

242

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

CR-4590-2015

Date of decision : 09.02.2016

Om Parkash and another

...Petitioners

Versus

Rajesh Kumar Sehgal and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Parduman Yadav, Advocate
for the petitioners.

Mr. Ajay Jain, Advocate
for respondents No.1 to 4.

Mr. Yogesh Saini, Advocate for
Mr. Manoj Bajaj, Advocate
for respondent No.5.

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?

AMIT RAWAL, J. (ORAL)

The petitioners-defendants claiming to be Legal Representatives of deceased Raj Rani (defendant in suit), moved an application for impleadment and as well as the consigning the suit sine die on the ground that the suit bearing No.78 dated 23.03.2012, titled as **"Sudesh Rani and others V/s Om Parkash and other"** viz-a-viz the Will executed by Raj Rani is pending for adjudication.

behalf of the petitioners, submits that in a suit for partition, identical application was filed and the same has been allowed vide order dated 16.08.2013 (Annexure P-5). However, the similar application was moved in the suit for permanent injunction and the same has been declined. This Court while issuing the notice of motion had noted the contention that a similar order ought to have been passed, until and unless, the genuinity of the Will under challenge is not assigned.

Mr. Ajay Jain, learned counsel appearing on behalf of respondent Nos.1 to 4, submits that as per the Will, the petitioners are claiming the tenancy which is not permissible in law and thus, the application has rightly been dismissed.

I have heard the learned counsel for the parties and appraised the paper book.

Be that as it may, this Court is not enjoined upon the obligation to determine the genuinity of the Will shall be decided in the pending suit. Since, the trial Court in other connected suit for partition passed the order which reads thus:-

"Heard. During the course of arguments on the application of the applicant Om Parkash to implead as legal representative of the deceased Raj Rani, it transpired that another suit between the parties titled "Sudesh Rani and others Versus Om Parkash and other" civil suit No.78 dated 23.03.2012 is pending in the court of Smt. Sanpreet Kaur the learned Civil Judge (Jr. Divn.), Rewari in which the will in favour of the applicant Om

Parkash is under dispute and that is the civil suit for declaration and in that civil suit, question of rights of present applicant Om Parkash as legal representative of the deceased defendant Raj Rani will be decided. Present suit is for partition and in the present suit controversy cannot be changed to that of title dispute between the plaintiff and applicant Om Parkash. In case applicant is not found to be succeeding the interest of Smt. Raj Rani on the basis of Will, then in the suit property plaintiff alone will be owners and present suit for partition will become infructuous. In these circumstances, plaintiff No.2 Sanjay Sahgal on behalf of the plaintiffs has made statement that the present suit be consigned sine die to be taken after the decision of the civil suit No.78 dated 23.03.2012. Considering the same, suit stands consigned sine die to be taken as and when either of parties applies. Notice to the counsels shall be deemed notice to the parties. File be consigned to the record room after due compliance."

Similar order was required to pass in this case. However, the same has been declined vide impugned order dated 25.05.2015. I am of the view that no prejudice would be caused to the plaintiffs, in case the application seeking impleadment is allowed as the entire controversy involves in the adjudication of the Will allegedly executed by Raj Rani which is stated to be pending in a civil suit bearing No.78 dated 23.03.2012 titled as "Sudesh Rani and others

Versus Om Parkash and others”.

Keeping in view the aforementioned facts, the impugned order dated 25.05.2015 dismissing the application, is hereby set aside and the application seeking impleadment as Legal Representatives of Raj Rani is ordered to be kept in abeyance with the liberty to the parties to move an appropriate application as and when the suit bearing No.78 dated 23.03.2012 is decided.

With the aforementioned observations, the revisions petition stands allowed.

09.02.2016
yogesh

(AMIT RAWAL)
JUDGE