

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

**CR No. 4604 of 2010 (O&M)
Date of decision: 30.10.2015**

Randhir Singh

... Petitioner

versus

General Public and another

... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Samiya Singh, Advocate for the petitioner.

Mr. Amit Dhawan, Advocate for respondent No. 2.

K.Kannan, J.

The revision is at the instance of rival claimant to the estate of one Jaswant Singh in succession certificate proceedings. Contest was entered by a person claiming to be her wife while the revision petitioner was relying on a Will said to have been executed by the deceased in favour of the petitioner who was the deceased brother's son. It would appear that there was a civil suit with reference to the very same subject matter claiming under the Will and the validity of the Will although upheld by the two Courts, this Court has admitted the appeal filed by the widow in RSA No. 2854 of 2014 and put the issue regarding the validity of the Will as requiring adjudication on merits.

It is trite law that proceedings in succession certificate are summary in character and Section 387 of the Indian Succession Act (in short the 'Act') clarifies the effect of the decision under the Act under Part X as not final as regards the adjudication and that it shall not bar the trial on the same question in any court of law. Section 387 is therefore, a statutory recognition of the primacy of the Civil Court adjudication as regards title and if the case is now pending

consideration as regards the Will in RSA No. 2854 of 2014, the proceedings under Part X of the Act will, therefore, have to await the final adjudication in the Civil Court which is culminated in RSA No. 2854 of 2014.

Learned counsel for the petitioner would contend that the observations of the Appellate Court to the fact that even if the Will was not found to be not true, the widow would still be entitled to the gratuity, as erroneous, for, the entitlement the family pension under the relevant rules may depend only on the status as a widow while the right to gratuity will go only to a legal heir who claims such a status under a testamentary disposition. I accede to the contention and clarify that the Appellate Court's observation regarding the entitlement to gratuity even if the Will were found to be true is not correct. Any amount withdrawn by the wife will abide by the decision in RSA No. 2854 of 2014 regarding the truth of the Will and the widow's status being admitted as such, will secure the benefit of family pension irrespective of the finding regarding Will, but, with reference to any other item of property belonging to the estate of Jaswant Singh, the transmission of interest will take place as per the finding rendered by the High Court in RSA No. 2854 of 2014.

I am informed that deceased Jaswant Singh left behind her mother Charan kaur who died two years later. On her death, her half interest in the estate of Jawant singh will survive to the LRs which will include widow of the pre-deceased son also. It may not be a correct statement of law that surviving son will inherit the whole of half of the interest that Charan Kaur had, but, he will share along with widow of the pre-deceased son. These observations are on the contingency of the Will being not proved and the estate is put to intestate succession. The Court below has allowed for the succession certificate to be issued in favour of the widow, which I will not interfere with, for, the beneficiary under the Will will secure the benefit to the estate if he

succeeds in RSA No. 2854 of 2014. I clarify that the issuance of certificate shall be subject to the decision in RSA No. 2854 of 2014 in the manner contemplated under Section 387 of Indian Succession Act and any receipt by the widow will be subject to the decision in the Civil suit at the final forum

The order passed by the Court below is modified only to this extent and the civil revision petition is disposed of.

(K.KANNAN)
JUDGE

30.10.2015
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