

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

**Date of Decision: 9.8.2017
RSA No.462 of 2015 (O&M)**

Kailash Chander

...Appellant

Versus

Brij Kishore, the deceased, through legal heirs

...Respondent

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

Present: Dr.Praveen Hans, Advocate for the appellant

RAJIV NARAIN RAINA, J. (Oral)

1. The plaintiffs filed a suit for declaration to the effect that the will dated 3rd September, 1980 (Ex.D2) executed by Bishambar Dass is null and void and has no effect on the rights, title or interest of the plaintiffs and defendants no.6 and 7 over the suit property. Plaintiff no.1 is the wife of Bishambar Dass who has filed the suit through the General Power of Attorney Kailash Chander i.e. plaintiff no.2, appellant herein and Bishambar Dass is the maternal-grand-father of plaintiff no.2. Bishambar Dass executed the will dated 3rd September, 1980 Ex.D2 bequeathing his property to his son- defendant no.1, Brij Kishore to the exclusion of his wife and daughters. The daughters who have been excluded from the will are Ram Dulari and Raj Kumari. Plaintiff no.2 is the son of Raj Kumari. The suit was filed on 17th April, 2004 challenging the will dated 3rd September, 1980. Bishambar Dass died on 8th August, 1982. On 12th August, 1994, mutation was sanctioned in favour of the beneficiary- defendant no.1. The will is unregistered. One of the attesting witnesses, Hukam Singh died on 3rd May, 1993, as proved through the

register of DW4 chowkidar of the village. Accordingly, the will had been acted upon at the time of sanctioning of mutation. The presence of legal heirs of the deceased was mentioned therein, which the learned counsel for the appellant, says is merely an allegation. Be that as it may, no evidence was brought on record by the appellant to show that he did not know the existence of the will, even though mutation had been sanctioned on public revenue record in 1994. It was not explained by the plaintiff as to what he did from 1994 till 2004 when he filed the suit, and therefore, both the courts below have non-suited the appellant on bar of limitation. In paragraph 14 of the plaint, the following has been pleaded:-

“14.That the plaintiffs requested the defendants several times to admit the genuine claim of the plaintiff over the property in dispute and to get the mutation no.3067 and 3277 cancelled but the defendants has been putting off the plaintiffs on one pretext or the others and have refused to do the needful and admit the claim of the plaintiffs in the month of October, 2003. Then the plaintiffs get the revenue record collected from the revenue authority and are filing the present suit.”

2. Nothing can be said from these pleadings to conclude in favour of the appellant/plaintiff that he had no knowledge of the will till 2003. It is not a case that the appellant was not aware of the execution of will. On the other hand, the appellant- Kailash Chander/plaintiff no.2 himself admitted in his cross-examination that Ram Dulari/ plaintiff no.1 (for whom appellant/plaintiff no.2-Kailash Chander filed the suit being her General Power of Attorney) had been aware of the will and that she never filed any suit for cancellation of the will during her life time.

There is an unexplained and inordinate delay of 24 years in filing the suit challenging the will. It is a settled proposition of law that where a suit has been presented in the court beyond limitation, the person has to explain the court as to what was the “sufficient cause” which means an adequate and sufficient reason which prevented him from approaching the court within limitation. In the present case, the plaintiffs have failed to show any “sufficient cause” which prevented them from challenging the will or even the mutation in time. The plaintiffs were found to be negligent by both the courts below. They had not acted diligently and remained inactive in challenging the will.

3. On the basis of the lack of evidence and materials on record justifying a decree in favour of the plaintiffs, it is not possible for this Court to interfere with the findings of fact recorded by the courts below. The judgments and decrees of the courts below do not suffer from any illegality, irregularity or perversity nor 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 an appellate decree. No question of law, much less a substantial one, arises for consideration in this appeal.

4. For the foregoing reasons, this appeal is held to be without substance and is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

9.8.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No