

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 2352 of 2013 (O&M)

Date of decision: 06.04.2015

Swaran Singh

... Petitioner

versus

Natha Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Harkesh Manuja, Advocate for the petitioner.

Mr. Bhupinder Singh, Advocate,

for respondent Nos. 1 to 3.

K.Kannan, J.

The petitioner, who is the decree holder pursuant to the order passed by the Arbitrator, in the course of the execution, was confronted with the objections from the judgment debtors raising several objections in the year 2004. The award passed by the Arbitrator was of the year 1999 in relation to the agreement of sale executed by one Arjun Singh and Mukhtiar Singh in the year 1996. Earlier Arjun Singh and Mukhtiar Singh were reported to be beneficiaries of Court decrees of half share each and the decrees which were also subsequently registered. Arjun Singh had given the power of attorney to two of his brothers and 3rd brother attested the power of attorney. They caused the obstruction petitions to be filed for execution of the award passed by the Arbitrator. After prolonging the execution petition for sufficient long time, the persons who held the power of attorney have turned around to say that the decree secured in the year 1990 by respective vendors of Arjun Singh was not valid and the award is also not enforceable. The objection taken by the petitioner in that suit is barred under law. According to him, the decree obtained by Arjun

Singh in the year 1990 could be assailed by his brothers in the year 2012 and that further the plaintiff themselves were personally aware of the decree obtained by Arjun Singh and the subsequent award passed against him and Mukhtiar Singh in the year 1999 even when the power of attorney was executed in the year 2004. Having contested the execution petitions and thwarted the successful attempts to secure the fruits of the award passed by the Arbitrator, they have now resorted to the suit for setting aside the decree passed in the year 1990 and the award passed in the year 1999.

After the father had suffered the decree in the year 1990 and allowed for the property to go to only one son to the exclusion of others, if the plaintiffs were to contend that such a decree is not enforceable, the challenge ought to come within a period of three years from the time when the disability ceased if anyone of them had been a minor. The same fetter would arise also to the award passed against his brother Arjun Singh in the year 1999. If the award takes into account the decree in the year 1990 in terms of which Arjun Singh had a half share and that was taken as the basis for making an agreement of sale in favour of the petitioner, the same could have been assailed within a period of 3 years from the time when the award was passed. There is simply no legal basis for entertaining the suit brought belatedly. Even on the face of it, it is evident that it is collusive and the present attempt is to browbeat the plaintiff and defeat the effect of the award that was passed against their brother. The suit is hopelessly barred by limitation and a vexatious one. The trial Court ought to have seen through the game of the plaintiff and thrown out the plaint at the threshold. The order is erroneous and it is set aside. The plaint is ordered to be rejected as barred by law.

The civil revision petition is allowed with costs assessed at ₹ 5,000/-.

06.04.2015

(K.KANNAN)

kv

JUDGE