

CR No.357 of 2018

{1}

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

CR No.357 of 2018

Date of decision:19.01.2018

Kaushalya and others

... Petitioners

Vs.

Ajay Kumar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Ashok Kumar Khubbar, Advocate
for the petitioners.

AMIT RAWAL J. (Oral)

The petitioners are aggrieved of the impugned order dated 13.11.2017 (Annexure P-9) whereby, the application moved under Order 1 Rule 10 CPC for impleading the applicants as respondents in case No.1/PR013 titled as Ajay Kumar and others vs. General Public and others, being necessary parties, seeking grant of letter of administration/legal representative in respect of the estate/assets movable and immovable property of late Piare Lal (since deceased), has been dismissed.

Learned counsel for the petitioners submitted that prior to filing of the aforementioned petition, the petition sought probate *vis-a-vis* Will dated 25.07.1962 executed by Piare Lal in favour of his only son Hari Narain which was granted on 04.11.1969 but ultimately was set aside by the then District Judge, Ambala, vide order dated 09.06.1977. The appeal preferred against the aforesaid order, was also dismissed by this Court and

the matter reached upto the Hon'ble Supreme Court vide SLP bearing No.9687 of 2013, which had been dismissed, vide order dated 27.10.2016 but granted the liberty to the petitioner to file application for grant of Letter Of Administration. A copy of the order has been annexed at page 24 to 24-A of the paper book as Annexure P-2.

He further submitted that during the pendency of all these proceedings, LRs of Piare Lal had sold the part of property to the petitioners and therefore, valuable right accrued in their favour which would seriously prejudice the right and interest of the petitioners.

I have heard learned counsel for the petitioners and appraised the paper book.

The facts as noticed above are not in dispute. The grievance of the petitioners apparently appears to be justified but in view of the law laid down by the Hon'ble Supreme Court in **Krishna Kumar Birla Vs. Rajendra Singh Lodha and others 2008(2) R.C.R.(Civil) 835**, wherein, concededly, it has been held that in a petition for probate or letter of administration, the Court cannot adjudicate the title of the property, in other words, it has only to adjudicate regarding execution of Will. The question of title has to be decided in an independent manner, thus, the petitioners, in my view, would have an independent cause of action to lay claim on their title in a competent Court of law but not in the manner and mode as indicated above. For the sake of brevity, relevant paragraphs 69 and 70 of the judgment cited above read as under:-

“69. This Court, thus, categorically opined that while granting a probate, the court would not decide any dispute with regard to title. A separate suit would be maintainable therefor. If probate is granted, they have a remedy in terms of [Section 263](#) of the 1925 Act also.

70. In the recent judgment of [Kanwarjit Singh Dhillon v. Hardayal Singh Dhillon and others](#)[2007 (12) SCALE 282], this court inter alia relying upon [Chiranjilal Shrilal Goenka v. Jasjit Singh and Ors.](#) [(1993) 2 SCC 507] and upon referring to a catena of decisions of the High Court and this Court, held that Probate court does not decide any question of title or of the existence of the property itself.

[In Basanti Devi v. Raviprakash Ramprasad Jaiswal](#) [(2007) 12 SCALE 542], it is stated :

"21. The Probate Court, indisputably, exercises a limited jurisdiction. It is not concerned with the question of title. But if the probate has been granted subject to compliance of the provisions of the Act, an application for revocation would also lie."

No ground for interference is made out in the impugned order, much less, the same cannot be said to have been passed without jurisdiction.

Accordingly, while upholding the order under challenge, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

January 19, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No