

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

Civil Revision No.5223 of 2014 (O&M)

Date of decision: 6.9.2016

Vinod Kumar

... Petitioner

Versus

Subhash Kumar Jain

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Parminder Singh-I, Advocate,
for the petitioner.

Mr.I.S.Brar, Advocate,
for the respondent.

AMIT RAWAL, J. (Oral)

The petitioner-judgment debtor is aggrieved of the impugned order whereby the objections in execution petition seeking execution of the judgment and decree dated 30.7.2002, which has attained finality up to this Court in RSA No.962 of 2004 decided on 29.1.2007, has been dismissed.

Mr.Parminder Singh learned counsel appearing on behalf of the judgment debtor submits that Amar Nath father of the petitioner instituted a suit for possession of suit property on the ground that the petitioner being son was licensee. The aforementioned suit was decreed vide judgment and decree dated 30.7.2002 as stated above, has attained finality up to this Court. The respondent Subhash Kumar Jain claimed to be beneficiary of the will executed by Amar Nath, being self acquired property filed the

execution petition for execution of the aforementioned decree. Appellant in RSA No.962 of 2004 had also moved an application No.10072-C of 2005 for impleadment but the same was rejected and the question of inheritance was kept open. He submits at the best respondent could have sought declaration on the basis of the will dated 16.11.1998 allegedly executed by Amar Nath but not in the manner and mode and thus, the order is erroneously and perverse and is liable to be set aside.

Mr.Brar learned counsel appearing on behalf of the respondent submits that the respondent is collateral and being brother of the petitioner and beneficiary of the Will has every right to seek execution. There is no illegality or perversity in the order rightly so the Executing Court dismissed the objection as it cannot go behind the decree and urges this Court to affirm the findings.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is merit in the submission of Mr.Parminder Singh. For the sake of brevity, order dated 29.1.2007 passed in the application aforementioned seeking impleadment on behalf of the respondent reads as :

“CM No.10072-C of 2015 and RSA No.962 of 2004.

*Present : Sh.V.K.Jain, Sr. Advocate with
Ms.Divya Sharma, Advocate, for the appellant.*

*Mr.Anil Kshetarpal, Advocate for respondents
No.1 to 5.*

The applicant is defendant in the suit, who has sought to be impleaded as one of the legal representatives of the deceased plaintiff. In reply to such application, one Subhash Jain has propounded Will dated 16.11.1998 executed by Shri

Amar Nath in his favour.

After hearing the learned counsel for the parties, I deem it appropriate to permit Shri Subhash Jain to represent the estate of late Amar Nath for the purposes of present appeal.

The question of inheritance of Shri Amar Nath is not the subject matter of controversy in the present suit. The said question is left open to be decided in accordance with law.

29.1.2007

sd/-
Hemant Gupta
Judge”

The respondent has not sought any declaration in an independent proceedings and in the absence of the same cannot circumvent the order seeking execution of the judgment and decree dated 30.7.2002.

In my view, in the absence of the declaration as of now the decree cannot be executed. In view of the above, the impugned order is set aside and the objections are sustainable. The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

September 6, 2016

Paritosh Kumar

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No