

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 85 of 2015 (O&M)

Date of decision: 21.05.2015

Bhanti and another

... Petitioners

versus

General Public and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.K.S. Malik-I, Advocate for the petitioner.

Mr. Satyapal Khatri, Advocate,
for respondent Nos. 2 and 4.

Respondent No. 3, In person.

K.Kannan, J.

The plaintiffs' suit was for right to property of the estate of one Raghubir Singh on a plea that a Will alleged to have been executed by him as propounded by the defendant was not true and genuine. The Will was therefore put at issue in the suit. One of the defendants filed an application for issuance of probate on the basis of Will although it was not compulsory for parties to apply for probate for the estate in the State of Haryana. There was request made by the plaintiff that probate proceedings should be stayed till the disposal of the suit instituted by him. The application was dismissed. The revision is against the order of dismissal of the application filed at the instance of the plaintiff.

The respondents point out that the suit instituted by the petitioner-plaintiff has been disposed off on merits on 24.03.2015 upholding the will propounded by the defendant. The question of stay of probate proceedings does not therefore arise. Probate proceedings create a different legal effect namely, a judgment in rem while a suit for a declaration is only binding *inter partes*. Probate proceeding has therefore a potential to bind even person who are not parties to action.

Therefore, the law enjoins a particular procedure to be followed as laid down under the provisions of the Indian Succession Act, 1925. The proceedings already pending for probate shall be carried through to its own logical end and I will find no reason for interfering with the order already passed, more particularly when the plaintiff's own suit has been dismissed.

The civil revision petition is consequently dismissed with the above observations.

(K.KANNAN)
JUDGE

21.05.2015

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