



RSA No.4684 of 2011 (O&M)

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

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**RSA No.4684 of 2011 (O&M)
Date of Decision: 27.08.2025**

RAGHU NATH AND ORS **.....Appellants**
Vs
SMT. KELA (NOW DECEASED) THROUGH HER LRS AND ANR
....Respondent(s)
CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Saajan Singla, Advocate
 Ms. Parveen Dahiya, Advocate
 Mr. Vipul Khurna, Advocate for the appellants.

Mr. Vikram Singh, Advocate
 Mr. Randeep Singh, Advocate and
 Mr. Yuvraj Singh, Advocate for respondent No.1.

HARKESH MANUJA, J. (Oral)

CM-7762-C-2022

Prayer made in the application is for impleading the applicant(s) as legal heir(s) of respondent No.1-Smt. Kela, who died on 01.03.2020.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions and the applicant(s) as mentioned in paragraph No.2 of the application are ordered to be impleaded as legal heir(s) of respondent No.1 Smt. Kela (deceased) in order to pursue the present case.

Amended memo of parties is taken on record.

Registry to do the needful.

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[1]. By way of present appeal, challenge has been laid to the judgments and decrees dated 09.12.2010 and 16.08.2011 passed by the Courts below, whereby, the suit filed at the instance of appellants-plaintiffs for declaration qua



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ownership of their share left in the estate of deceased Ram Kali daughter of Niadar in village Teha, Tehsil Ganaur, District Sonapat, stands dismissed.

[2]. In short, the declaration sought for in the plaint at the instance of appellants-plaintiffs was qua the validity of Mutation No.999 dated 22.06.1998 entered in the name of respondent No.1 on the basis of Will dated 28.02.1974 for the estate of deceased-Ram Kali. It was further pleaded that the Will being fraudulent document was liable to be ignored and estate of deceased-Ram Kali was to devolve upon her all the natural heir including the appellants-plaintiffs as per the provisions of the Hindu Succession Act, 1956.

[3]. Upon appearance, the defendants contested the suit while opposing the same being barred by limitation, besides relying upon Will dated 28.02.1974 executed in favour of defendant No.1 by deceased-Ram Kali being a valid and genuine documents and the same being the basis of Mutation No.999 dated 22.06.1998.

[4]. On the basis of pleadings, following issues were framed by the learned Trial Court:-

- “1. Whether the mutation No.999 dated 22-6-98 in favour of the defendant No.1 with respect to the land measuring 5 Kanals 15 Marlas being 1/12 share pertaining to deceased Smt. Ramkali daughter of Niadar is liable to declared illegal, null and void, if so to what effect? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff have not come to the court with clean hands and have suppressed the true and material facts from the court? OPD
4. Whether the suit of the plaintiffs is time-barred? OPD
5. Relief.”

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[5]. The learned Trial Court without even adjudicating upon the validity of Will dated 28.02.1974 in accordance with law, placed on record as Ex.P1, went on to dismiss the suit being barred by limitation vide its judgment and decree dated 09.12.2010. Aggrieved thereof, the appellants-plaintiffs filed first appeal, however, the same was also dismissed by the Court of learned Additional District Judge, Sonipat vide judgment and decree dated 16.08.2011.

[6]. Impugning the aforementioned judgments and decrees, learned counsel for the appellants-plaintiffs submits that the burden to prove the validity of Will dated 28.02.1974 was upon respondent No.1-beneficiary, which was never discharged in terms of Section 68 of the Indian Evidence Act, 1872 as no attesting witness was ever produced by her so as to prove the valid execution of Will. He also submits that the Courts below went wrong while non-suiting the appellants-plaintiffs by dismissing their suit being barred by limitation as the date of entering of mutation was not to be taken as the date of commencement of cause of action. No other argument has been addressed.

[7]. On the other hand, learned counsel appearing on behalf of respondent No.1-defendant No.1 submits that the suit for declaration filed at the instance of appellants-plaintiffs was clearly barred by limitation as the mutation sanctioned on 22.06.1999 was challenged in the year 2006 and thus, no interference was called for with the concurrent findings of fact recorded by the Courts below.

[8]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the appellants.

[9]. In the present facts wherein the relationship between the parties was not disputed or denied besides even admitting the dispute being of the estate left by deceased Ram Kali, in view of settled law, the respondent No.1-defendant No.1

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being the beneficiary of the Will dated 28.02.1974 executed in her favour by the deceased Ram Kali was required to prove the same in terms of Section 63 of the Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. As such, it was essential for her to prove valid attestation of Will dated 28.02.1974 by two attesting witnesses. On the contrary, none of the attesting witness was ever produced by respondent No.1-defendant No.1 in the witness box to prove valid attestation of Will; though the same being as an essential mandate in terms of Section 68 of the Indian Evidence Act, 1872.

[10]. In view of above, once the Will dated 28.02.1974 executed by deceased Ram Kali in favour of respondent No.1/defendant No.1 qua her estate was not proved in accordance with the law, the suit for declaration filed at the instance of appellants/plaintiffs questioning the validity of Mutation No.999 dated 22.06.1998 based on the Will dated 28.02.1974 was required to be decreed. Moreover, the Courts below failed to appreciate the fact that Mutation No.999 was sanctioned on 22.06.1998 i.e. after more than twenty four years of the death of Ram Kali and that too without serving any notice upon the others including the appellants, who were her natural successors.

[11]. Further, the findings recorded by the Courts below to the effect that the suit for declaration filed at the instance of appellants-plaintiffs in the year 2006 while laying challenge to the mutation Entry No.999 dated 22.06.1998 was barred by limitation is wholly incorrect. As per Article 58, the limitation of three years commences from the date when the right to sue first accrues, which in fact is the day when there is infringement of rights or a clear and unequivocal threat to infringe the rights of the suitor on the basis of such a mutation, and not merely from the date of entering or sanctioning of the same. Similar view has been



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expressed by the Hon'ble Apex Court in Daya Singh & Anr. Versus Gurdev Singh (Dead) by L.Rs. & Ors., reported as 2010(1) Civil Court Cases 290 and relevant paragraphs 7 to 9 of the same are reproduced hereunder:-

“7. As noted herein earlier, the only question, therefore, to be decided is whether the mere existence of an adverse entry in the revenue records had given rise to cause of action as contemplated under Article 58 or it had accrued when the right was infringed or threatened to be infringed. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues. In support of the contention that the suit was filed within the period of limitation, the learned senior counsel appearing for the plaintiffs/ appellants before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned senior counsel strongly relied on a decision of the Privy Council reported in AIR 1930 Privy Council 270 [Mt. Bolo v. Mt. Koklan and others]. In this decision their Lordships of the Privy Council observed as follows :-

"There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted."

8. A similar view was reiterated in the case of *C. Mohammad Yunus v. Syed Unnissa and others* [AIR 1961 Supreme Court 808] in which this Court observed: *"the period of 6 years prescribed by Article 120 has to be computed from the date when the right to sue accrued and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."*

9. In the case of *C. Mohammad Yunus (supra)*, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when



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the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry into the revenue record cannot give rise to cause of action.”

In the present case there is no evidence on record that the possession of plaintiffs over the land in dispute was ever disturbed by respondent No.1 as an effect of mutation in question.

[12]. As a result of aforesaid discussion, the judgments and decrees passed by the Courts below are hereby set aside and suit for declaration filed at the instance of appellants/plaintiffs stands decreed. Decree sheet be prepared accordingly.

[13]. Appeal stands allowed in the aforesaid terms. All pending application(s), if any, shall also stand disposed of.

August 27, 2025

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**(HARKESH MANUJA)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No