

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

RSA No.3433 of 2015 (O&M)

Date of Decision: 26.9.2017

Bhagiasali and another

... Appellants

Versus

Kamlesh Kumar and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Jagram Singh Cooner, Advocate for the appellants

RAJIV NARAIN RAINA, J. (Oral)

1. The plaintiffs have preferred this appeal against the impugned judgments and decrees of the trial court and the first appellate court whereby the suit for declaration that they are the owners in possession of the suit property being a double storey residential house situated at Baldev Nagar, Ambala City, has been dismissed.

2. I have heard learned counsel for the appellant.

3. The onus was upon the plaintiffs to seek framing of specific issue regarding the testamentary will from where title was sought to be derived over the suit property. The alleged will was executed by his grandfather, Tirath Ram and the plaintiff's claim to have been one of the beneficiaries of the bequeath came to naught when the grandfather during his life time sold the suit property vide sale deed dated 5th April, 1974 to defendant no.1, Kamlesh Kumar. Thereafter, the said property was sold by defendant no.1 to defendant no.2, Smt.Naresh Bala vide sale deed dated 7th January, 2003. The plaintiff filed the suit for declaration alleging that the documents were forged in the name of Tirath Ram and the same deserve to be declared null and void and not binding on the rights of the plaintiffs under Order 7 Rule 1 of the CPC. The suit was

Judge (Sr.Division), Ambala vide judgment and decree dated 23rd July, 2013 which judgment was affirmed by the first appellate court vide its judgment and decree dated 3rd March, 2015.

4. The plaintiffs have been non-suited on the ground of bar of limitation. It is *ex facie* established from the face of the plaint itself that the suit was barred by time and should have been dismissed at the threshold, but it has come to meander through two courts to reach the High Court in second appeal.

5. Learned counsel for the appellant argues that the suit is not barred by limitation since no period of limitation is prescribed for a suit based on title. For this proposition, he cites **Harnam Kaur and others vs. Malkiat Singh and others**, 1986 PLJ 687. This judgment is not applicable to the facts and circumstances of the present case. The argument raised by the learned counsel for the appellants that no period of limitation is prescribed for a suit on the basis of title, is misplaced. There is no doubt that the suit is barred by limitation. No issue with respect to the will was framed or claimed by the plaintiffs or put to trial on the basis of which title was claimed nor was the will challenged. In both the cases, the issue would be whether the will was good or bad and that has not been made the subject matter of trial and therefore, the argument of the learned counsel has no foundation to stand on and is rejected.

6. Moreover, Tirath Ram was admittedly owner of suit property and had a right to dispose it off by sale inter vivos and the will stood superseded since it could take effect only upon death of the testator. Perhaps that is the reason for not claiming an issue on the will and its effect.

7. Thereby, the judgments and decrees of the courts below do not suffer from any illegality, irregularity or perversity or the same can be said to be tainted with any error apparent on the face of record so as to require interference

by this Court in this second appeal. No question of law, much less a substantial one, arises for consideration in this appeal.

8. For the foregoing reasons, this appeal is found to be without any substance and is accordingly dismissed.

26.9.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>No</i>