

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

CR No. 3461 of 2015 (O&M)

Date of decision: 17.03.2016

Kanta Devi @ Chander Kanta

... Petitioner

versus

Bharat Bhushan and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.B. Kaushi, Advocate for the petitioner.

Mr. Rohit Bedi, Advocate for respondent No.1.

Mr. Neeraj Malhotra, Advocate for the applicant.

K.Kannan, J. (ORAL)

The revision petition is against the rejection of a prayer for grant of a decree in respect of an item of property described as property 'A' in suit. The suit has been filed by the widow of Nand Lal claiming her right as on intestate succession to the estate of Nand Lal and for a plea that Will propounded by the nephews of the Nand Lal is null and void. The Will purported to make two distinct bequests, one, in favour of the Sunil Tiwari bequeathing house property absolutely described as property 'A', and, the remaining properties that included some bank deposits and agricultural lands to others. Sunil Tiwari had given a statement in Court that he forsook the bequest and he was willing to recognize the plaintiff as an owner. Admittedly, even as per the contentions of the defendants Sunil Tiwari alone was the beneficiary of the property 'A'.

There is no compulsion in law for a beneficiary under a Will to accept the bequest and it shall be perfectly competent for a person to foresake the same. He has made such a statement before the

Court and willing to recognize the plaintiff as the owner as heir to her husband Nand Lal. The court was bound to accept the same. There was no impediment for a grant of a decree in respect of the item of property as regards the defendants. This statement of Sunil Tiwari will not operate as rendering invalid the bequest operating in favour of others, if the Will is proved as per the law. Even on such proof Sunil Tiwari will not be able to reclaim the property by his own conduct in foresaking the bequest which operates *eo instante*.

The order already passed is set aside on the above line of reasoning that I have allowed for a decree to be passed in favour of the plaintiff as against the defendants. Now an application has been filed before this court for impleadment at the instance of the 3rd party claiming herself to be adopted daughter of Nand Lal. I pass no orders in the application and treat it as unnecessary in view of the statement given that an application for impleadment is pending also before the Court below. If she were to be impleaded and the trial of suit results in an adjudication of her status as a daughter to Nand Lal, her own right of the properties, in the event of Will being not proved, will not be affected by the decree which is now passed. It will be reopened again to admit her right to the property to the extent to which the law would permit. This decree which is now passed must be taken as binding only on the existing defendants and will not bind the person claiming to be the daughter. At her option, the person claiming to be the adopted daughter may also bring her own suit for establishing her right, if her application for impleadment is not favourably considered.

With these observations, the impugned order is set aside and the revision petition is allowed.

(K.KANNAN)
JUDGE

17.03.2016

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