

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 2127 of 2019 (O&M)****Date of Decision: 01.09.2023**

Smt. Neelam Rani

... Petitioner(s)

Versus

Lalit Kataria and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.Present: Mr. Surinder Singh, Advocate
for the petitioner(s).Mr. J.P.Jangu, Advocate
for the respondents.**Anil Kshetarpal, J.**

1. Late Sh.Satbir Singh Kataria's daughter is the petitioner (plaintiff) herein. While filing a suit for the grant of decree of declaration, she claims 1/4th share in the property left behind by her father late Sh.Satbir Singh Kataria, who left behind his two sons and two daughters including the petitioner herein. The respondents are the brothers of the petitioner. They claim the property on the basis of a Will executed by late Sh.Satbir Singh Kataria on 02.01.2003. On an application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), the trial Court rejected the plaint on two grounds, namely, the suit as instituted is barred by limitation as well as under the proviso to Section 6 of the Hindu Succession Act, 1956 (hereinafter referred to as "the 1956 Act"). The Appellate Court has upheld the order rejecting the plaint on the ground that

the suit is barred by limitation, however, the findings of the trial Court on

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the second ground i.e. bar to maintainability of the suit under the proviso to Section 6 of 1956 Act, has been set aside.

2. On the careful reading of the order passed by the Appellate Court, it is evident that the Court has observed that the limitation for filing the suit will begin to run from the date of death of late Sh. Satbir Singh Kataria on 15.10.2006 and thereafter, on 31.07.2007, when the mutation on the basis of the Will was sanctioned, the petitioner claims that the alleged Will executed by late Sh.Satbir Singh Kataria came to her knowledge on 01.12.2016.

3. Before rejecting the plaint at the threshold, the Court is required to come to a definite conclusion that the suit is barred by law on the basis of the pleadings in the plaint. At that stage, the defence of the defendants is not required to be examined. Moreover, ordinarily, the objection with regard to the limitation is a mixed question of fact and law. The cause of action for filing the suit is based on the bundle of facts asserted by one party and denied by another. The limitation period would begin to run from the date the cause of action has arisen for filing the suit. For adjudicating the same, the parties are required to be given an opportunity to lead evidence. The sanction of mutation on the basis of Will may not always be the starting point for the limitation to begin to run. On the death of late Sh. Satbir Singh Kataria, his succession opened. In these circumstances, the Appellate Court has erred in observing that the plaint is required to be rejected as the suit was filed beyond the prescribed time of limitation.

5. Keeping in view the aforesaid facts, the present revision petition is allowed. The impugned orders passed by both the Courts below

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are set aside and the matter is remitted back to the trial Court for deciding the case on merits after granting them an opportunity to file their pleadings and lead evidence. The parties, through their learned counsel, are directed to appear before the trial Court on 03.10.2023.

6. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 01, 2023
“DK”

Whether speaking/reasoned :Yes/No

Whether reportable : Yes/No