

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-812-1993 (O&M)****Date of pronouncement: 15.01.2025****Smt. Maya Kaur****...Appellant(s)****Vs.****Mansa Singh & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Som Nath Saini, Advocate  
for the appellant.

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**NIDHI GUPTA, J.**

Prayer in the present appeal filed by the plaintiff is for setting aside the judgment and decree of the lower Appellate Court dated 14.01.1993; and to restore the judgment and decree dated 06.08.1988 of the learned Sub-Judge, 1<sup>st</sup> Class, Rajpura.

2. The plaintiff-appellant filed a suit for joint possession of 1/11th share in agricultural land and Gair Mumkin land measuring 69 Bighas 6 Biswas comprising in khewat khata No. 305/524 to 528 Khasra Nos. 738 to 740, 742, 743, 815, 817, 814 741,812,816 Khewat Khata No. 112/193 khasra No. 1148, 1149 as per the jamabandi for the year 1983-84. The claim of the appellant in the plaint was that she is the daughter of Kartar Singh who was married to Dayal Kaur. Her father died when she was about one-and-a-half year old, and her mother stayed in the house of her in-laws for about 4 years after the death of Kartar Singh. Thereafter she contracted a Kareva marriage with Mehma Singh of village Mota Majra, Tehsil Kharar and she is still alive and is living as wife



of Mehma Singh. However, the appellant remained with defendants No. 1 to 4 and she was brought up by them. Rattan Singh grandfather of the appellant died and after his death defendants no.1 to 4/ respondents Nos. 1 to 4 got the mutation sanctioned in their favour by concealing the fact that Rattan Singh was having fifth son Kartar Singh also. Appellant became major about 15 years back, but she was living with defendants Nos. 1 to 4 and she could not raise any objection in the mutation. Respondents no. 1 to 4 arranged the marriage of the appellant to Mohinder Singh. Respondents No. 1 to 4 after her marriage used to pay her share as 'Batai' up to the year 1986 but thereafter they stopped making payment. As such, on 15.09.1988 the appellant filed a suit for joint possession for 1/11th share in the suit land being the daughter of Kartar Singh s/o Rattan Singh.

3. Upon notice, the suit of the appellant was contested by some of the defendants i.e. defendants no.1 to 4/respondents no.1 to 4 herein, who denied the relationship of the appellant with Kartar Singh; and alleged that Kartar Singh had died issueless; and thereafter Dayal Kaur/widow of Kartar Singh settled in the house of Dial Singh defendant no.1/respondent No.4 herein; and that the appellant was born out of the wedlock of Dayal Kaur and Dial Singh. The said defendants also raised objections about the suit being time barred.

4. On the basis of the pleadings of the parties, following 9 issues were framed by the learned trial Court: -



1. *Whether the plaintiff is entitled to the joint possession of 1/11 share as mentioned in the heading of the plaint.? OPP*
2. *Whether the plaintiff is d/o Kartar Singh s/o Rattan Singh as alleged? OPP*
3. *Whether the suit is time barred? OPD*
4. *Whether the plaintiff is daughter of Dayal Singh as alleged in the written statement? OPD*
5. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
6. *Whether Kartar Singh died issueless prior to the enactment of Hindu Succession Act? OPD*
7. *Whether defendant No.8 & 9 had died? OPD*
8. *Whether the suit is false and frivolous, and the defendants are entitled to compensatory costs u/s 35-A CPC? OPD*
9. *Relief."*

5. On the basis of the evidence led by the parties, all issues were decided by the trial court in favour of the appellant. Issue No. 6 was decided against the contesting respondents and in favour of the appellant. On issue Nos. 5 & 7 as respondents did not lead any evidence the same were decided in favour of the appellant and against the respondents. On issue No. 3 regarding limitation the Ld. Trial Court recorded a finding that the suit is within limitation and decided the same against the respondents and in favour of the appellant. Issue No.8 was also decided in favour of the appellant and ultimately under issue No. 1 & 9, the suit of the appellant was decreed with costs while recording a finding that the appellant is daughter of Kartar Singh and not of Dial Singh.



6. An appeal was filed by Mansa Singh, Nikka Singh & Harbhajan Singh defendants no.2 to 4/respondents no. 1 to 3 before the Ld. Distt. Judge, Patiala which has been allowed vide impugned judgement and decree dated 14.1.93 thereby reversing the finding of the Ld. Trial Court only on issue No. 3 with regard to the limitation of the suit. Otherwise, findings on all other issues recorded by Ld. Trial Court have been affirmed by Ld. District Judge.

7. Learned counsel for the appellant argues that the learned first Appellate Court has upheld all the findings returned by the learned trial Court. It is only in regard of issue of limitation that the appeal of the respondents/defendants has been allowed and finding of the ld. trial Court in this regard has been reversed. Ld. counsel submits that the impugned judgment of the Appellate Court deserves to be set aside as it has been wrongly held that the suit of the appellant was barred by limitation. It is contended that Section 6 of the Limitation Act is not applicable to the present case, and it is Article 65 which is applicable as per which there is no limitation for filing of civil suit. It is submitted that it is well settled law that there is no limitation prescribed for filing a suit for joint possession on the basis of title.

8. Ld. Counsel for the appellant further argues that the respondents/defendants were claiming ownership over the suit land on the basis of adverse possession. It is submitted that it is also well settled law that a co-sharer cannot be in adverse possession of a co-sharer. It is accordingly prayed that the well-reasoned judgment dated 06.08.1988



passed by the learned Sub-Judge, 1<sup>st</sup> Class, Rajpura be restored and the impugned judgment dated 14.01.1993 passed by the learned Additional District Judge, Patiala be set aside.

9. No other argument is raised on behalf of the appellant.

10. I have heard learned counsel for the appellant and perused the case file in great detail.

11. Before proceeding with the matter on merits, it may be pointed out that vide order dated 21.04.1993, while issuing notice of motion, this Court had restrained the respondents “...from alienating the suit land i.e. the share of the appellant till further orders.”. Further, the respondents No.1 and 2 were proceeded against ex parte before this Court vide order dated 16.05.2024; respondent No.3 vide order dated 08.04.2024; respondent No.5 vide order dated 05.11.1993; respondents No.4, 7 to 16 and 18 vide order dated 07.01.1994; and respondent No.17 vide order dated 25.03.1994. Respondent No.6 had expired and her legal representatives were brought on record as respondents No.7 to 13 who have already been proceeded against ex parte vide order dated 07.01.1994.

12. As noted above, the Appellant Maya Kaur filed a suit for joint possession of 1/11<sup>th</sup> share in land measuring 69 B-6b (the land measuring 69 Biswas 6 Bighas as per Jamabandi for the years 1983 – 84 situated in Village Chalheri Tehsil Rajpura along with share in Shamlat Deh & Abadi Deh), on the basis of inheritance being daughter of Kartar



Singh son of Rattan Singh while defendants No.5 & 6/pro forma respondents No.5 & 6 and pro-forma defendants No.7 to 9/pro-forma respondents No.15 to 17 herein are daughters of Rattan Singh. Kartar Singh was married to Dayal Kaur/mother of the appellant. Kartar Singh died when the appellant was about one-and-a-half years old. Dayal Kaur stayed there for 4 years and then she solemnized her second marriage with one Mehma Singh in village Mota Majra, Tehsil Kharar. Maya Kaur was brought up by the defendants no. 1 to 4, who are her real parental uncles. Maya Kaur was born in about 1953-54 and was married at the age of 21 years and at time of filing of the suit, she was 33 years of age. Defendant nos. 1 to 4 & 5 to 7 got a mutation sanctioned in their favour in equal share; and they also got the share of 5 to 7 transferred in their favour, so a suit for joint possession was filed by the appellant. The defence taken by the contesting defendants no.1 to 4/respondents no. 1 to 4 herein was that Maya Kaur is not daughter of Kartar Singh, and he died issueless, so suit is time barred and not maintainable.

13. The appellant stepped into the witness box as PW1; and examined her mother Dayal Kaur as PW2, who deposed that the appellant was her daughter from Kartar Singh and denied that Maya Kaur was born to her from the loins of Dial Singh. PW3 was Maan Kaur sister of Dayal Kaur, who deposed that Maya Kaur is the daughter of Dayal Kaur and Kartar Singh. Besides these, the appellant also examined PW4, Mohinder Singh; and PW5, Balwinder son of Dayal Singh; and produced



on record Ex. P-1 & Ex P-2 Jamabandi; Ex P-3 Mutation. The contesting defendants examined DW1 Mansa Singh who post that they were four brothers, and that Kartar Singh was 5<sup>th</sup> brother who had died issueless at the age of about 38 years. However, DW1 admitted in his cross-examination that the wife of Dial Singh was alive and is still alive. DW2 Janak Singh tendered documents Ex D-1 to D-6.

14. On the basis of the pleadings of the parties, the 9 issues above noted were framed by the trial court. In its order dated 6.8.1988, the learned trial court decided Issue Nos. 2 & 4 in favour of plaintiff; Issue No. 6: Against defendants in favour of plaintiff; Issue Nos. 5 & 7: No evidence was led by defendants so in favour of plaintiff; and Issue No. 3: It was held that the suit was filed within limitation.

15. The relevant reasoning and findings of the learned trial court in respect of Issue no.3 regarding limitation are contained in Para 10 of the order dated 6.8.1988, which is as under:-

*“10. On this issue, the contesting defendant did not lead any concrete evidence to prove as to how the suit is time barred. It is the contention of the plaintiff that her father Kartar Singh died then she was barely 1<sup>1/2</sup> years of age She was brought up by the defendants Nos. 2 to 4 and they were to arrange the marriage of the plaintiff. Had she disputed her claim in the suit land before her marriage, it would have created mi for her. There would have been difficulties in her marriage and she could not have been properly brought up by defendants No.2 to 4 till she married. She can be regarded to*



*be under the influence of defendants Nos. 2 to 4. Therefore, in her case, the limitation was to start running from the time when the influence of contesting defendants ceased over the plaintiff. Besides, this, the plaintiff has contended in her plaint as well as in her statement in the Court that she was being paid Batai by the contesting defendants and the contesting defendants have only recently denied and refused to give Batai to the plaintiff. She was not cross-examined at all on this aspect, which must be taken to have been admitted by the defendants. The non-cross-examination on this aspect by the defendants only goes against the defendants in so far as the factum of Batai is concerned, Till the defendants No. 2 to 4 went on giving the plaintiff, her share in produce by the suit land the defendants are deemed to have acknowledged the share of plaintiff in the suit land. Thus the suit of the plaintiff is found to be within limitation. This issue is found and decided in favour of the plaintiff and against the contesting defendants.”*

16. The judgment of the learned trial court dated 06.08.1988 was challenged by the defendants No.2 to 4/respondents No.1 to 3 herein before the learned Additional District Judge, Patiala by way of Civil Appeal No.172 of 01.09.1988. The learned 1st Appellate Court affirmed the findings of the learned trial court in respect of all issues except Issue no.3 regarding limitation; and therefore, vide the impugned judgement and decree dismissed the suit of the appellant/plaintiff only on ground of limitation. The relevant reasoning of the learned First Appellate Court is contained in Para 8 of the impugned judgment, which reads as under: -



*“8- First of all, it was argued by the learned counsel for the appellants that the suit was barred by limitation and that the learned trial court has wrongly held that the same was not time barred. In the plaint it has been said that at the time Rattan Singh father's father of the plaintiff had died, she (plaintiff) was aged about 7 or 8 years only and that in-  
defendant Nos. 1 to 4 in connivance with defendants Nos. 5 to 7 had got the mutation of the property left by Rattan Singh sanctioned in favour of defendant Nos. 1 to 7 after concealing the fact that Rattan Singh had got another son, namely, Kartar Singh, who had pre-deceased him and that Kartar Singh had left one daughter namely; the plaintiff. Leaving the question of parentage of the plaintiff apart the fact is admitted that she was minor at the time of the death of Rattan Singh. Even if her own plea in this context is admitted, she was born approximately in the year 1953-54 and was aged 33 years at the time of filing the suit, The plaintiff was thus minor at that time, and her case can be covered under Section 6 of the Limitation Act, 1963. This Section provide that were a person entitled to institute a suit is a minor or insane or an idiot, he may institute the suit within the same period after the disability had ceased, as would otherwise have been allowed from the time therefore in the third column of the schedule. The plaintiff had become major in the year 1971. The period of limitation for filing such like suits was three years and the suit was thus to be filed by the plaintiff within a period of three years after attaining the majority i.e. upto the year 1974. Even if it is said for the sake of argument that the period of limitation for filing the suit was 12 years as alleged by the counsel for the plaintiff, then she was bound to file the suit upto the year 1983. The present*



*suit admitted y was filed in the year 1988 and it could not be argued by the learned counsel for the plaintiff as to how the suit could be held to be one being within the period of limitation ordinarily. The case of the plaintiff was that she could not file the suit earlier because she was being maintained by the defendant No. 1 to 4 and was to be married by them and that after her marriage when she had started living her husband, she had asked defedents Nos. 1 to 4 regarding her share in the suit land and then they had started paying her share of the produce in the suit land and that they had stopped paying Batai in July, 1986 and thus the cause of action had arisen from that date and the suit was accordingly filed within the period of limitation. The counsel for the plaintiff- respondent could not show as to under what Article of the Limitation Act his case was covered. He also could not draw my attention to any such Article under which the refusal to pay the Batai was to give the cause of action to the party challenging certain mutation or that the payment of Batai had postponed the period of limitation. The limitation once it starts never stops. In the present case, infact, it was the right to the succession of the property of Rattan Singh and the payment or non-payment of Batai by the defendants Nos. 1 to 4 to the plaintiff at her asking after he marriage could not be on any avail. Again there is no evidence on the file that any such Batai was ever demanded by the plaintiff from defendants Nos. 1 to 4 or was ever paid by them and further that had really stopped paying the same in July, 1986 and not earlier to that. No receipt of payment of Batai or no writing to that effect has been produced on the file. There is bald statement of the plaintiff or of some witnesses on her behalf. If such like statements were allowed*



*to enlarge the period of limitation, there would not be any case to be dismissed on bar of limitation. Such like oral statements of the witnesses can be created by any body and that at any point of time. If this statement of the plaintiff in the present case is to be accepted it will tantamount saying that she could still wait for many years and then file the suit stating that the defendants had refused to pay Batai to her just sometime prior to her filing the suit. I have gone through the finding of the learned trial court on this issue. It had merely relied upon the fact that had the plaintiff disputed her claim in the suit land and before her marriage, it was likely to create misries and she could not have been properly brought up by the defendants Nos. 2 to 4 and that she could be regarded to be under the influence of defendants Nos. 2 to 4 and accordingly the limitation in her case was to start running when the influence of contesting defendants ceased over the plaintiff. The plaintiff has contended in her plaint as well as in her statement in the court that she was being paid Batai by the contesting defendants and her statement on that score was not challenged in the course of her cross-examination. Further that till defendants Nos. 2 to 4 went on paying the plaintiff her share of the produce out of the suit land, they were deemed to have acknowledged the share of the plaintiff in the suit land. In this way, it was held that the suit was within limitation. I have not been able to agree with this finding of the learned lower court. On the basis of my discussion made above, I reached the conclusion that the present suit is not at all within the period of limitation. The findings of the learned trial court on issue No. 3 are hereby reversed.”*



17. It is my considered view that the above said reasoning of the learned First Appellate Court is patently erroneous, being in contradiction of the law laid down by a Division Bench of this Court in **“Mohinder Singh (died) and Rep. By his Lrs. & Another Vs. Kashmira Singh” Law Finder Doc ID # 53265**, where in it has been held that:

*“Limitation Act, Article 65 - Suit for possession on the basis of inheritance. No period of limitation prescribed - Inheritance does not remain in abeyance and after death of last male-holder heirs succeed to property - Heir not required to file a suit for stabilising his right as heir - Held that suit for possession by heir not in possession of inherited property may fail on defendant proving that he perfected his title by adverse possession - Suit governed by Article 65.”*

18. Reference may be made to another judgment of this Court in **“Harnam Kaur & Others Vs. Malkiat Singh Others” Law finder Doc ID # 52662**, wherein it has been held that:-

*“B. Limitation Act, Article 65 - Limitation for suit on the basis of title - Held that no period of limitation prescribed for suit on the basis of title - Suit filed after 12 years is not barred by limitation.*

*C. Adverse possession - Possession simpliciter howsoever long not sufficient to perfect title by prescription - Permissive possession cannot turn into hostile possession unless some overt act, openly, to the knowledge and in derogation of ownership of true owner.*

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*5. On the question of limitation, again, the finding of the Courts below is palpably erroneous. The suit was filed on January 11, 1971 after the enforcement of 1963 Limitation Act. Under the said Act, as held by a Division Bench of this Court in Mohinder Singh v. Kashmira Singh, 1985 PL/ 82: 1985 R.R.R. 339 for a suit filed on the basis of the title there is no period of limitation prescribed. Therefore, the finding of the Courts below that the suit was barred by limitation having been filed after 12 years after the death of Smt. Raj Kaur cannot be sustained and is hereby reversed.”*

19. In this regard, it is also relevant to note that as per the record, the respondents had stopped making payment of share to the appellant in the month of June 1986. This fact has not been specifically denied by the respondents in their reply to the plaint; and the only reply filed by the respondents is that the appellant had no share in the suit land, and she never demanded share or she has any right to do so (in Para 7 of the reply). Even when the appellant appeared as PW1, there is no cross-examination on this point; and therefore, the learned trial Court had rightly returned a finding that the suit is within limitation.

20. From the above, it is clear that Issue no 3 of limitation was wrongly decided by the Id. 1<sup>st</sup> Appellate Court by applying section 6 of the Limitation Act, while suit for joint possession was filed on the basis of inheritance and therefore, Article 65 would apply. As per settled law in such situation there is no limitation. Therefore, for the reasons stated above, finding under Issue no 3 of the Id. Appellate Court are contrary to



settled law and is liable to be rejected and that of Ld Trial Court are affirmed.

21. In view of the above, present appeal **allowed**.

22. Pending application(s) if any also stand(s) disposed of.

**15.01.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

**Whether speaking/reasoned: Yes/No**

**Whether reportable: Yes/No**