

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

CR No.1706 of 2018 (O&M)

Date of decision : March 15, 2018

Anil Kumar (since deceased) through LRs Petitioner

Versus

Bhagwan Dass and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Arif Quresshi, Advocate for the petitioner.

Mr. Vaibhav Sehgal, Advocate for respondent Nos.1 to 3.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 12.02.2018 passed by learned Addl. District Judge, Ludhiana, in which during the pendency of the appeal, the appellant Anil Kumar died and two sets of legal heirs filed application to bring on record; one set was his wife Saroj Vij and his children Kunal Vij and Reema Vij; the other set was of Nirmala Devi, claiming to be second wife of Anil Kumar Vij, the Learned Addl. District Judge allowed both the sets of the legal heirs to represent the deceased for the purpose of the appeal.

Learned counsel for the petitioner has argued that there is *inter se* dispute between the legal heirs and same should be decided.

The matter was settled by the Full Bench judgment of this Court delivered in case of ***“Mohinder Kaur and another vs Piara Singh***

and others”, *AIR 1981 Punjab and Haryana, 130*, and it was observed as under:

“9. We are , therefore, of the opinion that in essence a decision under Order 22, Rule 5, Civil Procedure Code, is only directed to answers an orderly conduct of the proceedings with a view to avoid the delay in the final decision of the suit till the persons claiming to be the representatives of the deceased party get the question of succession settled through a different suit and such a decision does not put an end to the litigation in that regard. It also does not determine any of the issues in controversy in the suit. Besides this it is obvious that such a proceeding is of a very summary nature against the result of which no appeal is provided for. The grant of an opportunity to lead some sort of evidence in support of the claim of being a legal representative of the deceased party would not in any manner change the nature of the proceedings. In the instant case the brevity of the order (reproduced above) with which the report submitted by the trial Court after enquiry into the matter was accepted, is a clear pointer to the fact that the proceedings resorted to were treated to be of a very summary nature. It is thus manifest that the Civil Procedure Code proceeds upon the view of not imparting any finality to the determination of the question of succession or heirship of the deceased party.

10. In view of the above discussion we are clearly of the opinion that the answer to the above referred to question stated in the opening part of the judgment has to be in the affirmative and we accordingly hold that in no case a decision under Order 22, Rule 5, Civil Procedure Code, would operate as res judicata between

the same parties or their successors in interest or their privies, in a subsequent proceeding, even when the said parties had been provided an opportunity to contest the issue and lead the evidence thereon. With this answer to the question posed, we send back the case to the learned single Judge for decision on merits.”

It comes out that a suit was filed by Anil Kumar for permanent injunction, in which the defendants filed a counter claim for mandatory injunction. The said counter claim was allowed.

I am of the view that the *inter se* dispute between the parties is not being decided and that the legal heirs are allowed to represent the deceased for the limited purpose. Therefore, the legal heirs can get their dispute settled by way of filing separate suit. Therefore, there is no ground to interfere in the impugned order.

As such, the present revision petition is dismissed. Since the main revision petition is dismissed, therefore, the connected application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

March 15, 2018

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Whether speaking / reasoned Yes

Whether Reportable: No