

227.

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

Civil Revision No.2383 of 2014 (O&M)

Date of decision: 15.12.2015

Rikhi Ram and another

... Petitioners

versus

Garib Dass

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arvinder Arora, Advocate,
for the petitioner.

Mr. Inderjeet Singh, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The plaintiff, who filed a suit challenging a sale executed by the defendants, was resisted in the suit that the defendants are the owners of the property by bequest under a Will. The defendants had also stated that in relation to the very same property, the plaintiff had filed a suit for injunction and the injunction suit was dismissed on a plea taken by the defendants that the claim by the plaintiff as heir to Ram Diya was not tenable since he had executed a Will in his favour in the year 2003. Pending suit,

the plaintiff brought an application for amendment to incorporate a prayer that the Will propounded by the defendants was null and void. This was resisted by the defendants that it was barred by limitation; that the rights of parties were already concluded in the previous proceeding for injunction brought by the same plaintiff and that the amendment brought was grossly belated. The court rejected these contentions and allowed the amendment. The defendants are the petitioners before this court.

2. The learned counsel reiterates the objections already raised and reads to me the judgment in the suit between the same parties that the Will of Ram Diya, as set up by the defendants, had been taken as proved by the fact that the plaintiff did not prove that the Will was false and fabricated. The response by the plaintiff is that the previous suit was only for the relief of injunction and there was not even an issue regarding the Will. There were several witnesses, none of whom was examined. The plaintiff is entitled to therefore bring a suitable amendment.

3. The present suit itself is resultant to a poor quality of adjudication rendered in the previous suit. If the plaintiff was seeking for relief of injunction in respect of the property as a heir at law along with the defendants to the estate of Ram Diya and the defendants were setting up a Will, the court ought to have framed a specific question of whether the Will as propounded by the

defendants was true and valid and placed the burden on the defendants to establish the same. Even if it were merely a relief of injunction, if the plaint is drafted on the basis that his possession must be recognized as that of a co-owner with the defendants and the defendants set up a Will, the issue regarding Will was essential to decide on whether the plaintiff was entitled to relief of injunction or not. The court merely famed relief relating whether the plaintiff had a right to secure the relief of injunction and while considering the same, it made an observation that the plaintiff has not proved that the Will propounded by the defendant was false and fabricated. It is a poor understanding of law that has led to this subsequent proceeding, for, if the Judge has framed the issues correctly and had directed the attention of the parties on the said issues, the present suit would not have been even instituted. Again, a person, who pleads that the document is forged or fabricated, is not required to prove anything and the very assertion would put onus on the other person to establish that the document was true. It is a fundamental precept of law that the propounder of a Will always takes upon himself the burden of proof in the manner set forth under Section 68 of the Evidence Act. The observations of the court that the plaintiff failed to prove the forged nature of the Will ought to be taken merely as an observation in the passing, for, it cannot amount to any adjudication and if it were to be taken as adjudication, it is patently

wrong and cannot be supported in any court of law.

4. If the suit is again filed by the present plaintiff challenging the sale, the challenge must be taken as rested only on whether the defendants were competent to execute the sale and if the defendants were setting up a Will as a basis for their claim, again the burden will be only on the defendants to prove the Will. A prayer that the Will is false and fabricated cannot make the burden rest on the plaintiff. Even such a prayer must be understood as merely a surplusage and it should put the court as guard and also should call upon the defendant to prove the same and cast the onus on the propounder. That adjudication would become essential in view of the fact that no issue had been framed as regards the Will in the previous suit.

5. The argument that the Will was set up in the year 2003 and the amendment is brought merely 8 years later is meaningless. There is no bar of limitation to assail the Will, for, the law of limitation will operate if only there is adverse claim which the defendants set up on the basis of their own possession ousting the plaintiff.

6. The amendment ordered is maintained and the revision petition is dismissed.

(K.KANNAN)
JUDGE

15.12.2015
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