

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

CR No. 4177 of 2014 (O&M)
Date of decision: March 27, 2015

Kavita and others

...Petitioners

Versus

Smt. Bhateri and others

...Respondents

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**

Present: Mr. Jagdish Manchanda, Advocate,
for the petitioners.

Mr. Ramandeep Singh, Advocate, for
Mr. Ashwani Bakshi, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The petition is against the order passed under Section 372 of the Indian Succession Act at the instance of the wife and son of one Rakesh Kumar, who was an army personnel. There were two petitions filed, one at the instance of the mother Bhateri claiming her share as class I heir to all the outstandings while the wife and the son claimed by another application for the whole of the outstanding placing reliance on a Will stated to have been executed. The court held that the Will was not even proved and it was not shown to have been signed by the deceased. It set up certain amounts such as defence pension (AWWA) and the family pension as payable only to one member of the family and excluded the mother from the claim. In respect of the remaining amount, the court awarded 1/3rd share.

2. The learned counsel appearing on behalf of the petitioners/wife and son would contend that in terms of Rule 189 of the Army Group Insurance Funds, nominations could be made in the name of his wife and this must be understood as making possible only the nominee to claim the amount. The counsel would also contend that there is no challenge to the rule by the mother and consequently the amount shall be given only to the wife as a nominee.

3. I cannot find any fault about the observations of the court below that a nominee is always a trustee and if there is a rule which specifies a person to whom a nomination can be made, it cannot be taken as operating to exclude the right of legal heir to claim the amount. There is no requirement in law to even challenge the rule stipulating the nomination, since nomination is not the same thing as an authority to exclude the persons who are entitled to the amount as per law. This point of how nomination is to be considered in insurance and whether it should be taken as excluding the claim of a legal heir was considered by the Supreme Court in Sarbati Devi Vs. Usha Devi AIR 1984 Supreme Court 346. This judgment was at all times approved and followed in several other decisions of the Supreme Court and I state them all only because of conviction of the counsel for the petitioners of the position that he argues seems so strong that would require to be dislodged by a whole bunch of law available against him. The said decisions are Usha Ranjan Bhattachargee v. Abinash Chandra Chakroborty (1997) 10 SCC 344; Vishin N Khanchandani V. Vidya Lachnandas Khanchandani (2000) 6 SCC 724; Challamma V. Tilaga (2009) 9 SCC 299; and Shipra Sengupta V. Mridul Sengupta (2009) 10 SCC 680.

4. A nominee is a person who is the authorized representative on

behalf of a legal heir. He or she never exclude the legal heir when no rule could operate to take away the right of what a statute provides under the Hindu Succession Act making the mother as class I heir along with the widow and son.

5. There is one observation of the court which is erroneous, namely, the finding that the Will was not proved and there was not even signature and it must have been, therefore, forged and fabricated. This need not operate to the wife or son to make independent claim for any of the amounts mentioned in the Will, if through a regular suit such a suit were to be filed and the Will is proved in accordance with law. This is so in view of Section 387 of the Indian Succession Act which states that no decision rendered by a court exercising jurisdiction under Part X of the Indian Succession Act will operate as res-judicata for rendering any decision relating to the right or status. This statutory provision itself will protect the wife and son to claim whole of the estate by virtue of the Will, if the Will is proved. This will not, however, prevent the mother from claiming the share what has been awarded through the judgment and if a civil court adjudication could be shown with reference to the disposition under the succession certificate proceedings, the widow and the son would obtain due restitution of what the decree might provide.

6. The Civil Revision is dismissed but with the above observations.

March 27, 2015
prem

(K.KANNAN)
JUDGE