

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 1503 of 2014 (O&M)
Date of Decision : 15.10.2015

Om Parkash

....Appellant

Versus

Jeet Rani and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.S. Sodhi, Advocate
for the appellant.

Surinder Gupta, J.

This is an appeal against concurrent judgments of the Courts below whereby suit of the plaintiff-respondents no. 1 to 4 was decreed for declaration that they are owners in possession of 2/3rd share of land measuring 107 *kanals* 12 *marlas*, as fully defined in the headnote of the plaint and the defendant-appellant and Baldev Raj (defendant no. 1) were restrained from alienating the suit land in excess of their share.

2. The suit land measuring 107 *kanals* 12 *marlas* was owned by Tulsi Ram, who died in the year 1972, leaving behind plaintiffs, defendants and his wife Maya Devi. The case of the plaintiffs is that after the death of Tulsi Ram all the legal heirs have inherited 1/7th share each. Maya Devi also died intestate on 21.01.2005 and now the plaintiffs have 1/6th share each in the suit land. The defendants wrongly and falsely manipulated the mutation entry relating to inheritance of Tulsi Ram in their names to the exclusion of plaintiffs by setting up a Will claimed to have been executed by Tulsi Ram.

3. The defendants contested the claim of plaintiffs with the plea that the suit was barred by limitation and they are estopped by

their own act and conduct from filing the suit. Defendant no. 1 alleged that he is not a party to alleged manipulation of mutation of the estate left by Tulsi Ram. The mutation of inheritance was got sanctioned by defendant no. 2 and the plaintiffs never raised objection to that mutation. Defendant no. 1 further alleged that he did not produce any Will before the revenue authorities or got recorded any report to this effect. While alleging that as per his knowledge father of parties did not leave behind any Will, defendant no. 1 alleged that it was defendant no. 2 who told the plaintiffs about the Will of their father.

4. Defendant no. 2 (appellant) propounded Will dated 01.04.1972 alleged to have been executed by Tulsi Ram in favour of defendants and his wife Maya Devi. It was alleged that plaintiff-appellants no. 2 and 3, namely; Janak Rani and Nirmala Rani admitted the Will before *Naib Tehsildar* at the time of sanctioning of mutation.

5. The propounder of Will i.e. defendants did not produce any evidence to prove execution of Will dated 01.04.1972 by Tulsi Ram. No evidence was produced that plaintiffs no. 2 and 3 had not objected to the Will at the time of sanctioning of mutation. In the absence of Will of Tulsi Ram, lower Courts have observed that the property had to devolve on all the legal heirs in equal shares.

6. The defendants have also alleged a Will executed by Maya Devi but the same was also not prove. The lower Courts discarded that Will on the ground that original Will has not come forward and defendants have not propounded the Will in their pleadings.

7. Learned counsel for the appellant during his lengthy

arguments has only stressed on the point that Tulsi Ram had died in the year 1972 and the suit was filed by plaintiffs in the year 2005 i.e. after a delay of 33 years. There is long delay in filing the suit which operate as bar and estoppel against the plaintiffs for claiming share in the property left by their father.

8. The dispute in this case is regarding the intestate inheritance of estate of Tulsi Ram. Mother of the parties was alive till the year 2005. She had died on 21.01.2005. It is not uncommon in Indian society that the girls do not claim share in the property of their father during life time of their mother. Even otherwise, in the absence of any Will, property of Tulsi Ram had to devolve on his heirs by natural succession and there is no limitation claiming their share by the plaintiffs. It is nowhere the case of defendants that they have become owner of suit property by way of adverse possession. Both the Courts below have rightly rejected the plea of appellant that the suit is not barred by limitation. Learned counsel for the appellant has not been able to cite any law or citation in support of his contention.

9. No question of law, what to talk of substantial question of law requiring determination, arises in this appeal, which has no merit.

Dismissed.

October 15, 2015
jk

(SURINDER GUPTA)
JUDGE