

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1774 of 2015

Date of Decision.12.03.2015

Pankaj Sharma and others

.....Petitioners

Versus

Santosh Sharma and others

.....Respondents

Present: Mr. Rahul Vats, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

1. The petition for rejection of the application filed under Order 7 Rule 11 CPC by the defendants was in a suit filed by the plaintiffs contending that the Will executed by the father was a forgery and that it has to be set aside. The contention is that the Will was executed in the year 2004 and the plaintiffs themselves had given an affidavit agreeing to the genuineness of the Will to enable the respondents to take the mutation in their favour in relation to the landlord and the building. The counsel would refer to original sale deeds and the Limitation Act to state that in suit for a declaration that forgery is made, the period shall be three years from the date when the forgery was known. The counsel would say that suit filed by the plaintiffs is, therefore, barred by limitation having been instituted after 10 years after the execution of the Will.

2. The prayer is inartistically worded and that gives the

occasion to take the defence which the defendants have done. When the daughters seek for right in the property of the father claiming that the father has not executed the Will and the sons set up the Will, the burden will be on the sons to establish the Will. It is a fundamental precept of law that the propounder takes the burden on himself to prove the document in his favour and if the document of Will is propounded by the defendants, the burden will always be on the defendants. If the plaintiffs say that the Will is forgery, it is not required to be proved as such, for, it must only be taken as an instrument which would require to be supported and proved by the defendants who propound the same.

3. The reference to Article 56 of the Limitation Act is equally without any merit, for, it would apply only to a case where a person is party to a document which is claimed by that party to be a forgery in which case the limitation shall be three years from the time when he came to know that the forgery had been committed. If the document is executed by the father and the daughters say that the document is forged, Article 56 of the Limitation Act will not apply at all. All that it means, would be that the plaintiffs are seeking a share in the property uninhibited by the Will which the defendants propound and it shall be left to the defendants to prove the same. If the suit is brought within 12 years from the time before when the son excludes the other co-heirs, who would have right in the property but for the alleged Will a plea of ouster cannot succeed, the suit must be taken to be within time.

4. The dismissal of the application for rejection of the plaint was justified and I would find no reason for making an interference.

The revision petition is dismissed.

(K. KANNAN)
JUDGE

March 12, 2015
Pankaj*