

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

RSA No.1477 of 2016 (O&M)

Date of Decision.23.12.2016

Jarnail Singh

.....Appellant

Vs

Malkit Singh and others

.....Respondents

Present: Mr. Kshitij Sharma, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

After hearing the arguments, this Court had issued notice of motion order for 27.05.2016, as the counsel for the appellant sought the remand of the matter in order to prove the original Will, subject to payment of costs of ₹2 lacs. The costs has not been deposited and the registry did not accept the process fee. An application had been moved seeking exemption of payment of costs of ₹2 lacs with further request of hearing of arguments on merits.

Mr. Sharma, learned counsel appearing for the appellant-defendant No.3 submits that the respondent-plaintiff had filed the suit claiming the following relief:-

“Suit for declaration to the effect that the unregistered Will of late Sh. Labh Singh i.e. grand father of plaintiff & defendant No.3 in favour of defendant No.2 dated 19.12.1986 in respect of house No.891, Mohalla Dehra Sahib, Mani Majra, Chandigarh is forged and fabricated and also transfer letter No.NAC-90/853 dated 15.11.1990 issued by the defendant No.2 are liable to be set aside being illegal, null and void, having been obtained by misrepresentation, concealment of facts, fraudulently and behind the back of the plaintiff.”

Labh Singh had one male child and the plaintiff and defendant No.3 are the grand sons. Labh Singh had executed an unregistered Will dated 1912.1986 in favour of the appellant and he died on 3.5.1999. The application was moved to the authorities for mutation which was granted way back in the year 1990 and the present suit instituted is of the year 2007, which is barred by limitation as per the provisions of Article 58 of the Limitation Act, as the period of limitation is three years. No explanation has come forward as to how the suit was within the period of limitation, much less, the acquisition of knowledge of the aforementioned mutation.

No doubt the original Will has not seen the light of the day but the same has been proved through the testimony of DW2, Ranjit Singh and Ranjit Singh has not been cross-examined. All these factors lead to irresistible conclusion that Labh Singh on account of love and affection had bequeathed his share in favour of defendant No.3, thus, there is gross illegality and perversity.

I have heard learned counsel for the appellant and appraised the paper book. Original Will has not seen the light of the day. Other party has not been given chance to disprove the signature or thumb impression of Labh Singh. Even no issue has been framed. Had the parties were alive to the situation, they would have definitely led their evidence and therefore, there can be no ground of setting aside the judgment on this ground. There is no limitation for claiming title. On acquisition of the knowledge, the suit had been filed. The suit cannot be said to be barred by limitation. Both the Court below have not committed any illegality and perversity by setting aside the Will and injunctioned the appellant-defendant No.2 from alienating the suit property but has not granted declaration of ownership to plaintiff

exclusively, in essence, the parties will have to claim ownership by way of natural succession in accordance with law.

For the reasons aforementioned, I do not intend to differ with the findings rendered by the Courts below as the same are based upon preponderance of evidence, much less, no substantial question of law arises for consideration. No ground for interference is made out. The second appeal is dismissed.

(AMIT RAWAL)
JUDGE

December 23, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No