second appeal is allowed. The judgments and decrees passed by both the Courts below are set aside and the suit of the plaintiff-appellant is decreed. Pending applications, if any, also stand disposed off.

R.M.S. – *Appeal allowed.*