

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-1866-2025 (O&M)****Date of Decision : 21.08.2025**

Balu Khan @ Ballu Khan and Others ... Petitioners

Versus

Syida and Others ... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Tanmoy Gupta, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 09.10.2024 whereby the application dated 10.04.2024 filed by the defendant-petitioners under Order VII Rule 11 of the Code of Civil Procedure, 1908 has been dismissed.
2. The brief facts relevant to the present *lis* are that the plaintiff-respondent No.1 herein filed a suit for permanent injunction and declaration to the effect that she is co-owner in joint possession of the suit property as she has succeeded to the property of her father Sh. Babu Khan on his death in the year 1993. An application has been filed for rejection of the plaint on the ground that the suit is barred by limitation as the suit has been filed after a period of 30 years of mutation having been entered. The further ground taken was that the plaintiff-respondent No.1 is not in possession of the suit property hence *ad valorem* court fee would be payable and further that she has no right

upon the property. Reply was filed to the said application. Vide the impugned order the said application has been dismissed.

3. Learned counsel for the defendant-petitioners would contend that the mutation in the present case was entered into on the death of Babu Khan in the year 1993 and the present suit has been filed after a period of 30 years. It is further the contention that since plaintiff-respondent No.1 is not in possession of the suit property hence the *ad valorem* court fee would be payable. It is the contention that because of clever drafting and in order to avoid *ad valorem* court fees, no prayer for possession has been made. Learned counsel for the defendant-petitioners would further contend that there is no cause of action in favour of plaintiff-respondent No.1.

4. Heard.

5. Firstly, dealing with the argument of the learned counsel for the defendant-petitioners qua limitation, in the present case the suit has been filed on the ground that the plaintiff-respondent No.1 had become joint owner of the suit property of her father as detailed in the plaint. It has been averred in the plaint that on the death of Babu Khan, plaintiff-respondent No.1 was entitled to inherit 1/9th share of the suit land. The mutation was entered into on the basis of the intestate succession and plaintiff-respondent No.1 was excluded from the inheritance. It will be a matter of evidence as to whether the suit is barred by limitation inasmuch as it is well settled that mutation is not a document of title and no right accrues in favour of any party on the basis thereof. Hence, whether the mere entering of mutation in 1993 would attract the law of limitation cannot be gone into in the proceedings under Order VII Rule 11 CPC.

6. Further, dealing with the second argument of the learned counsel for the defendant-petitioners that the *ad valorem* court fees ought to have been paid since the plaintiff-respondent No.1 is not in possession, a meaningful reading of the plaint reveals that the plaintiff-respondent No.1 has sought joint possession of the suit property. Hon'ble Supreme Court in the case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. [2010(12) SCC 112]** has held as under :

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to `A' and `B' - two brothers. `A' executes a sale deed in favour of `C'. Subsequently `A' wants to avoid the sale. `A' has to sue for cancellation of the deed. On the other hand, if `B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by `A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If `A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If

‘B’, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if ‘B’, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.”

7. In view of the law laid down in the case of Surid Singh (supra), *ad-valorem* court fees would not be payable. Being a co-sharer, the plaintiff-respondent is seeking a declaration that she is in joint possession. Hence, the argument of the learned counsel for the defendant-petitioners stands rejected. The third argument of the learned counsel for the defendant-petitioners that no cause of action has accrued in favour of the plaintiff-respondent No.1 also is not a question which can be gone into at this stage as *prima facie* the case set up by the plaintiff-respondent No.1 is that she has a right to inherit the suit

property as her father Babu Khan had died intestate.

8. In view of the above, there is no merit in the present revision petition and the same is dismissed accordingly. Pending applications, if any, also stand disposed off.

9. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

21.08.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO