

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 7342 of 2016

Date of decision:- 24.08.2017

Himmat Singh

...Petitioner

versus

Hanuwant Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Vishaldeep Goyal, Advocate
for the petitioner.

Mr. Vikas Behl, Sr. Advocate with
Mr. Gaurav Chopra, Advocate and Ms. Japneet Kaur, Advocate
for respondent No. 1.

RITU BAHRI J.

Challenge in the present revision petition, filed under Article 227 of the Constitution of India read with Section 115 of Code of Civil Procedure, 1908 (for short 'the Code') is to the order dated 16.07.2015 (Annexure P-1) passed by the Court of learned Addl. Civil Judge (Sr. Divn.) Nabha vide which the application of the petitioner for 'impleading as party' in the execution proceedings filed by respondent No. 1 against the JD's (respondent Nos. 2 and 3) in the Court of Add. Civil Judge (Sr. Divn.) Nabha was dismissed. Further prayer is for setting aside order dated 03.09.2015 (Annexure P-2) passed by the Court of learned Addl. Civil Judge (Sr. Divn.) Nabha whereby objections filed by petitioner under Section 47 of the Code in the said execution proceedings filed by respondent No. 1 against the JD's (respondent Nos. 2 and 3) in the Court of Add. Civil Judge (Sr. Divn.) Nabha was dismissed and challenge is to order dated 09.08.2016 passed by learned learned Addl. District Judge, Patiala whereby appeal filed

against order dated 03.09.2015 was dismissed.

Brief facts of the case are that petitioner in the present case is younger brother of of Maharaja Pratap Singh of Nabha. Briefly the facts of the case are that on 24.07.1995, Maharaja Pratap Singh died intestate leaving behind four first class legal heirs namely Smt. Urmila Devi (wife), Hanuwant Singh (son), Himmat Singh (son-petitioner) and Sneh Lata (daughter). During his life time, Maharaja Pratap Singh filed a suit for possession against one Jagroop Singh (respondent No. 3). The said suit was decreed in favour of Maharaja Pratap Singh by judgment and decree dated 30.11.1984 passed by the Court of learned Sub Judge 1st Class, Nabha and Maharaja Pratap Singh was held to be owner of the suit property. The appeal filed by Jagroop Singh against the judgment and decree dated 30.11.1984 was also dismissed by learned Addl. District Judge, Patiala. Thereafter, Jagroop Singh filed RSA No. 3623/1986 against the judgment and decrees of both the Courts below. The said RSA was admitted on 23.02.1987. During the pendency of the said RSA, Maharaja Pratap Singh died after leaving behind the above said four first legal heirs.

Thereafter, Hanumant Singh (respondent No. 1) filed an application under Order 22 Rule 4 of the code for getting himself impleaded as sole legal representative of Maharaja Pratap Singh vide C.M. No. 3752-C-1995. This application was allowed on 22.09.1995, subject to just exceptions. A compromise dated 25.07.2010 (Annexure P-4) was effected between respondent No. 1 and 3 by which certain part of suit property which was owned by Maharaja Pratap Singh was relinquished by respondent No. 1 in favour of Jagroop Singh for consideration. A consent order dated 23.09.2010 was passed by this Court in view of the compromise

effected between the parties.

The petitioner then filed an application seeking recalling of order dated 23.09.2010 (Annexure P-5). The wife of the petitioner in the month of September/October 2012 came to know about the execution proceedings in regard to RSA No. 3623-1986. The petitioner then filed an application for being impleaded as party in the execution proceedings, which was dismissed, vide impugned order dated 16.07.2015 (Annexure P-1). After dismissal of the above application, the petitioner filed objections before the Executing Court under Section 47 of the Code, which was also dismissed on 03.09.2015 (Annexure P-2) and appeal filed against this order, was also dismissed on 09.08.2016 (Annexure P-3).

Learned senior counsel for the petitioner is seeking quashing of impugned order dated 16.07.2015 on the ground that the petitioner was not aware about the fact that his brother Hanumant Singh had got himself impleaded as legal heir of Maharaja Pratap Singh in R.S.A No. 3623/1986 by filing C.M. No. 3752-C-1995, which was allowed on 22.09.1995 and thereafter, a consent order was also passed by this Court on 23.09.2010 in view of the compromise effected between the parties on 25.07.2010. Learned counsel submits that there was no occasion with the petitioner to get himself impleaded as party in RSA No. 3623/1986, as the petitioner was suffering from Agorophobia after the shock of his father's demise. The petitioner has still not recovered from the same and is on wheel chair bound till date.

Learned counsel further submits that the inheritance and succession being a statutory right flowing from the Hindu Succession Act could not had been set to naught by any compromise. Learned counsel

further submits that after 26th Constitution amendment, the rule of primogeniture would not apply and the petitioner/applicant would be the legal heir to inherit the properties of Maharaja Pratap Singh, as per Hindu Succession Act, 1956.

To give force to its contention, learned senior counsel for the petitioner has referred to a judgment of Hon'ble the Supreme Court of India in a case of *N. Padmamma and others vs. S. Ramakrishna Reddy and others, 2008(15) SCC 517* wherein it has been held that the law of Primogeniture is no longer applicable in India/. Such a provision may be held to be unconstitutional being hit by Article 14 of the Constitution.

Reference has been further made to a judgment of Hon'ble Gujrat High Court in a case of *Maharaja Shri Manvendrasinhji Ranjitsinhji Jadeja vs. Rajmata Vijaykunverba wd/o late Maharaja Mahendrasinhji, 199(1) GLR 261* had discussed Section 4(1) (a) and 5 of Hindu Succession Act and observed that a bare perusal of Section 4 would indicate that any custom or usage as part of Hindu Law in force will cease to have effect after the enforcement of Hindu Succession Act with respect to any matter for which provision is made in the Act. If the rule of lineal primogeniture in estate left by decease Mahendrasinhji is customary one, it will certainly cease to have effect. We are fortified in our view by the decision of the Supreme Court rendered in the case of *Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj Pratap Deo and other, AIR 1981 SC 1937*. Section 5 of the said Act stands as an exception to Section 4 of the Act referred to above and inter alia provides that the said Act will not apply to any estate, which descends to a single heir by the life terms of covenant or agreement entered into by the Ruler of any Indian State with the

Government of India or by the terms of any enactment passed before the commencement of this Act.

On the other, learned senior counsel for the respondent has argued that the impugned orders have been passed in accordance with settled law, as the properties of Maharaja Pratap Singh falls in the exception as carved out in Section 5 (ii) of the Hindu Succession Act which states that the Act not applied to any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act.

Reference has been made to a judgment of Hon'ble the Supreme Court of India in a case of ***His Highness Maharaja Pratap Singh vs. Her Highness Maharani Sarojni Devi, 1994(Supp) SCC 734*** wherein separate proceedings in the form of a civil suit which was filed by Maharani Sarojini Devi and the siblings of Maharaja Pratap Singh before the High Court of Himachal Pradesh at Shimla seeking the relief of partition of two properties amongst the list of private properties received by late Pratap Singh and a civil suit for recovery of H. No. 34, Alipur Road, Civil Lines, Delhi also forming the list of private properties filed by Maharaja Pratap Singh before the Delhi High Court were ultimately adjudicated by Hon'ble the Supreme Court of India and held that the erstwhile Princely State of Nabha is governed by the Rule of Primogeniture.

Learned senior counsel for respondent No. 1 while relying upon the above mentioned judgment of Hon'ble the Supreme Court contends that in view of the above mentioned judgment, respondent No. 1 became the sole and absolute owner of the Nabha Estate under the rule of Primogeniture

being the eldest son of Late Maharaja Pratap Singh, the erstwhile ruler of Nabha State.

Learned senior counsel has further stated that pursuant to the demise of Maharaja Pratap Singh on 24.07.1995, an interlocutory application No. 12086/1995 under the principles of Order 22 rule 4 of the Code was filed in Civil Suit No. 75-1975 pending before the High Court of Delhi to bring on record the LR's of defendant No. therein i.e Maharaja Pratap Singh. The petitioner herein (defendant No. 5 in the aforesaid suit, his late mother Smt. Urimilla Devi, his adopted brother Shir Hemant Singh and his sister Smt. Snehlata were duly served in the above application as recorded, vide order dated 13.03.1997 (R-6) and the petitioner, his late mother Smt. Urimilla Devi, his adopted brother Shir Hemant Singh and his sister Smt. Snehlata filed affidavits dated 05.04.1997 (R-7) acknowledging the trite proposition of law that the continuity of the Rule of Primogeniture as prevalent in the family of late Maharaja Pratap Singh of Nabha has been declared and confirmed by the Hon'ble Supreme Court of India.

Learned senior counsel for respondent No. 1 submits that petitioner was in good health both mentally and physically way back in April 1997 at the time when affidavits were signed and sworn by him and now he has concocted a false and fabricated story regarding his ill health with a ulterior view to wriggle out of the aforesaid affidavit signed and filed before Hon'ble Delhi High Court.

Learned senior counsel for respondent No. 1 further states that suit No. 75-1975 (now re-numbered 293-2006) filed by Maharaja Kharak Singh has been dismissed vide judgment dated 19.08.2008 by the learned District Judge, Fast Track Court, Delhi. The judgment dated 19.08.2008 was

assailed by the legal heirs of Maharaja Kharak Singh, which was also dismissal vide judgment dated 16.01.2014. Further the petitioner herein was also arrayed as respondent No. 5 in the said appeal and he had supported the plea of respondent No. 1 herein as recorded vide judgment dated 16.01.2014 (R-9). Thus, the petitioner has unconditionally asserted and accepted that the princely state of Nabha is governed by the Rule of Primogeniture and binds himself to the judgment reported as *1994(Supp) SCC 734* .

In the above said suit No. 75-1975, the a joint written statement dated 17.10.1980 (R-3) was filed by all the defendants including the petitioner who was arrayed as respondent No. 5 wherein he has sworn on affidavit that the Rule of Primogeniture is applicable to the properties as detailed in Schedule F (a) (i) of the plaint.

After hearing learned counsel for the parties and perusing the record with the able assistance of learned counsel, the present revision petition deserves to be dismissed.

In the civil suit No. 75-1975 filed by Maharaja Kharak Singh in Schedule F, the subject matter of the property has been mentioned, which can be read on Page No. 92 of Annexure R-2. This suit was dismissed vide judgment dated 19.08.2008 by the learned District Judge, Fast Track Court, Delhi, which was upheld by Hon'ble Delhi High Court vide judgment dated 16.01.2014 (R-9). The details of the property mentioned in RSA No. 3623/1986, which was compromised between Jagroop Singh and respondent No. 1 was also included in the earlier suit i.e Civil Suit No. 75-1975 filed by Maharaja Kharak Singh. Now the question for consideration what was the stand of the present petitioner wherein he filed a joint written statement dated 17.10.1980 (R-3) in the suit No. 75-1975.

A bare perusal of joint written statement filed by defendants (Including petitioner) shows that in para No. 10, it has been clearly stated that the devolution of these properties were according to the law of Primogeniture which governed the Ruling family of Nabha, which was one of the Phulkian States. Maharaja Ripudaman Singh of Nabha died in 1942 and subsequently merger of the State of Nabha and subsequent legislation passed by the Government of India cannot create a right where no such right existed in the year 1928 when defendant No. 1 became the Ruler of Nabha. Section 5 of the Hindu Succession Act does not apply to the properties of State of Nabha. The customary law in the States of Nabha relating to succession is the same as that of Patiala and Jind. The three States are collectively known as Phulkian States.

After going through the stand taken by the petitioner in the joint written statement, and in view of the judgment of Hon'ble the Supreme Court of India in a case of ***His Highness Maharaja Pratap Singh vs. Her Highness Maharani Sarojni Devi, 1994(Supp) SCC 734***, the revision petition is liable to be dismissed. In para 69 of this judgment, it has been held that “if the Estate is impartible in nature it would continue to be governed by the Rule of Primogeniture and thus, respondent No. 1 became the sole successor in interest to the estate of his late father. The affidavits of Smt. Urmilla Devi, Smt. Snehlata Devi and Himant Singh were neither found to be false nor fabricated nor have they been prepared on any blank papers, upon the death of Maharaja Pratap Singh on 24.07.1995.

Hence, this Court is of the view that the Court below had rightly dismissed the application of the petitioner for being impleaded as party after giving detail reasons as it is not a case where any fraud has been

committed by respondent No. 1. Respondent No. 1 became the sole successor in interest to the estate of his late father by the Rule of Primogeniture, as held by Hon'ble the Supreme Court of India in a case of *His Highness Maharaja Pratap Singh vs. Her Highness Maharani Sarojni Devi, 1994(Supp) SCC 734* .

In view of the discussions made above, the present petition is dismissed being devoid of merits.

24.08.2017

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes