

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.8094 of 2015 (O&M)

Date of Decision.14.01.2016

Parveen Kumari

.....Petitioner

Vs.

Sada Bai and another

.....Respondents

Present: Mr. PS Jammu, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The suit brought by the mother of Ram Chand through her yet another son as a guardian for her since she is old. An application for rejection of the plaint was brought at the instance of the petitioner who claims to be an adopted daughter of Ram Chand. Ram Chand, according to the petitioner, has executed a Will in favour of his two wives and the adopted daughter. Ram Chand has died in the year 2007. The suit is filed in the year 2015.

2. The objection taken for the suit through application for rejection of the plaint is that the suit is barred by limitation that the matter is not competent to file this application. The mother is a natural heir to her son under the scheme of Section 8 of the Hindu Succession Act and she is entitled to file the suit claiming a right to the property as a heir to her son. If there is a Will propounded by the defendants, it is for the defendants to prove the same and till the Will is proved, there

can no presumption that the mother would have lost her right to the property as legal heir. The person who propounds the Will always has the burden to prove the same and the Will does not even require to be set aside. If there is a prayer to that effect, it must only be taken as superfluous and that the mother claims a right to the property as legal heir to the son. There is no limitation to such a suit claiming as heir so long as the person in possession has not ousted the plaintiff and prescribed title to the property by adverse possession. Since he is reported to have died only in the year 2007, the plea of ouster or adverse possession is also not possible for the defendant to constitute a bar for the institution of suit. The further contention that the mother is 105 years old and another son is trying to grab the property by using the mother will be a matter that will be adjudicated at the time of trial of suit and it cannot be brought in application for rejection.

3. The application for rejection of the suit which was dismissed was justified and there is no scope for interference. The revision petition is dismissed.

(K. KANNAN)
JUDGE

January 14, 2016
Pankaj*