

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.8645 of 2015

Date of Decision.15.01.2016

Surain Singh and another

.....Petitioners

Vs.

Pritha Singh and others

.....Respondents

Present: Mr.Navjot Singh Wahniwala, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. The revision petition is at the instance of the defendants who are aggrieved that one of the defendants arrayed along with them has been ordered to be transposed as legal heir to the sole plaintiff. Certain relationships between the parties would require to be stated in order to explain whether the transposition ordered was correct and whether the defendants could have any lawful objection.

2. The plaintiff was one Pirtha Singh. He claimed right to the property through a declaratory relief that the properties in suit belonged to the family of including his brothers Jai Singh and Narain Singh. On their death, he became the surviving heir along with some of the defendants. His contention was that Jai Singh and Narain Singh had died without making any provision for the transmission of rights of the properties and hence, the right claimed was by means of intestate succession.

3. The defendants were the plaintiff's brother and other brothers' sons. One of the defendants was plaintiff's brother Joginder Singh's son Harbans Singh. During his life time, the plaintiff himself has originally executed a Will in respect of his properties which he owned and possessed through a Will of the year 2000. Subsequently in respect of properties of extent of 15 kanals 2 marals, he had also executed a sale deed in favour of Harbans Singh. The suit was on the plea that the properties which the brothers of plaintiff namely Jai Singh and Narain Singh left behind must belong to him as heir at law along with defendants and that he should be granted possession of the property. Harbans Singh who had already obtained a bequest from his uncle plaintiff sought for impleadment as a heir to Pirtha Singh. He was making reference to the sale executed by Pirtha Singh in the year 2000 and stated that apart from the property sold to him, the Will already executed operated to make a bequest of all the remaining properties which he owned and possessed. According to him, the Will must be taken as constituting a universal bequest of all the properties that he possessed of at the time of his death. The objection taken was that the expression owned and possessed must mean only the property which he owned and possessed at the time of execution of the Will and since his brothers Jai Singh and Narain Singh were actually alive at the time of the execution of the Will, he could not have contemplated to make a bequest in relation to the properties which he had obtained by means of intestate succession when Jai Singh and Narian Singh died. Indeed, there was a defence by Ram Singh, another brother's son that Jai Singh and Narain Singh did not die intestate and they had actually made

provisions of bequest through a Will in his favour. Consequently, the plaintiff could not treat himself as heir.

4. Whether Jai Singh and Narain Singh had bequeathed the property by means of Will to Ram Singh or whether they died without such provisions so that their properties fell to succession by intestate will be a matter which would require consideration through the suit. I have examined the terms of the Will. The document merely makes reference to the property which he owned and possessed and it has no specific prima facie inference that the intention of the testator was only to make a bequest in relation to the property which he actually had in his hand at the time of execution of the Will and that the testator did not contemplate to make the benefit of transmission of right to any property which he had obtained subsequently. That would again be a matter of construction of the Will which cannot be very easily inferred at this stage. If Harbans Singh had been a beneficiary of a bequest through the Will which on the face of it would operate in respect of all properties which Pirtha Singh owned and had possessed at the time of his death, then the transposition made of the defendant was perfectly justified.

5. Learned counsel appearing on behalf of the defendants-revision petitioners have a further objection that the person who is now seeking for transmission had an interest adverse to the plaintiffs at the time of institution of suit since Pirtha Singh was making a plea for recovery of possession against Harbans Singh also and therefore, he cannot be transposed. This argument is fallacious. He also makes reference to the judgment of Orissa High Court. I do not think that I

should travel to all the way to Orrisa to pick a small point of law for me that if Pirtha Singh's right to the property were to devolve to Harbans Singh, it is irrelevant that Pirtha Singh had a contest to make against Harbans Singh during his life time. On his death, the subject of contest against Harbans Singh becomes inoperative and the contest of Harbans Singh vis-a-vis other defendants as heir under bequest from Pirtha Singh would require to be proceeded with.

6. There is no merit in the revision petition. The revision petition is dismissed.

(K. KANNAN)
JUDGE

January 15, 2016
Pankaj*