

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 352 of 2012 (O&M)
Date of decision: 24.07.2015

Usha Rani and another
... Petitioners
versus
General Public and others
.... Respondents

2 CR No. 353 of 2012 (O&M)

Usha Rani and another
... Petitioners
versus
General Public and others
.... Respondents

3. CR No. 354 of 2012 (O&M)

Usha Rani and another
... Petitioners
versus
General Public and others
.... Respondents

4. CR No. 8090 of 2011 (O&M)

Sunita Rani
... Petitioner
versus
Kumari Geetika and others
.... Respondents

5. CR No. 8088 of 2011 (O&M)

Sunita Rani

... Petitioner

versus

Kumari Geetika and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashish Gupta, Advocate for
Mr. R.K. Gupta, Advocate, for the petitioners.
Mr. O.P. Sharma, Advocate for the respondents.

K.Kannan, J.

The effect of certificate itself is provisional and it cannot render any final adjudication of right of parties by virtue of Section 387 of the Indian Succession Act. It related to the outstandings that were recoverable for the estate of Tribhuwan Kumar who was a Leturer in a College of the claims made by 3 persons through independent petitions, one was at the instance of Sudha Rani who admittedly was his wife, yet another person Sunita Rani filed a petition stating that she was married to Tribhuwan Kumar after the divorce of Tribhuwan Kumar with Sudha. Two persons Usha Rani and Manju filed another petition claiming under a Will alleged to have been executed by Tribhuwan Kumar in their favour. Sudha Rani died during the pendency of the petition and the Court continued with the trial without directing the impleadment of the daughter,

Geetika. Sunita's petition was dismissed holding that she could not have been lawfully married. Usha Rani and Manju sought to prove the Will alleged to have been executed by examining the witness to the Will and also examining an official from the Registrar's Office and the Deed Writer. The Court rejected their contention on the ground that the original Will had not been produced and that therefore, the Will was not established. The Court passed an order issuing succession certificate to the daughter Geetika. These orders are the subject of revision in the petitions.

As far as the rejection of the claim by Sunita is concerned, no exception can be taken to it because admittedly she was married when the 1st wife was still living and the 2nd wife was claiming a legitimate status had to take upon herself the burden of proving a divorce between the Tribhuwan Kumar and his 1st wife. The petitioner made a valiant attempt to prove the divorce by giving oral evidence without reference to any judicial order of divorce. The Court correctly rejected such a fanciful plea by the 2nd wife. As far as the claim by Usha Rani and Manju were concerned, the Court, in my view was justified in holding that the Will cannot be taken to be established in the absence of original. It must be remembered that proceedings under Part X of the Indian Succession Act

are summary in character and Section 387 of the Act specifically lays down that any adjudication made will not effect any right of a party to establish in a Court of law. In *Madhvi Amma Bhawani Amma Vs. Kunjikutty Pillai Meenakshi Pillai*, 2000 (6) SCC 301

“Succession whether the application is prima facie entitled to grant of such certificate-The Judge cannot decide rights and title in such proceedings. It is only to protect the debtors of the deceased from any penalty or loss-Any payment made to such certificate holder would at the most shall be taken to be made in good faith as per Section 381-Section 387 of the Act specifically provides that the effect of decisions made under this Act and the liability of holder of such certificate will not operate as res judicata in any subsequent proceedings for determining the right of any parties and would not be taken to be a final decision on an issue of right and title.”

The adjudication is only to ensure a protection to a debtor to make a payment to the holder of succession certificate and obtain a valid discharge. It creates no legal right other than a right of recovery by a person who holds succession certificate. That certificate will be given to a

person who is on a prima facie consideration of facts the lawful heir to the estate. That person will also make the recoveries only as a trustee on behalf of the legal heirs who may have a claim to the estate so far as the outstandings are concerned. In this case, the sisters were attempting to bring the credibility to the Will by the fact that in the probate proceedings initiated by the deceased Tribhuwan Kumar for the estate of his father, they had been impleaded as Legal heirs of Tribhuwan Kumar on the basis of the Will and the probate for the estate of Tribhuwan Kumar's father was granted in their favour. The representatives impleaded in the proceedings can only be taken as such, and cannot obtain a legal right to exclude the claim of title by a person otherwise lawfully entitled. The fact that the sisters could step in to the shoes of Tribhuwan Kumar to prosecute the probate proceedings initiated by him for his father's estate cannot give to them a legal status to be favoured with issuance of succession certificate. For the purpose of summary proceedings, the Court was surely justified in rejecting the plea and allowing for the succession certificate to be issued in favour of the daughter of the deceased who but, for, the alleged Will, ought to be recognised as a heir. I find there has been an error of procedure adopted by the Court of law when Sudha Rani died and when the Court

was issuing certificate in the name of daughter, it should have ensured that the notice was issued to her to secure her own statement. Even in the proceedings before this Court, I find the deceased Sudha Rani has still been shown as a 2nd respondent but describing her as dead and treating the daughter as the LR of her mother. The description of the cause title itself is fallacious and improper. I find notice has not been served in CR No. 8088 and 8090 of 2011. I thought for a while if I should serve the notice to her, but, the order passed by the Court below benefits her and she is not going to be prejudiced in any way if the order is going to be confirmed. I have, therefore, dispensed with such a requirement and uphold the order and leave it to the sisters to bring their own independent suit or proceedings, where they can obtain the rights declared by filing a suit against Geetika who has been now authorised to receive the money and outstandings due to the estate of Tribhuwan Kumar.

I will cause no intervention for, if the genuineness of the Will is to be taken for consideration, now, again it will be only the wasteful exercise for the grant of the certificate to a person who is heir but for the Will was justified under the peculiar circumstances, when the persons setting up a claim tender a Will did not even tender the original Will. No

prejudice could be caused to them for they will still be entitled to prove the Will in the manner that the law requires, unhampered by the findings rendered against them in the proceedings before the Lower Court.

All the civil revision petitions are dismissed with subject to the provisions of this case.

(K.KANNAN)
JUDGE

24.07.2015

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