

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

CR-7365-2013 (O&M)

Date of decision : 20.07.2015

Kamla Parhawk & Anr.

.....Petitioners

Vs

Anmol Parhawk & Anr.

.....Respondents

Coram : Hon'ble Mr. Justice K. Kannan

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

Present : Mr. Om Pal Sharma, Advocate
for the petitioners.

Mr. Chandan Deep Singh, Advocate
for the respondents.

K. KANNAN, J. (oral)

In a suit for declaration of a right to property, the defence was that in relation to the same property, a probate has already been issued to which the plaintiff himself was a party. By virtue of the probate, the property claimed by the plaintiff has actually been granted in full ownership to the defendant and therefore a suit filed concealing the grant of probate and seeking for a right of property against the terms of disposition was barred by law. The trial Court has, in the application filed by the defendant for rejection of the plaint, dismissed the petition and hence the defendant is in revision before this Court.

The order passed by the trial Court is erroneous. A decision by a court of competency in probate jurisdiction is a judgment in rem under Section 41 of the Evidence Act. The plaintiff cannot seek for any relief in relation to the bequest unless he renounces the bequest and sets up a title against the executant of the Will itself. On the other hand, the suit itself

makes an admission of source of title as emanating from the executant of the Will, namely, the plaintiff's grand-father Dr. Chander Hans Parhawk. The objection taken by the defendant was formidable and the plaintiff could have not been permitted to prosecute the case further. The application for rejection of plaint ought to have been allowed. The order is erroneous and the revision is allowed. The plaint filed by the plaintiff is ordered to be rejected.

(K. KANNAN)
JUDGE

20.07.2015
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