

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

RSA-1887-2013(O&M)

Date of decision:-24.4.2019

Ram Bilas Gupta

...Appellant

Versus

Krishan Avtar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.R.K. Gupta, Advocate
for the appellant.

Mr.D.K. Tuteja, Advocate
for respondent No.1.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff – Sh.Ram Bilas Gupta son of late Sh.Gajadhar Gupta, aged 63 years, resident of Delhi had filed a suit against his brothers Krishan Avtar and Ram Avtar besides others seeking a declaration that Will dated 21.1.1998 executed by Smt.Angoori Devi is liable to be declared null and void further craving for grant of consequential relief of setting aside of sale deeds dated 3.3.2004 bearing Nos.2259, 2258, 2257 as well as sale deeds dated 31.5.2005 and 28.10.2005 being null and void.

As per the case of the plaintiff, his father Sh.Gajadhar Gupta

had given life time interest in his property to Smt.Angoori Devi (wife of Sh.Gajadhar) and after death of Smt.Angoori Devi, the property was to devolve upon the parties in equal shares, however, during her life time Smt.Angoori Devi executed a Will dated 21.1.1998, which she could not do; that she had expired on 2.2.2001 without cancelling or altering her Will. According to the plaintiff, he had tried to challenge the Will in Civil Suit titled as “Ram Bilas Versus Angoori Devi”, however, he was unsuccessful and his application was dismissed on 22.5.2004; that he had filed another application on 17.4.2003, which was dismissed on technical grounds on 22.5.2004; that the defendants No.1 and 2 had sold the disputed property by way of impugned sale deeds and defendant No.3 was having the knowledge with respect to the dispute about the property, however, he had further sold the property to one Shankar Lal son of Ghan Shyam Dass on 28.10.2005 during pendency of the civil suit. Feeling aggrieved the plaintiff had knocked at the door of the Civil Court by way of filing the suit in question.

On being put to notice, defendants appeared in the Court and offered a contest. In the written statements filed by them, they had raised preliminary objections that the suit was time barred; that the plaintiff had no cause of action to file the same; that the suit was not maintainable; that the plaintiff had no locus standi to bring the suit; that the plaintiff had not approached the Court with clean hands; that the suit had become infructuous; that the suit is bad for non-joinder and misjoinder of the necessary parties; that the suit was barred under Section 34 of Specific Relief Act, 1963. On merits, such defendants controverted the assertions

in the plaint though admitting that defendants No.1 and 2 are real brothers of the plaintiff. According to the defendants, the plaintiff had moved applications for amendment, which were dismissed by the Court. The defendants stoutly denied that deceased Smt.Angoori Devi was given a life time interest in the property. According to them Smt.Angoori Devi was competent to execute the Will, which she did and in addition to that had sold a portion of land through registered sale deed; that the plaintiff himself had signed the sale deed as a witness and he was very much aware about the facts of the case; that Smt.Angoori Devi was sole and exclusive owner of the property left by her husband. Refuting the remaining allegations, the defendants prayed for dismissal of the suit.

The plaintiffs had filed replication controverting the allegations in the written statement whereas reiterating the averments in the plaint.

On the pleadings of the parties, following issues were framed:

1. Whether the Will dated 21.1.98 is liable to be set aside as alleged?OPP.
2. If the above issue is proved in affirmative, whether the impugned sale deeds No.2259 dated 3.3.2004, No.2258 dated 3.3.2004 and No.2257 dated 3.3.2004 are liable to be set aside as alleged? OPP.
3. Whether the delay cannot be condoned? OPP.
4. Whether there exists for sufficient ground of condonation of delay? OPP.
5. Whether the suit is within limitation? OPP.

6. Whether the suit of the plaintiff is not maintainable? OPD.

7. Relief.

In order to prove his case, the plaintiff – Sh.Ram Bilas Gupta got his statement recorded as PW1 besides tendering certain documents.

On the other hand, the defendant No.1 – Sh.Krishan Avtar got his statement recorded as DW1. The defendants also tendered into evidence certain documents.

After hearing learned counsel for the parties, the trial Court dismissed the suit of the plaintiff with costs being time barred. This was so done vide judgment and decree dated 7.4.2009.

Feeling aggrieved by the said judgment and decree, the plaintiff had filed an appeal in the Court of District Judge, Rohtak which was assigned to Additional District Judge, Rohtak, who vide judgment and decree dated 6.3.2012 dismissed the same.

Dissatisfied with the judgments and decrees passed by the Courts below, the plaintiff has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgments and decrees passed by the Courts below be set aside.

Notice of the appeal was issued to the respondents. However, only respondent No.1 appeared through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the appeal lacks merit and is doomed for dismissal.

Obviously the suit was filed by the plaintiff beyond the

period of limitation. He wants to take benefit of Section 14 of the Limitation Act to get the period spent by him in prosecuting the first suit filed by him excluded for the reason that he was bonafidely prosecuting that suit and had inadvertently challenged the Will of his father in the said suit. However, the trial Court by giving detailed reasoning, which is quite cogent and convincing, has arrived at the conclusion that Section 14 of the Limitation Act does not come to rescue of the plaintiff in this case. The trial Court has observed that the plaintiff had filed civil suit on 14.6.2004, whereas the cause of action for challenging the Will executed by his mother accrued to him on 2.2.2001 when his mother had died. He had knowledge of the Will prior to that for the reason that as per arguments advanced by his counsel the plaintiff wanted to challenge the Will of his mother in the previous suit titled 'Ram Bilas Versus Angoori Devi' but due to inadvertence he challenged the Will of his father. Furthermore, he had moved applications for amendment, which were dismissed. He had withdrawn the previous suit and filed fresh one. The trial Court has further observed that the limitation started running on 2.2.2001 when mother of the plaintiff, namely, Smt. Angoori Devi had expired. He could have filed suit within three years thereafter i.e. upto 1.2.2004 but he brought the suit on 14.6.2004.

Obviously the suit was barred by limitation. Section 5 of the Limitation Act could not be made applicable by the plaintiff for the reason that it applies to the applications and appeal only and not to the civil suits. The Court of Additional District Judge, Rohtak was in agreement with the trial Court on that point and I do not find any reason to differ with the

Courts below in that regard. With respect to authority referred to by learned counsel for the appellant/plaintiff i.e. **J. Kumaradasan Nair & Anr. Versus IRIC Sohan & Ors., 2009(2) RCR(Civil)258** by the Apex Court wherein it was provided that when the appellants were pursuing the remedy in wrong forum, provisions of Section 14(2) of the Limitation Act are attracted. However, this judgment does not come to help of the appellant/plaintiff due to different facts and circumstances. Here it is not a case of appellant/plaintiff pursuing the remedy in wrong forum, rather the previous suit filed by him was with respect to the Will executed by his father, whereas the subsequent suit was with regard to the Will executed by his mother. The nature of both the suits was different. The plea put forward on behalf of the appellant/plaintiff that inadvertently he had challenged the Will of his father in the first suit is not plausible and convincing. Therefore, the period spent with regard to first suit filed by plaintiff cannot be excluded from the period of limitation for filing suit by the plaintiff challenging Will of his mother. The provisions of Section 14(2) of the Limitation Act are not at all attracted in this case.

No substantial question of law arises in this appeal.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgments passed by the Courts below.

The appeal stands dismissed accordingly.

24.4.2019
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No