

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

**RSA No. 902 of 1995 (O&M)
Date of decision: 28.10.2015**

Gurdial Singh

... Appellant

versus

Amarjit Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R.K. Sharma, Advocate for the appellant.

Mr. B.S. Saini, Advocate for the respondents.

K.Kannan, J.

The second appeal has been admitted on 17.10.1995 without framing any substantial question of law. The only point that falls for consideration is as under:-

Whether the plaintiff's suit is barred by limitation?

After framing the question with the consent of both the counsel, the appeal itself has been taken up for hearing. The appeal is by the 4th defendant. The contest was on a suit by the plaintiff claiming under a Will said to have been executed by Achar Singh in favour of the plaintiff's father and the subsequent Will executed by the father in favour of the plaintiff. The 4th defendant's contest was with reference to the 1/4th share as belonging to him as representative to the original owner Dula Singh. The suit came to be instituted by the plaintiff's father by placing reliance on the Will said to have been executed by Dula Singh for carrying out the mutation of the properties in his favour to the exclusion of other LR including the 4th defendant. The suit came to be instituted after proceedings were initiated before the revenue authorities which held the Will to be not true and allowed for an allotment of 1/4th share to the 4th defendant. It is the result of the partition proceeding that was the immediate cause for the suit by the

plaintiff on a plea that the findings regarding the Will by the authorities were not correct and that Dula Singh had actually bequeathed the entire property in favour of the plaintiff and he in turn had bequeathed the property in his favour. The defendant took up the contest, inter alia that the Wills were not true and that further the suit was barred by limitation. The point urged was that the cause of action for the plaintiff had arisen even in the year 1971 when the 4th defendant had initiated action for partition and if the plaintiff or his father did not take action immediately to seek for an adjudication as regards the Will in the Civil Court within a period of 12 years from the date when the proceedings were initiated in the year 1971, the plaintiff's right would stand extinguished.

The trial Court found the Wills to be true but accepted the plea in defence that the suit was barred by limitation. The Appellate court confirmed the Wills and reversed the decision as regards the plea of limitation. Learned counsel appearing on behalf of the 4th defendant-appellant restricted his argument only on the plea of limitation and he would contend that the cause of action first arose when partition proceedings were initiated by the 4th defendant and the suit filed more than 12 years after the proceedings were initiated was barred in law. The counsel would rely on the Division Bench ruling of this court in Ibrahim @ Dharam Vir Vs. Sharifan @ Shanti, 1979 PLJ 469, where the Court was holding with reference to the effect of entry of mutation in the name of defendant as constituting the cause of action when one party actually threatened forcible dispossession on the basis of the mutation entry. The Court was holding that a mere entry of mutation in the name of the defendant would not furnish any cause of action and mere entry of mutation cannot be taken as the starting point of limitation. I am afraid that this judgment does not support the case of the 4th defendant. On the other hand, the Court was holding that even the mutation effected cannot be taken to constitute the starting point of limitation so long as the possession continued with the plaintiff. If we

must apply this principle, if only 4th defendant had taken actual possession of the property by excluding the plaintiff's 1/4th share at any time before 12 years prior to the institution of the suit, could there be a bar of limitation. The partition proceedings that allowed for the 4th defendant to have the property allotted was said to have been made in the year 1980 and the suit was filed in the year 1983. The mere commencement of the partition action claiming for 1/4th share as on intestacy cannot compel a person claiming under the Will to sue for establishing the bequest, for, the plaintiff can take the actual date of threatened possession by a partition order that became final to be the real starting point for limitation. Further, in this case, the parties were not strangers but legal representatives of a common ancestor divided only by two decrees and the assertion of right on intestacy would not still afford a serious threat of dispossession or constituted the holding of one to be adversely held against another. There is no question of the 4th defendant prescribing the right to the property by adverse possession or the plaintiff losing the right by extinguishment in not resorting to action for establishing the Will. The issue decided in favour of the plaintiff by the Appellate Court conforms to law and I do not find any error for intervention. The regular second appeal is dismissed.

(K.KANNAN)
JUDGE

28.10.2015

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