

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

CR No. 3939 of 2014 (O&M)

Date of decision: 31.07.2015

Smt. Kamlesh Thakur

... Petitioner

versus

Rano Devi

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mandeep Singh Sachdev, Advocate for the petitioner.

Mr. Arun Bakshi, Advocate for the respondent.

K.Kannan, J.

The petition is at the instance of the judgment debtor who is aggrieved about the impleadment ordered on the death of one of the decree-holders. The facts that give rise to the revision could be stated in greater detail below. One Saheb Singh filed a suit for mandatory injunction for directing the removal of the defendant-petitioner from the suit property. The defendant claimed to be the adopted daughter. Saheb Singh was alleged to have executed a Will in favour of the defendant but the Will itself could have obtained no significance, for, Saheb Singh himself filed the suit. It was also alleged that there was a 2nd Will made revoking the earlier Will. The suit was decreed. The appeal by the defendant was dismissed and during the pendency of the 2nd appeal Saheb

Singh died. His wife Prem Kumar and the daughter born through Prem Kumari, Rano, were impleaded as legal representatives. The defendant who is the petitioner contested the impleadment that on the death of Saheb Singh she was also a heir. The Court allowed for such a contention to be brought at appropriate stage but still dismissed the 2nd appeal after impleading the wife and daughter of Saheb Singh.

At the stage of execution, the widow of Saheb Singh also died and Rano, who had been already impleaded as a party in the High Court filed yet another application for impleadment. This was contested by the judgment debtor again on a plea that she was heir to Prem Kumari as an adopted daughter and she must also to be treated as legal representative. The objection was spurned off and the Court has dismissed the objection.

Learned counsel appearing on behalf of the petitioner states that the petitioner's right to be considered as legal representative of Prem Kumari could not have been thwarted by the Executing Court the way it was done. Even if the bequest made to her by Saheb Singh was modified or annulled by the subsequent disposition, the so-called disposition will allows for a share to Prem Kumari and when Prem Kumari died, the petitioner as an adopted daughter was equally entitled to the property. Secondly, she must also be treated as the legal representative and Rano alone could not be treated as legal representative.

The contention raised is erroneous and legally fallacious. The Court, that orders impleadment as legal representative does no more than ensuring that the person who is allowed the right to prosecute or defend has tangible interest in the property. On the death of a person the law does

not require heirship to be found at all times. The expression 'legal representative' under Section 2 (6) of CPC is wide enough to allow even a person who intermeddles with the estate to be added. In this case, if during the pendency of the 2nd appeal before this Court, Rano was allowed to be impleaded along with Prem Kumari, she ought to be given the benefit of prosecution of the decree to its logical end by treating herself as a legal representative. If according to the defendant the decree has become inexecutable by virtue of the fact that she has herself obtained a proprietary right in the property subsequent to the decree, it could be done through an application filed under Section 47 CPC and if such an application is pending, the right will be decided in such a petition and the impleadment petition could not required to be dismissed and taken as far as to say that the defendant has already become a heir and therefore she will also to be treated as legal representative of Prem Kumari. As I have explained already, a decree-holder, treated as such by the impleadment ordered as representative of the interest of the Saheb Singh must have the benefit of taking it to the next stage. The Court in an application under Order 22 is not required to decide on heirship or proprietary rights. It shall only take a summary decision for the proceedings to be taken to the next state. The response to the application for treating Rano herself as a representative was incompetent for a judgment debtor. If judgment debtor would treat herself as a legal representative, it is another way of saying that the execution proceedings must head for termination *eo instante*. The judgment debtor cannot have such fanciful plea at the execution stage.

It is indeed a moot point whether a decree lawfully obtained

could become inexecutable by the survival of proprietary rights and whether the Executing court will have such a bar of adjudication under Section 47 CPC. I will not still pronounce my mind, lest it should mean pre-judging an issue of what has already said to be pending before the Executing Court under Section 47 CPC.

The revision petition is vexatious and dismissed with costs of Rs. 3,500/- to be paid to the respondent.

(K.KANNAN)
JUDGE

31.07.2015

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