

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

Civil Revision No.6859 of 2015

Date of decision:14.10.2015

Smt. Tej Kaur @ Satnam Kaur

... Petitioner

versus

Gurmukh Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashish Aggarwal, Senior Advocate,
with Ms. Neeti Gupta, Advocate,
for the petitioner.

K.Kannan, J. (*Oral*)

1. The plaintiff abandoned the suit against defendants 1 to 4, who were the sons of her brother and the suit came to be dismissed as withdrawn against them. She moved an application later to implead them again. The defendants, who are the sons of brothers of the plaintiff, contended that their grandfather Kapoor Singh had executed a Will making a bequest of the property in suit in favour of all the defendants. During the pendency of suit, it would appear that the defendants 1 to 4, who are the sons of one brother Partap Singh admitted to the plaintiff's 1/3rd share and did not press on their claim under the Will. A compromise deed was executed and, therefore, on the basis of such compromise, the defendants 1 to 4 were removed from the array of parties. They wanted to implead

them again on the basis of contest from the defendants 5 and 6 that other beneficiaries under the Will should also be included. The court denied the action for impleadment.

2. I find no error in the order passed for the plaintiffs, who, while giving up defendants 1 to 4, were actually abandoning the action against defendants 1 to 4 in the manner contemplated under Order 23 Rule 1 CPC. The petitioner/plaintiff's apprehension is that all the beneficiaries under the Will ought to be impleaded and non-impleadment is likely to affect the frame of suit. If the plaintiff has empowered herself with some of the so-called beneficiaries disclaiming under the Will and recognizing the plaintiff's 1/3rd share, they cannot revive their claim under the Will any longer and, therefore, the case will be considered only from the point of view of whether the defendants 5 and 6 could sustain the Will and prove the bequest in their favour. Any adjudication cannot make possible a fresh claim to defendants 1 to 4, they having already given up their right under the Will and admitted to the plaintiff's 1/3rd share. Law does not compel a beneficiary to claim the benefit of bequest. It is perfectly possible for a beneficiary in a Will to disclaim the bequest, even if the Will were to be true and let go as un-bequeathed. The suit cannot fail for their non-impleadment and the plaintiff will be entitled to pursue the suit in the matter that is pending now after the withdrawal of the suit against defendants 1 to 4.

3. Revision petition is disposed of with the above observations.

(K.KANNAN)
JUDGE

14.10.2015
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