

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4967 of 2014(O&M)

Date of decision: 23.04.2015

Kamaljit Singh

... Petitioner

versus

Surinder Kaur

.... Respondent

2. CR No. 4986 of 2014(O&M)

Kamaljit Singh

... Petitioner

versus

Surinder Kaur

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. G.S. Jaswal, Advocate for the petitioner.

Mr. M.S. Longia, Advocate for

Ms. Surinder Kaur, Advocate for the respondent.

K.Kannan, J.

The petition is an example of how vexatious a party could be in taunting the widow from realization of the property which she is justly entitled to, at least prima facie so. The suit is by the plaintiff that he is the owner of the property by virtue of a Will executed by the respondent's husband Manjit Singh through a Will alleged to have been executed on 04.07.1994. Manjit Singh had claimed right in the property by virtue of a decree obtained in his favour from his father Bant Singh and Bant Singh's brother as early in the year 1978. It appears that the plaintiff had filed a suit challenging the said decree through his mother as a guardian in the year 1995 and had later on withdrawn the suit as dismissed. Subsequently, the father Bant Singh himself appears to have

filed the suit challenging the decree and that suit was also dismissed. Presently, the suit is filed by the plaintiff contending that his step brother whose widow is the defendant had executed a Will in his favour, disinheriting his wife in the year 1984. If the suit was on the basis that Manjit Singh was the owner and the plaintiff has got bequest in his favour, presently, the amendment sought is that the decree obtained by Manjit Singh is itself invalid and that he would seek for such a declaration to be brought by way of amendment.

It requires no forensic skills to discern that the nature of amendment itself is inconsistent with the source title which the plaintiff propounds through a Will said to have been executed by Manjit Singh himself. Now, there cannot be a plea that Manjit Singh could not have been the owner by virtue of the decree and that the decree obtained in the year 1978 is invalid. The plaintiff cannot ride two horses. If his suit for declaration is on the basis of the Will by Manjit Singh, there cannot also be a plea that the decree obtained by Manjit Singh was invalid.

Apart from the fact that the amendment itself is inconsistent with the source of title pleaded, the plaintiff had the benefit of the suit instituted to challenge the decree through his mother during his minority and that was allowed to be dismissed as withdrawn in the year 2002. If there had been no permission taken for filing a fresh suit on the same cause of action, the relief will be barred by the provisions of Order 23 Rule 1 CPC for the plaintiff and he must be taken as having abandoned the claim as regards the challenge to the decree. He cannot therefore bring the same relief by means of a fresh suit. If it were to be construed that mother was negligent in not prosecuting the suit, the plaintiff must have taken action within the period of three years on attaining the majority to assail the order by means of suit making the mother as a party and impugning the act of the mother of withdrawing the suit as negligent. Even at the time of institution of the suit, the plaintiff was 27 years of age which means more than 9 years had passed from the date of attaining the age of majority. The matter did

not stop there. Even the father Bant Singh himself had filed the suit against the defendant challenging the decree obtained by her husband and that suit had also been dismissed. The suit instituted in the year 2005 is being pulled on and I am informed by the counsel for the respondent that plaintiff took 10 years to conclude his evidence and there had been several applications filed over a period of time to stall the proceeding and delay the widow from enjoying peacefully the property that she claims as heir through her husband.

The petition for amendment was malafide and surely an attempt to browbeat the defendant and create endless trouble. The civil procedure code provides for exemplary cost for vexatious litigation provides for a ceiling on what the amount could be under Section 35A CPC. The amount unfortunately is not adequate to take note of situation where persons indulged in vexatious litigation. The litigation is not now complete and probably the trial Court will decide on what is appropriate, if it finds that there is no merit. But, as of now, I can fully qualify the vexatious nature of the application for amendment. The matter which is today before this Court is not a revision under Section 115 but it is a constitutional remedy sought by the petitioner to correct the alleged illegality in the supervisory jurisdiction. The limitations about Section 35A CPC will therefore not apply to the proceedings under Article 227 of the Constitution. I, therefore, find that the petitioner must be mulcted in costs which are telling and would fetter such a misadventure in future.

With these observations, the civil revision petition is dismissed with costs of ₹ 1,00,000/- to be paid to the respondent by the petitioner. The trial Court shall not allow the trial for evidence without payment of costs. The Court may conclude evidence of other witnesses of the defendant and proceed to pronounce the judgment.

23.04.2015

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I attest to the accuracy and
integrity of this document
High Court Chandigarh

(K.KANNAN)
JUDGE

