

Civil Revision No.5243-2015

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

Civil Revision No.5243-2015

Date of Decision: 07.01.2016

Dinesh Kumar

... Petitioner(s)

Versus

Perhlad Gupta and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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 ?

Present: Mr. Sanjay Jain, Advocate,
for the petitioner.

Mr. Daldeep Singh, Advocate,
for respondent Nos.1(b) and 2.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant revision has been filed under Article 227 of the Constitution of India for setting aside the order dated 17.07.2015 (Annexure P-1) passed by learned Civil Judge (Sr. Divn.), Ambala whereby application filed by Arvind Kumar (respondent No.2) for impleading himself as legal heir of deceased-Parhlad Gupta, executant of Will, has been allowed for the purpose of defending the proceedings, however, application moved by the petitioner for bringing on record legal heirs of deceased-Parhlad Gupta has been dismissed.

Before I deal with the impugned order, it would be

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appropriate to mention here that suit for declaration filed by the petitioner challenging the validity of Will dated 15.07.2009 allegedly executed by defendant No1-Perhlad Gupta in favour of defendant No.2, is not maintainable. The civil court should have dismissed the suit being not maintainable on the ground that a Will only operates after the death of its executant, not during the life-time of the executant. As such, no cause of action accrue to the petitioner. In fact, plaint does not disclose cause of action on the date of filing of suit. I fail to understand as to how this suit was entertained and allowed to continue when the executant of the Will was alive. The suit, itself, was not maintainable, question of impleading legal heirs of defendant No.1-Perhlad Gupta who has subsequently died during the pendency of suit, would not arise. If the petitioner-plaintiff is aggrieved by the Will, he could have challenged it only after the death of its executant-Perhlad Gupta. During the life-time of executant of a Will, no right could accrue to any beneficiary on the basis of Will. The suit apparently appears to be misconceived. The Civil Court has not taken into consideration all these aspects.

Now the difficulty has arisen that during the pendency of suit, defendant No.1-Perhlad Gupta has expired. The suit, itself, was filed on 11.03.2010 and defendant No.1-Perhlad Gupta is stated to have expired on 13.03.2012. So far as challenge to the validity of Will is concerned, the cause of action could arise only after the death of Perhlad Gupta and all the legal heirs of deceased-Perhlad Gupta (executant) are

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required to be impleaded as party. Once the suit, itself, was not maintainable, the plaint is required to be rejected under Order 7 Rule 11 CPC. Accordingly, the suit is dismissed as not maintainable. However, liberty is granted to the petitioner to file independent suit challenging the validity of Will allegedly executed by defendant No.1 (since deceased). The cause of action will accrue to the petitioner from the date of death of executant.

Disposed of in the aforementioned terms.

07.01.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge