HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No. CSA No. 30/2013

Reserved on: 09.10.2026
Pronounced on: 23.10.2026
Uploaded on:- 23.10.2026

Whether the operative part or full judgment is pronounced:- ***Full***

Mst. Themu
D/o Late Sonu
W/o Krishan Chand,
R/o Village Kundal Padder,
Tehsil Kishtwar.

.....Petitioner/Appellant(s)

Through: Mr. Abhishek Wazir, Advocate.

Vs

1. Ram Nath
   S/o Late Dina Nath
   R/o Village Machail Padder, Tehsil Kishtwar.
2. Om Parkash
   S/o Late Dina Nath
   R/o Village Machail Padder, Tehsil Padder District Kishtwar.
3. Girdhari Lal
   S/o Late Dina Nath
   R/o Village Machail Padder Tehsil Kishtwar.
4. Tirath Lal
   S/o Late Dina Nath
   R/o Village Machail Padder Tehsil Kishtwar
5. Jai Kishan
   S/o Late Dina Nath
   R/o Village Machail Padder Tehsil Kishtwar
6. Smt. Himla Devi
   W/o Hira Lal
   R/o Village Garh (Machail Padder) Tehsil Kishtwar.
7. Shyama Devi
   W/o Pyara Lal

R/o Village Krtha Padder
Tehsil Kishtwar.

8. Kunta Devi
D/o Dina Nath
R/o Village Machail
Padder Tehsil Kishtwar.

9. Kashpa Devi
S/o Late Dina Nath
R/o Village Machail
Padder Tehsil Kishtwar.

10. Anoopa Devi
W/o Nand Lal
R/o Village Legri Padder
Tehsil Kishtwar.

11. Jama Devi
W/o Late Dina Nath
R/o Village Machail
Tehsil Padder District
Kishtwar.

..... Respondent(s)

Through: Mr. P.N Raina, Sr. Advocate with
Mr. J.A Hamal, Advocate

CORAM: HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

(JUDGMENT)

1. This Civil 2nd Appeal under Section 100 of Code of Civil Procedure, Svt. 1977 [for short "the Code"] is directed against the judgment and decree dated 07.11.2012 passed by the learned District Judge, Kishtwar [the 1st Appellate Court] in File No. 01/Appeal titled Ram Nath and ors. Vs. Mst. Themoo, whereby the judgment and decree dated 09.03.2004 passed by the learned Sub Judge, Kishtwar [the trial Court] in Suit No. 65/Civil c/w Suit No. 61/Civil was reversed and suits were dismissed.

BRIEF FACTUAL MATRIX

2. The appellant (plaintiff) filed suit No. 65/Civil on 14.09.1982 seeking declaration that she is the only daughter of Late Sonu S/o Deep Ram Thakur of village Machail, Padder, and is entitled to half share in land measuring 58 kanals 11 marlas in Khewat No. 01 and that mutation No. 43 dated 15.10.1966, attested exclusively in favour of Smt. Shib Devi is illegal to the extent of her share, together with consequential relief of ejectment/possession. A second suit bearing No. 61/Civil was filed on 27.08.1991 against the present respondents after the death of Shib Devi. Both suits were clubbed.

3. Sonu died around the year 1963 when the appellant was a minor approximately 6-7 years of age. The respondents (defendants) denied the paternity of the appellant and raised pleas of limitation, non-maintainability, etc. The trial Court after appreciating the evidence, decreed both suits on 09.03.2004. The 1st Appellate Court by judgment dated 7.11.2012, reversed the decree primarily on the grounds of limitation and non-proof of paternity.

4. This Appeal was admitted vide order dated 27.03.2023 on the following substantial questions of law:

(i) Whether to determine, when right to sue and cause of action accrues to the plaintiff, it was incumbent upon the 1st Appellate Court to examine the pleadings and evidence of the plaintiff in this regard and whether any deviation from the pleadings and evidence of appellant can be made by the 1st Appellate Court, this aspect in the absence of any pleadings and evidence of the defendant to this effect?

(ii) Whether the issue of limitation which is mixed question of fact and law can be decided by the 1st Appellate Court in favour of respondents when the respondents failed to discharge the onus of said issue by leading any evidence in this regard?.

SUBMISSIONS

5. Learned counsel for the appellant contended that the trial Court correctly appreciated the documentary and oral evidence and rightly held that the appellant is the daughter of Late Sonu, who born out of the wedlock of Sonu and Channa Devi. It was further submitted that the 1st Appellate Court completely overlooked the evidence, misapplied Section 50 of the

Evidence Act, reversed the burden of proof on the issue of limitation, contrary to the issue framed, whereby the burden was cast on the defendants, and failed to consider the minority of the appellant under Section 6 of the Limitation Act, thereby rendering its findings perverse.

6. Per contra, learned senior counsel for the respondents supported the reasoning of the 1st Appellate Court, and prayed for dismissal of the appeal.

ANALYSIS

7. To determine when the right to sue and cause of action accrues, the Court is required to examine the pleadings and evidence of the plaintiffs. The 1st Appellate Court was not entitled to deviate from the appellant's pleadings and evidence in the complete absence of any contrary material from the defendants.

8. In the Paragraph-6 of the plaint, it was specifically averred that the defendants were asked to admit the appellant's rights and handover possession but they refused, "for the last few days", thereby constituting the cause of action. The Trial Court accepted this plea. The appellant was a minor at the time of

attestation of Mutation No. 43 dated 15.10.1966 and at the time of Sonu's death.

9. Section 6 of the Limitation Act provides that limitation does not run against a minor until he attains majority. A bare denial in mutation proceedings against a minor does not necessarily constitute a clear and unequivocal threat so as to start the limitation clock. Hon'ble Supreme Court in "***Mst. Rukhmabai Vs. Lala Laxminarayan and ors., AIR 1960 SC 335"*** held that the right to sue under the residuary article accrues only when there is clear and unequivocal threat to the right, and not on every ineffective or incomplete denial. Subsequent refusals by the respondents after the death of Shib Devi, as pleaded, can give rise to a fresh cause of action.

10. The concept of cause of action, right to sue and limitation are closely interwoven in Civil Procedure. The cause of action furnishes the foundation of the suit and the law of limitation bars the remedy once the prescribed period expires from the date, the right to sue accrues, however, the 1st Appellate Court while reversing the judgment and decree of the trial Court completely deviated from the evidence led by the appellant on the point of right to sue and cause of action. In this regard, it is worth

noting that **PW-Ram Saran** deposed that Sonu divorced Channa Devi after the appellant's birth when she was about 02 years old and after Sonu's death, Shib Devi turned the appellant out of the house. **PW-Sukh Dayal** deposed that he worked at the Machail Temple in 2013, Bikrami and saw the appellant then about 03 years old coming with her father Sonu. **PW-Jyoti Ram** deposed that Sonu divorced Channa Devi when the appellant was about 03 years old. The **appellant** (**Themu**) herself deposed that she was turned out by Shib Devi after Sonu's death and her status was denied by Shib Devi before the Tehsildar when she was minor. **PW-Romal Chand**, Patwari produced the revenue record. However, against it, the 1st Appellate Court had ventured to fix the age of the appellant and accrual of cause of action on surmises and conjectures without taking into consideration the factum of minority of the appellant at the time of death of her father and subsequent attestation of the mutation, where her status as daughter of Sonu was denied by Shib Devi, when the appellant was reeling under Minority.

11. The 1st Appellate Court, while reversing the trial Court's finding, did not properly examine or give effect to the pleadings and evidence of the appellant on the point of accrual of cause of

action, nor did it consider the effect of minority. Such deviation, in the absence of any pleadings or evidence from the defendants, is impermissible.

12. Although the substantial questions of law, primarily, concern accrual of cause of action and limitation, nonetheless the findings on paternity, with regard to issue No. 1 are intertwined, as the First Appellate Court's reversal on both issues is perverse. The Trial Court correctly held that the appellant is the Daughter of late Sonu on the basis of consistent oral evidence of PW-Ram Saran, a domestic help in Sonu's house for 5-6 years, PW-Sukh Dayal, PW-Jyoti Ram, the appellant herself, and contemporaneous revenue entries in mutation No. 43 (Shajra Nasab) and Mutation No. 67 proved by PW-Romal Chand, Patwari. Some of the defence witnesses also admitted that Channa Devi lived with Sonu and in this regard, reference can be made to the testimonies of DW-Lal Chand and DW-Sujan Singh. At the same time, DW-Saroop Chand, Patwari confirmed the pedigree entries showing the appellant as Daughter of Sonu and Channa Devi, though the mutation was not finally attested in her favour.

13. Section 50 of the Evidence Act, makes relevant the opinion of a person having special means of knowledge as to relationship "as a member of the family or otherwise". The expression "or otherwise" is significant. A domestic help who lived in the house and persons who saw the child with the father possess special means of knowledge. Non-examination of the mother is a relevant circumstance but is not fatal when other cogent evidence is available. The 1st Appellate Court, by completely overlooking the oral and documentary evidence and by misapplying Section 50 of the Evidence Act, recorded a perverse finding. Issue No. 1 was rightly decided in favour of the appellant by the trial Court.

14. The accrual of the right to sue and the cause of action to the plaintiff is subservient to the proof of paternity. Once paternity is established, the consequential relief of entitlement to inherit and possession of the property left by Sonu follows. The appellant specifically averred in the plaint the denial of her entitlement to inherit the property by the respondents before the filing of the suit. The denial was twinned with the proof of her paternity. To hold that the appellant failed to prove when cause of

action accrued is against the mandate of Section 6 of the Limitation Act.

15. The findings of the 1st Appellate Court are also perverse, because appellant had sufficiently proved, by leading cogent evidence, that at the time of attestation of mutation No. 43 she was a minor and thereafter she was consistently pursuing her claim as owner of the property left by her father. In that event, the cause of action was continuing and cannot be made static with the time period when she was a minor or without guardian. Once the 1st Appellate Court is found to have misapplied the law to the foundational facts regarding the status of the appellant as daughter of Sonu, the natural fallout is the wrong application of law to the foundational facts of accrual of the right to sue and cause of action, which goes to the root of the case.

16. In **Chowdamma (D) by LR and Anr. Versus Venkatappa (D) by LRs and Anr**. **(2025 SCC Online SC 1814)**, the Hon'ble Supreme Court while dealing with scope of Section 50 of the Evidence Act, held that a witness who is not a blood relative of either party but has demonstrated long standing familiarity with the parties can be accepted. The Court observed that the evidence of such a witness, rooted in personal knowledge

and long-standing familiarity, which withstood the rigours of cross-examination, and found corroboration in the genealogical chart, is sufficient. It was further held that it is not always the blood relation who can depose regarding the relationship between the parties; if the plaintiff has discharged the burden to prove the relationship by leading evidence based on personal knowledge and long standing familiarity, the same is sufficient.

17. Accordingly, the 1st Appellate Court, while reversing the judgment of the trial Court on the ground that the appellant failed to examine mother or nearest relative, completely misapplied Section 50 of the Evidence Act. This misapplication took the 1st Appellate Court in the wrong direction and formed the basis for the misapplication of law on the issue of accrual of the right to sue and the cause of action to the appellant to seek her share in the property of her father.

18. Issue No. 3 i.e., "whether the suit is time barred", was framed with the onus on the defendants. The 1st Appellate Court decided the issue against the appellant without the defendants discharging this onus. This constitutes a clear error of law, rendering the finding perverse.

19. The respondents led no evidence whatsoever to prove the exact date when the right was first unequivocally denied or the exact date of birth of the appellant. The First Appellate Court itself noted the absence of exact evidence regarding the date of birth, yet proceeded to fix the year of birth as 1953-54 and hold the suits barred by limitation. A minor cannot be imputed with the knowledge of an adverse revenue entry in a manner that starts limitation against her, particularly when the Tehsildar referred the parties to the civil Court.

20. Under Section 3 of Limitation Act, the Court is required to examine the period of limitation. However, this does not permit the Court to decide a mixed question of fact and law against the plaintiff when the onus lies on the defendant and the defendant has led no evidence. The finding of the First Appellate Court that "it is for the plaintiff to show that the suit is within time" incorrectly reverses the burden cast by the trial Court. Where the defendants fail to lead evidence on a mixed issue of limitation, the issue must be decided against them.

21. If the 1st Appellate Court was of the view that the burden had been wrongly cast, it was required to re-cast or amend the issue and, if necessary, exercise power under Order XLI Rules 25

or 27 of the Code after giving the parties an opportunity. The First Appellate Court reversed the Trial Court's judgment without following the prescribed procedure and without properly dealing with the reasoning of the trial Court and Order XLI Rule 31 of the Code.

22. For the foregoing reasons, both the substantial questions of law are answered in favour of the appellant. The judgment and decree dated 07.11.2012 passed by the 1st Appellate Court suffers from perversity and is set aside. The judgment and decree dated 09.03.2004 passed by the trial Court in suit No. 65/Civil clubbed with suit No. 61/civil is restored.

23. The Civil 2nd Appeal is allowed in the above terms. Parties shall bear their own costs.

24. Disposed of.

(SHAHZAD AZEEM)
JUDGE

JAMMU
23.10.2026
Tarun/PS

Whether judgment is speaking: Yes
Whether judgment is reportable: Yes