

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.8646 of 2015 (O&M)

Date of Decision.19.12.2015

Smt. Amarjit Kaur

.....Petitioner

Vs.

Smt. Surinderjit Kaur and another

.....Respondents

Present: Mr. Arvind Seth, Advocate
for the petitioner.

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?

-.-

K. KANNAN J. (ORAL)

1. The defendant in suit who was the purchaser from the plaintiff's mother is the petitioner before this Court. The suit had been filed by the plaintiff challenging the sale executed by her mother on 5.10.2011 through suit filed on 12.12.2011. The suit came to be instituted after the death of the mother. The plaintiff's sister was the 2nd defendant in the suit and a pro forma defendant. The plaintiff has expired and the application for transposition by the 2nd defendant has been filed to prosecute the case. There was also a prayer for impleadment of some persons under Order 22 Rule 3 CPC claiming as beneficiaries under the Will executed by the plaintiff. Both the prayers brought through a single application have been allowed. The defendant is aggrieved about the order.

2. The learned counsel for the petitioner states that the transposition could not have been ordered without minding the fact that

there was a bar of limitation for prosecuting the claim. It is also urged that the persons who claimed as beneficiaries under the Will have not stated anywhere about the existence of legal heirs but for the Will and the Court could not have allowed the impleadment without bringing all the legal heirs interested in the estate. I reject both these contentions as not tenable. If the plaintiff's suit was filed within two months from the date of sale by the mother contending that the alleged sale deed was brought about under vitiating circumstances and hence, voidable at the instance of the plaintiff as heir, the suit ought to be taken as really for benefit of herself and yet another heir who was cited as the 2nd defendant, who was pro forma in the suit. If the plaintiff had died, the pro forma defendant could treat herself as a person directly having an interest in the same way as the plaintiff had and treat the institution of the suit made by the plaintiff already as a relief sought on her behalf as well and transpose herself as person having no adverse interest to the plaintiff. Such a transposition will not have any impact on the law of limitation, for the institution of suit by the plaintiff itself ought to be taken as for the benefit of the 2nd defendant as well.

3. Even the objection that the impleadment of some persons claiming under a Will ought not to be ordered without satisfying itself about who was the other legal heirs but for the Will cannot constitute any hardship, for even the 2nd defendant would be competent to represent the estate. The term legal representative is a broader expression than the legal heir and the impleadment under a Will ought not to even require an adjudication regarding the validity of the Will. It is only for the purpose of representation and if there are any other

persons who according to the defendant could treat themselves as aggrieved or they may create a problem in future, it will be open for the defendant to move an application for impleading them as parties in suit so that a full-fledged adjudication is made in the presence of every one interested in the estate of the mother whose sale is put to challenge under the suit.

4. The petitioner cannot be in any way aggrieved by the order already passed and I decline to make any intervention. The revision petition is dismissed.

(K. KANNAN)
JUDGE

December 19, 2015
Pankaj*