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

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RSA-2391-2023 (O&M)

Decided on : 04.09.2023

Randhir Singh

. . . Appellant(s)

Versus

Attar Singh and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rahul Jaswal, Advocate
for the appellant(s).

SANJAY VASHISTH, J. (Oral)

1. The present appeal has been filed by the plaintiff - Randhir Singh (appellant herein) against the concurrent findings *qua* the dismissal of the suit filed by him.

2. Suit for seeking a decree of declaration, permanent injunction and possession was instituted by the plaintiff on 30.03.2015, pleading that after the death of his father Jai Lal @ Dayala on 01.08.1983, by virtue of a registered will bearing Vasika No. 21 dated 29.04.1981 in favour of Testator's (Jai Lal @ Dayala) three sons including plaintiff, they have become owner of the suit property. Further, it is pleaded that on earlier registered Will bearing Vasika No.86 dated 21.01.1969 executed by Jai Lal @ Dayala in favour of Hari Singh (father of defendant No.1) is illegal, void and not binding against the rights of the plaintiff. Rather, said Will dated 21.01.1969 was cancelled by Jai Lal @ Dayala by virtue of a subsequent Will dated 29.04.1981 during his lifetime.

Respondents/defendants No.1 to 4 filed their written statement

taking preliminary objections that the plaintiff was in the knowledge of the

Will dated 21.01.1969 executed in favour of Hari Singh, whereas, suit has been instituted in the year 2015 i.e. after 45 years. Not only this, Jai Lal @ Dayala (Testator) expired in the year 1983 and filing of suit in the year 2015 challenging the Will dated 21.01.1969 is beyond the period of limitation. It is also pleaded that even no complaint/application has ever been moved to the Tehsildar or any other authority by the plaintiff at any point of time.

3. Considering the pleadings of the parties, learned Trial Court framed the following ten issues:-

- “1. Whether the plaintiff is entitled to a decree for declaration to the effect that the Will bearing Vasika no.86, dated 21.01.1969 and the mutation no.649 are illegal, null and void and not binding upon the plaintiff and Proforma defendants ? OPP.*
- 2. Whether the plaintiff is entitled to a decree for declaration to the effect that the judgment and decree dated 20.07.1984 passed by the then learned Sub Judge 2nd Class, Panipat, in civil suit no.435 of 1984 are also illegal, null and void and not binding upon the rights of the plaintiff and Proforma defendants ? OPP*
- 3. Whether the plaintiff is entitled to a decree for declaration to the effect that the plaintiff and proforma defendant no.5 are owner in possession to the extent of 1/6 share each and Proforma defendant no.6 (a to f) are owners in possession of 1/6 share each ? OPP*
- 4. Whether the plaintiff is entitled to a decree for joint possession of 1/2 share of agricultural land fully explained in para no.2 of the plaint ? OPP*
- 5. Whether the plaintiff is entitled to a decree for permanent injunction restraining the defendants from alienating the suit land, as prayed for ? OPP*
- 6. Whether the suit is not maintainable ? OPD*
- 7. Whether the plaintiff has no cause of action to file the*

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present suit ? OPD

8. *Whether the plaintiff has no locus standi to file the present suit ? OPD*
9. *Whether the plaintiff has concealed the true and material facts and not come with clean hands to the Court? OPD*
10. *Relief.”*

3. It has been held by the learned Trial Court that admittedly, Jai Lal @ Dayala was the exclusive owner of the entire suit land, which he inherited from his mother Badamo who had also inherited the same from her father. Hari Singh, predecessor-in-interest of defendants No.1 to 4 was relative of Badamo. Suit of the plaintiff is to seek declaration as owner on the basis of will dated 29.04.1981 (Ex.PW2/A). The official witness, namely, Hemant Kumar, Clerk from the office of the Sub-Registrar appeared and proved both the wills i.e. dated 21.01.1969 as Ex.PW3/A and will dated 29.04.1981 as Ex.PW3/B. In fact, the trial Court failed in believing the Will dated 29.04.1981 (Ex.PW3/B) for the reason that the attesting witness Anand (PW2) deposed in his examination that ***signatures and thumb impression of the testator were not affixed in his presence***, rather, it was already there on the will and he signed the same as an attesting witness. He further deposed that he does not remember as to whether he went to the office of the Tehsildar or not. He further deposed that the contents of the Will were not read by him. He was told by the Deed-Writer that Will has been made by the testator in favour of his sons i.e. the plaintiff and his brothers (proforma defendants herein).

4. From such deposition, the learned Trial Court concluded that the attesting witness Anand (PW2) had never seen the testator executing the

Will in favour of the plaintiff and the proforma defendants. Therefore, testimony of the said attesting witness was discarded outrightly by the learned Trial Court resulting into the non-proving of the Will dated 29.04.1981 (Ex.PW3/B). The learned Trial Court has also concluded that by all means, plaintiff had come to know about the Will in dispute in the year 1983 itself, and suit has been filed in the year 2015 i.e. with the delay of about 32 years i.e. much after the expiry of the period of limitation as the law requires “a person not to sleep over his rights or else he loses his rights”.

In the appeal filed by the plaintiff, learned first appellate Court considered the factual aspects as well as the evidences in detail and the legal aspects also. The Court concluded that the will dated 21.01.1969 (Ex.PW3/A) has been proved in accordance with Section 63 of the Indian Evidence Act, 1872, whereas, Will dated 29.04.1981 (Ex.PW3/B) is not believable instrument/document, as the attesting witness himself has failed to prove the contents of the will.

5. Learned arguing counsel before this Court though submits that the finding recorded by the Courts below that the will dated 21.01.1969 (Ex.PW3/A) is perverse is merely on ground that the original of the said Will was never brought on the record. Even if this submission is accepted, it was obligatory upon the plaintiff to prove the will relied upon by him for the purpose of seeking ownership by way of declaratory decree in favour of the plaintiff as well as proforma defendants.

6. It is already discussed that alleged attesting witness, Anand (PW2) has himself demolished the case of the plaintiff proving the fact that though, he is shown as an attesting witness but he was not aware of the

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substance of the instrument/document/will. Otherwise also, the suit has been filed by the plaintiff at a very belated stage and keeping silence for a long period of time of 32 years after the execution of the Will dated 29.04.1981 (Ex.PW3/B), itself shows that despite having acknowledgement of execution of the earlier will i.e. Will dated 21.01.1969 (Ex.PW3/A) he never objected over that.

Thus, even considering the purpose of law of limitation i.e. “*vigilantibus non dormientibus jura subveniunt*” i.e. ‘law assists only those who are vigilant about their rights, and not those who sleep over it’, the suit/appeal is bound to be doomed.

7. There is another angle to observe that there is a recital in the Will dated 29.04.1981 (Ex.PW3/B) of another Will dated 21.01.1969 (Ex.PW3/A), therefore, it does not lie in the mouth of the plaintiff to say that the execution of the earlier will was not in his knowledge or it was never executed.

Considering all the submissions addressed before this Court and findings recorded by both the Courts below, I do not find any substantial reason to interfere with the same. Accordingly, by maintaining the impugned judgment and decree, present appeal **stands dismissed**.

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

September 04, 2023

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No