

\$~12

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 948/2015
ASHOK KUMAR

..... Petitioner

Through Mr. M.K. Bajaj, Adv.

versus

BHAGWAN SINGH

..... Respondent

Through Mr. Surinder Kalra, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **15.02.2016**

The petitioner is aggrieved by the impugned order dated 09.09.2015. Vide this order, the Trial Court had disposed of two applications. The first was an application under Section 10 of the CPC where a stay of suit had been sought. This had been declined. The second application was an application 151 of the CPC which was also of the same date i.e. 16.04.2015. In both these applications, the averments were largely common. In the application under Section 151 of the CPC, the prayer was that the present suit for declaration and permanent injunction be not proceeded with as Letters of Administration qua a Will dated 25.06.1996 (of deceased Hari Ram) has already been granted to the petitioner on 06.01.2010 and this whole suit which is premised on this document is thus liable not to be proceeded with. The second application which is an application under Section 10 of the CPC has also made the same prayer. The prayer being that since Letters of Administration has already been granted,

the present suit is liable to be stayed. Both these applications were decided by the common impugned order. The Court had noted that a similar application had also been filed which had also dismissed on 09.12.2014. Issues had been framed on 07.08.2013 which have not been challenged. Issues were framed on the valuation of the suit property, the bar of Order 2 Rule 2 of the CPC as also the ground of limitation. The trial was in progress. Since a similar application had already been filed and rejected, the present applications were also not maintainable. The applications were accordingly disposed of.

Before this Court, what has been urged is the ground of limitation; Article 58 of the Limitation Act has been brought to the notice of the Court; submission being that cause of action is to be counted as the three years from the date when the first right to sue accrues. The suit filed by the plaintiff is bar by limitation.

Relevant would it be to note that the impugned order has not dealt with the aspect of limitation as the applications which have been filed before the Trial Court i.e. the application under Section 10 of the CPC and Section 151 of the CPC were both not premised on the ground of limitation; the plea of limitation has been raised before this Court for the first time. That is why, it did not form a part of the impugned order as the averments made in the applications which have become the subject matter of the impugned order were not qua the ground of limitation.

Record shows that the issues had been framed on 07.08.2013. Issue on limitation had also been framed. It has been brought to the notice of the learned counsel for the petitioner that the question of

limitation is not always a legal plea as has been sought to be raised; it may be a mixed question of fact and law.

Be that as it may, the order dated 07.08.2013 wherein the issue on limitation had been framed has become a final order as it was not challenged. That apart, the subject matter of the impugned order was based on the two applications neither of which had made any averment qua the issue of limitation. No such objection had been taken before the Trial Court. This objection had been taken before this Court for the first time. This petition is nothing but an abuse of the process of the Court. It is dismissed with cost quantified at Rs.20,000/-.

INDERMEET KAUR, J

FEBRUARY 15, 2016

A