

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 7810 of 2012

Date of Decision: April 29, 2015

Jaspreet Singh

.....Petitioner

Vs.

Surjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Rakesh Bhatia, Advocate
for the petitioner.

Mr. Arun Jain, Sr. Advocate with
Mr. Kushagra Mahajan, Advocate
for respondent No.1.

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M.M.S. BEDI, J. (ORAL)

This is a revision petition against the order annexure P-5 dated November 30, 2012 passed by Additional District Judge, Ludhiana, allowing an amendment of the Probate petition enabling respondent No.1 to incorporate an alternative prayer for issuance of Letter of Administration.

Learned counsel for the petitioner has vehemently contended that the amendment of the Probate petition at belated stage of adjudication of the probate proceedings is not maintainable. He has contended that the

Will of Pritam Singh, father of respondent No.1 Surjit Singh and petitioner is to be adjudicated upon by the Court below. The Probate petition was filed on September 25, 2008 though the alleged Will is dated September 26, 1986 and their father Pritam Singh had died on February 17, 1992. He has argued that the written statement was filed on January 28, 2009 and issues were framed on June 3, 2009. When the arguments were being heard in November 2012 and an objection was raised by the petitioner that Probate petition was not maintainable, an application for amendment to incorporate the alternative prayer for issuance of Letter of Administration had been moved. It has been urged by counsel for the petitioner that no amendment can be allowed after commencement of the proceedings. As the issues had been framed on June 3, 2009, the Probate Court should not have permitted the amendment. He has also argued that the application for amendment was hopelessly barred by time. The original Probate petition filed in the year 2008 was already barred by time as it had been moved after a period of 16 years after the death of Pritam Singh.

On the other hand, Mr. Arun Jain, learned Senior counsel appearing for respondent No.1 has argued that the nature of the Probate petition has not been changed and that no additional evidence is sought to be produced by respondent No.1. The amendment is only clarificatory in nature and is necessary for the purpose of determining the real question in controversy between the parties.

Counsel for the petitioner has placed reliance on judgment in **Kunrarjeet Singh Khandpur Vs. Kirandeep Kaur and others**, 2009 (1) RCR (Civil) 806 in support of his contention that a petition for Letter of Administration can be filed within a period of limitation of 3 years as per Article 137 of the Limitation Act. In the said judgment, it was observed that right to apply for Letter of Administration is a continuing right which can be exercised any time after the death of deceased.

Counsel for the petitioner has urged that the objective behind amendment is to wriggle out of the limitation of three years which is prescribed for seeking probate under Section 278 of the Succession Act.

Mr. Jain, has contended that for legal purposes, there is no difference between Probate and Letter of Administration. He has submitted that when executor is appointed, then a petition for Probate can be filed but when no executor is appointed, in those circumstances, the appropriate remedy is to seek the Letter of Administration by filing application under Section 278 of the Succession Act. He has also argued that the amendment sought for is merely a rectification of technical error which will not, in any manner, prejudice the rights of the petitioner as respondent No.1 does not want to lead any evidence after seeking the amendment. He has also placed reliance on following judgments:-

1. **Dela Gurudal Vanjari Vs. Uddhal Govardhan Rathod**, 2012 (3) CCC 163 (Bombay), wherein it was observed that when the proposed amendment does not

fundamentally change the nature of the suit; appears to be bonafide; and permitting amendment would curtail multiplicity of litigation, the application for amendment of plaint can be allowed. In the said judgment it was further observed that the contention of the defendant that proposed amendment would take away the right of the defendant to raise defence of limitation, can be safeguarded by directing trial Court to consider the issue of limitation after allowing amendment.

2. **Abdul Rehman and another Vs. Mohd. Ruldu and others**, 2012 (5) Recent Apex Judgments 181, wherein it was observed that the amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

3. **Sumeer Jassal Vs. Smt. Pushpa Rani and ors.**, 2012 (3) CCC 776 (P&H). In the said case, amendment was allowed after framing of issues as the amendment

sought for was absolutely necessary for determining the real question of controversy between the parties.

4. **B. Manjunatha Prabhu (D) by LRs. Vs. C.G. Srinivas and others**, AIR 1005 Karnataka 136. In the said case, it was observed that in proceedings for grant of Probate or Letters of Administration, no right has been asserted or claimed by the application and the applicant only seeks recognition of the Court to perform duty and the application for issue of Probate does not fall under Section 137 of the Limitation Act. In the said case, the testator had appointed his wife as executrix of the Will. Though she had not renounced her executorship, an application filed by her for grant of Probate was not maintainable, therefore, the plaintiff sought grant of Letters of Administration instead of Probate by seeking amendment. It was held that there was no substantial difference in procedure to be adopted by the Court for issue of Probate or Letters of Administration which is only a matter of formality. No prejudice would be caused to the defendant if prayer for amendment was allowed. It was held in the said judgment that for deciding material questions of fact which arise in applications for probate or in actions or Wills, no hard

and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be stated generally that a propounder of the Will has to prove the due and valid execution of the Will and that if there are any suspicious circumstances surrounding the execution of the Will the propounder must remove the said suspicious from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of these two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties.

5. **Shambhu Prasad Agarwal and others Vs. Bhola Ram Agarwal**, (2000) 9 SCC 714. In the said case, the legatee who ought to have applied for issue of Letters of Administration had filed a petition for Probate. It was held that filing of Probate Petition will not debar his heirs to get Probate Petition amended. It was held that a person who was legatee and not an executor under the Will, on his death, his heirs could not be substituted because the executor possessed personal right but the heirs of legatee were permitted to apply for issue of Letters of Administration. Taking into consideration the

time elapsed, in the interest of justice, for expeditious disposal, the Apex Court had permitted the amendment of the petition at Appellate stage leaving it open to the parties to take such plea as may be available to them under law at the time of final disposal by the lower Court.

6. **Simrit Singh Vs. State of Delhi and ors.**, 2012 (5) AD (Delhi) 707. In the said case, no executor had been named in the Will by the testator. It was observed that Probate of the Will could not be granted under Section 222 of the Succession Act which provided that Probate could be granted only to an executor appointed by the Will. However, Section 232 of the Succession Act provides that when deceased had executed a Will without appointing an executor, or had appointed an executor who is legally incapable or refused to act or who has died before the testator or before proving the Will, in those circumstances, Letters of Administration could be granted. Observing that it is Section 278 of the Succession Act which deals with the application for Letters of Administration. At the time of final decision, the petition was treated under Section 278 of the Succession Act for Letters of Administration, as the

petitioner was able to establish that he was beneficiary under the Will.

7. **Smt. Vatsala Srinivasan Vs. Narisimha Raghunathan and another**, AIR 2011 (Bombay) 76. In the said case, a legatee under the Will was permitted to seek substitution and conversion of proceedings for grant of Probate into proceedings for grant of Letters of Administration. In the said case, it was observed that in both a proceeding for the grant of probate as well as a proceeding for the grant of letters of administration with the Will annexed is initiated for protecting the interest of the legatees under the Will. The essence of the enquiry in both the proceedings is the same and relates to the genuineness and authenticity of the Will. Having regard to these fundamental similarities in both the proceedings there is no conceivable reason as to why the law must be regarded as prohibiting a beneficiary from seeking to continue the proceedings upon the death of the sole executor and as incidental thereto for seeking formal conversion of the proceeding from one for the grant of a probate to one for the issuance of letters of administration.

8. **Rakesh Bhan Vs. Bawa Kripal Singh and another**, 2010 (169) DLT 10. In the said judgment, it was permitted that a party can seek the amendment of the prayer clause in the Probate Petition by making a request that seem to be treated as one for Letters of Administration.

Taking into consideration the above said judgments, I am of the considered opinion that the proceedings for grant of Probate as well as the proceedings for grant of Letters of Administration regarding a Will are both aimed for protecting the interests of legatees under the Will. In both the proceedings, the objective is to determine the genuineness and authenticity of the Will and its execution in accordance with the provisions of law. On account of fundamental similarities in both the proceedings, a beneficiary cannot be prohibited from converting a Probate Petition, to a petition for grant of Letters of Administration.

I have also considered the judgment of **Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur and others**, 2009 (1) RCR (Civil) 806. cited by counsel for the petitioner. The said judgment does not help the petitioner, in any manner, as in the said judgment, relying upon the judgment of Bombay High Court in **Vasudev Daulatram Sadarangani Vs. Sajni Prem Lalwani**, AIR 1989 Bom. 268, it was held that under the Limitation Act, no period is advisedly prescribed within which the application for Probate, Letters of Administration or succession certificate must be made

and that such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, it created, remains to be executed. It was observed that delay beyond three years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion. Said delay must be explained, but cannot be equated with the absolute bar of limitation. In the light of the ratio of the above said judgment, it was held that once execution and attestation are proved, suspicion of delay no longer operates.

In view of the above discussion, it is held that there is no illegality in the order passed by the lower Court in permitting the amendment for incorporating a prayer for grant of Letter of Administration of the Will of Pritam Singh in place of Probate. The amendment has rightly been allowed. Finding no ground to interference in the impugned order, the petition is dismissed. Parties are directed to appear before the trial Court for further proceedings in accordance with law.

April 29, 2015
sanjay

(M.M.S.BEDI)
JUDGE