

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

RSA No. 2216 of 2015 (O&M)

Date of decision: 12.10.2015

Juni Devi and another

... Appellants

versus

Suman Devi and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pritam Saini , Advocate for the appellants.

K.Kannan, J.

The plaintiffs who were successful in securing a decree challenging the decree obtained by the defendants against the father Ram Kishan suffered a reversal of the decision at the Appellate Court. The plaintiffs are the appellants before this Court.

The suit related to the property held by the plaintiffs' father Ram Kishan ancestrally along with his brother. The plaintiff Nos. 1 and 2 and the 5th defendant are the children born to the Ram Kishan through one Sukhdevi. Ram Kishan is said to have contracted a 2nd marriage even during the subsistence of the 1st marriage with one Birmati and the contesting defendants were the sons of Ram Kishan through the 2nd wife. The sons filed a suit in the year 1987 against the father for a declaration that in a family settlement brought about on 10.08.1986, the properties were granted to the sons that constituted a half share, while the other half

share went to Ram Kishan's brother. Ram Kishan himself was said to be ailing and in the hospital and one Gaje Singh as a power of attorney entered a fake contest on 19.08.1987 and on 26.08.1987, the decree was passed. This decree according to the plaintiffs was fraudulent, for, Ram Kishan himself was ailing and in the hospital and he did not know that there was any such family arrangement or there was any lawful authority for Gaje Singh to represent Ram Kishan. The plaintiffs also contend that Gaje Singh himself did not know when the family arrangement took place when he was examined in Court. The plaintiffs were seeking a declaration that they were heirs to Ram Kishan having a $1/5^{\text{th}}$ share each and the decree obtained was void and not binding on them. The defendants set up several contentions including a plea that the claim by the plaintiff was barred by limitation. The plaintiffs were suing for possession of $1/5^{\text{th}}$ share each on the basis that they were jointly in possession with the defendant and that they could secure the recovery of possession without being barred by law of limitation. The trial Court accepted the contention, but, the Lower Appellate Court reversed the same.

I asked the counsel as to how the suit came to be filed 20 years after the decree was passed in the year 1987. The counsel would state that they were themselves not a party and they were not bound by the same. If Ram Kishan had died before the Hindu Succession Act amendment of the year 2005, they would be entitled to any share of the property if only Ram Kishan had died intestate leaving his estate for succession at his death.

If Ram Kishan had allowed his own right in the property

under family settlement and allowed for a decree to be passed in favour of his sons through a decree, the plaintiffs will have only such right as Ram Kishan himself would have if he had been alive. If Ram Kishan himself would be barred by estoppel from setting up a right in the property of what he had given up through a power, it will be futile to argue that the plaintiffs could treat themselves as in joint possession of the defendant. The counsel would argue that the decree was fraudulent and therefore they can ignore the same. They were entitled to ignore the same if they had independent right without reference to the father's right itself. If they were claiming as the heirs of the father and father has given up the rights of the property of what he was capable of doing then the plaintiffs' assertion could obtain only on any of the grounds which were available to Ram Kishan himself. The only ground that was available to the Ram kishan was to state that it was obtained by fraud. If a person acted on his behalf in Court as a power of attorney at the trial that he did not know when the family partition took place, it can obtain no benefits for the plaintiffs. The decree obtained on 26.08.1987 constituted the cause of action and if the plaintiffs claiming under Ram Kishan did not take action within the period of 3 years to assail the same, the claim will be clearly barred by limitation. Even if the plaintiffs were not parties, they were actually laying claim to the property through Ram Kishan who was a party to the said suit. The plaintiffs cannot obtain a larger interest than what their father had. The plaintiffs' action was hopelessly barred by limitation, for, if the defendants were said to be in wrongful possession under a fraudulent decree, the suit for possession must be taken as a

possession in exercise of what the law would provide under Article 65. Such a recovery action should still to be possible within a period of 12 years. If the plaintiffs's suit was to be considered as truly constituting a prayer for setting aside the decree as fraudulent then it should be done within a period of 3 years from the time when the decree was passed. On both accounts the plaintiffs are bound to fail, for Section 27 of the Limitation Act states that if a suit was not instituted within the period stipulated under the provisions contained in the schedule, the right will stand extinguished. The plaintiffs have suffered such extinguishment of their claim .

I will find no error in the ultimate conclusion reached by the Appellate Court that the plaintiffs have lost the right of the property and they had no right to prosecute for.

The regular 2nd appeal is without any merit and is dismissed.

(K.KANNAN)
JUDGE

12.10.2015

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