IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.3721 of 2015 (O&M)
Date of Decision.28.05.2015

Sukhchain Singh .....Petitioner

Versus

General Public and others .....Respondents

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporters or not ? Yes
3. Whether the judgment should be reported in the Digest? Yes

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K. KANNAN J. (ORAL)

1. The petitioner is aggrieved against an order passed during the pendency of the succession certificate proceedings where on the death of one of the petitioners Narender Singh, persons claiming to be widow and children of Narender Singh have been permitted to be impleaded as parties. The petitioner is a brother who claims to have filed his own independent civil suit for declaration that Narender Singh was a bachelor and the so-called marriage of the person who is now impleaded along with the children are not the legal representatives of Narender Singh. The Court has allowed for the impleadment to be made and the petitioner's contention is that some form of enquiry must be conducted under Order 23 Rule 5 CPC and the impleadment could not have been ordered. It is his further contention that the petitioner's right must be protected by the fact that there is a civil suit pending and any adjudication under the succession certificate proceedings ought not to give room for withdrawal of the amount due to the estate of Narender

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Singh by the persons claiming to be the legal heirs of Narender Singh.

2. I find that the objection of the petitioner is a needless knee-jerk reaction, for, the proceedings under Part X of the Indian Succession Act are themselves summary in nature and they cannot finally operate on the heirship relating to the property. The proceedings are only to ensure that the outstandings are collected by persons who have a prima facie right for the amounts to be claimed on behalf of the deceased and any person who receives the same will receive it as a trustee for all the legal heirs. It is in that context that statute recognizes under Section 387 of the Indian Succession Act that no decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other proceeding between the same parties and nothing contained in the Part will constitute res judicata. There is hardly anything for his apprehension that adjudication before the authorities will take away his right and imperil the rights canvassed by him in the civil suit.

3. The petitioner refers to me some decisions rendered by the Supreme Court under Order 22 Rule 5 CPC in regular suits. What may apply for impleadment under regular suit need not really be a serious bar for consideration of the application in summary fashion in succession proceedings. If a person claims to be a legal representative and the Court allows for such application, it does not conclude the situation of whether he is a legal heir or not. Legal representative is a wider expression than legal heir and any person claiming to be such a legal heir through a civil suit will be able to secure a final adjudication without in any way being fettered by adjudication rendered by the authorities

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under the Indian Succession Act.

4. Having regard to the subsequent institution of a civil suit, the Court may consider the provision under Section 387 of the Indian Succession Act and find out feasibility allowing for an adjudication within a short period in the civil suit itself that will make unnecessary another proceedings before the succession proceedings as well. However, if the Court decides to render a quick adjudication under succession proceedings, the Court may take appropriate care to ensure that the share claimed by the petitioner is properly protected at the time of discharge of money by obtaining security or in some way imposing condition which can make meaningful the full-fledged adjudication in the civil suit.

5. It has been the experience of our Courts that application filed under the Indian Succession Act even for succession proceedings take long time of several years as though it were a suit. If the case were to be really taken up in summary fashion, it can be disposed of immediately but if it is going to allow for parties to let in evidence on all aspects and if it were to be taken as though it is a civil action then such a process need not be gone through and it would be advisable that the civil court adjudication itself may be taken up early and the matter disposed of which will give finality to the rights of parties.

6. With these observations, the civil revision is disposed of.

(K. KANNAN)
JUDGE

May 28, 2015
Pankaj*

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