

RSA No.2053 of 2013

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

RSA No.2053 of 2013

Date of Decision: September 03, 2015

Rajesh Kumar

...Appellant

Versus

Satyapal Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ramender Chauhan, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal is to the dismissal of the suit by the Additional Civil Judge (Senior Division), Bhiwani, on 13.04.2010, for declaration filed by the appellant-plaintiff, wherein, he had stated that Will No.118 dated 14.12.1981 executed by Nathu Singh, the predecessor-in-interest of the parties, in favour of Satyapal Singh respondent-defendant No.1 and Mutation No. 1608 sanctioned on 19.12.1989, on the basis of the impugned Will was also assailed being against law and facts, illegal, null and void and based on fraud and misrepresentation and further the appeal preferred by the appellant-plaintiff stands dismissed by judgment and decree dated 06.12.2012 passed by the Additional District Judge (I), Bhiwani.

It is the contention of the counsel for the appellant-plaintiff that Nathu Singh had a son named Umrav Singh, respondent-

defendant No.2. Bhim Singh, father of the appellant-plaintiff was the adopted son of Nathu Singh. Nathu Singh executed a Will dated 14.12.1981 in favour of his biological son Umrav Singh as also Satyapal Singh son of Umrav Singh, depriving the appellant and his father Bhim Singh of their right of inheritance by succession and thus, the Will cannot be sustained. Bhim Singh, biological father of the appellant-plaintiff died in the year 2000. He contends that the suit has been filed immediately after it come to the knowledge of appellant-plaintiff regarding execution of Will by late Nathu Singh and the findings recorded by the Courts below that the same is time barred, cannot be sustained.

I have considered the submissions made by the counsel for the appellant-plaintiff and have gone through the judgments passed by the Courts below.

It is not in dispute that the Will dated 14.12.1981 is a registered one. In pursuance thereto, Mutation No.1608 was sanctioned on 19.12.1989. Nathu Singh died on 10.12.1989 and Bhim Singh, father of the appellant-plaintiff died in the year 2000. Bhim Singh did not challenge either the Will or the sanctioning of mutation in favour of Satyapal Singh and Umrav Singh, during his life time. The present suit has been filed on 10.12.2002. It cannot be said that the appellant-plaintiff was not aware of either the Will or the mutation which has been sanctioned on the basis of the said Will in the year 1989. The suit, therefore, has rightly been held to be barred

by time. That apart, it has come on record that the appellant-plaintiff had earlier filed a suit against respondent-defendant No.1 but he had not made any claim to the property of Nathu Singh in the said suit. The suit and the subject matter of the present appeal are barred by Order 2 Rule 2 of Code of Civil Procedure.

The findings recorded by the Courts below being based upon proper appreciation of the evidence and there being no illegality or misreading thereof, interference in this matter is not called for specially when there are concurrent findings recorded by the Courts below.

No substantial question of law is involved in the present appeal which requires consideration of this Court. Therefore, finding no merit in the present appeal, the same stands dismissed.

September 03, 2015

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**