

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

**Regular Second Appeal No.6342 of 2018 (O&M)
Date of Decision: November 30, 2018.**

Dhani Ram

.....APPELLANT(s).

VERSUS

Raj Singh (deceased) through his LRs and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sumit Sangwan, Advocate
for the appellant (s).

SURINDER GUPTA, J.

Heard.

Plaintiff-respondent No.1 filed suit seeking the relief of declaration that Will dated 31.12.1986, alleged to have been executed by Chhuttan son of Saman is illegal, null and void and consequently, mutation No.6223 sanctioned on 29.06.2007 is not binding on the rights of plaintiff. He also sought relief of injunction to restrain the appellant from alienating the suit property changing the nature or creating any charge or interfering in the peaceful possession of the plaintiff over it.

Will dated 31.12.1986 was not duly proved by defendant No.1 and was discarded by learned Civil Judge (Junior Division), Pataudi decreeing the suit of the plaintiff to the following effect:-

“Thus, in the light of the above discussion and keeping
in view the finding of this Court on the foregoing issues,

the present suit is hereby decreed with costs to the effect that the impugned Will (Ex.P7) and consequent mutation No.6223 dated 29.06.2007 (Ex.P1) are illegal, null and void and not binding upon the plaintiff in any manner and consequently defendant No.1 is restrained from alienating, mortgaging and changing the nature of the suit property on the basis of aforesaid impugned Will (Ex.P7) and consequent impugned mutation (Ex.P1).”

On appeal, decree passed by learned lower Court was upheld.

Learned counsel for appellant-defendant No.1 has put forth the argument that the suit was barred by limitation as the cause of action to file the suit accrued to the plaintiff on 26.01.2004 and the suit filed on 10.08.2007 was barred by limitation. Plaintiff in para 7 of the plaint has pleaded this fact. In support of this contention, he has relied on the observations of Hon'ble Apex Court in case of ***Khatri Hotels Private Limited and another Vs. Union of India and another 2011 (9) SCC 126.***

As per observation in the citation referred by learned counsel for the appellant, the period of limitation will begin when the right to sue first accrues. There is no dispute with the above proposition of law but the question to be seen in this case is that the dispute pertains to the inheritance of property of Chhuttan and once inheritance opens, there is no period of limitation prescribed for claiming the share by different legal heirs/legal representatives. This contention of learned counsel for the appellant, as such, has no merits.

Learned counsel for the appellant has further argued that suit of plaintiff is not maintainable as he has not claimed his share or title in the property left by Chhuttan and merely sought the declaration that Will of

Chhuttan dated 31.12.1986 is a sham document. He, however, admitted that on discarding of Will, the plaintiff has 1/5th share in the land measuring 44 kanals left by Chhuttan. Even if, plaintiff has not claimed declaration of his right over that share, it does not mean that the appellant, in any manner, is authorised to sell or dispose of his share. As such, this argument of learned counsel for the appellant also has no merits and is discarded.

No other argument has been advanced.

On perusal of the judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

No substantial question of law requiring determination arises in this appeal, which has no merits.

Dismissed.

November 30, 2018.

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***