

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

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CM No.16041-CII of 2015 in/and
First Appeal Order No.2927 of 1996

Date of Decision: December 09, 2015

Mrs. Sunita

...Appellant

Versus

The General Public and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Mr. S.K.S. Bedi, Advocate
for the applicant-respondent No.2.

Mr. Sudhir Mittal, Advocate
for the appellant.

AUGUSTINE GEORGE MASI, J. (ORAL)

CM No.16041-CII of 2015

Prayer in the application filed by applicant-respondent No.2 is
for fixing an actual date for hearing of the case.

Notice of motion.

Mr. Sudhir Mittal, counsel for the appellant, accepts notice and
states that he has no objection to the prayer made in the application.

The appeal, with the consent of the counsel for the parties is,
thus, taken on board for disposal.

FAO No.2927 of 1996

Challenge in this appeal is to the order dated 09.08.1996 passed
by the learned Additional District Judge, Chandigarh, whereby application
on behalf of respondent No.2-Sunil Kumar under Section 263 of the Indian
Succession Act, 1925, for revocation of the probate granted by order dated
02.11.1991 in respect of estate of late Shri Surinder Nath Kumar son of Shri

Dewan Chand Kumar, stands allowed.

2. It is the contention of learned counsel for the appellant that the Court below has committed an error in not going into the genuineness and validity of the Will dated 10.04.1990, specially when such an issue had arisen as per the pleadings of the parties. He contends that one of the grounds which has been taken by respondent No.2-Sunil Kumar was that the Will in favour of the appellant-Sunita was a fraudulent document and the same not being genuine could not have been relied upon to grant probate. He places reliance upon the judgment of the Supreme Court passed in case titled as ***Anil Behari Ghosh Versus Smt. Latika Bala Dassi and others AIR 1955 Supreme Court 566***, to contend that the said issue should have been framed and a finding recorded by the Court about the genuineness and validity of the Will. He, therefore, contends that the matter should be remanded back to the Court for fresh adjudication on the application filed under Section 263 by respondent No.2 after framing of this issue and giving a decision thereon on the basis of the evidence which has already been led by the parties.

3. Counsel for the respondents states that he has no objection to the prayer made by the counsel for the appellant.

4. In view of the above consented terms, the impugned order dated 09.08.1996 passed by the Additional District Judge, Chandigarh, is hereby set aside and the matter is remanded back to the Court for fresh decision on the application filed under Section 263 by respondent No.2 after framing an issue with regard to the genuineness and validity of the Will dated 10.04.1990 and deciding the same on the basis of the evidence which is available on record.

5. Parties to appear before the Court on 15.01.2016.
6. It would be appreciated if the decision in the matter is taken by the Court within a period of three months from 15.01.2016.
7. The records received from the Court below be returned forthwith.
8. The appeal stands disposed of.

December 09, 2015
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE