

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

1. CR No.4033 of 2015
Date of decision : 23.02.2018

Lakhwinder Singh (deceased) through his LRs

...Petitioners

Versus

Gurcharan Singh and another

...Respondents

2. CR No.4048 of 2015
Date of decision : 23.02.2018

Lakhwinder Singh (deceased) through his LRs

...Petitioners

Versus

Taljinder Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jindal, Advocate for the petitioners.

Mr. J.S. Sodhi, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

By this common order, I shall be disposing of revision petitions bearing CR Nos.4033 and 4048 of 2015, as the counsel agrees that the similar order was passed by the trial Court in two different suits.

The order passed by the learned Additional Civil Judge (Senior Division), Sangrur, directing the impleadment of the legal heirs of

Lakhwinder Singh for the purpose of prosecuting the suit is challenged before this Court.

Since Lakhwinder Singh died, respondent No.2-Manjit Kaur claiming to be the widow of Lakhwinder Singh and otherwise legal heir, on the basis of the Will, filed an application. Defendant No.1 contested the application.

Learned trial Court taking into consideration the facts pleaded in the application as well as the reply, chose a safe course to implead the petitioners who also claim to be the legal heirs of Late Lakhwinder Singh, as well as Manjit Kaur, the alleged widow, to be impleaded as legal heirs of Lakhwinder Singh-plaintiff for the purpose of prosecuting the suit.

Learned counsel for the petitioners has argued that the learned trial Court was in error in refusing to determine the inter se rights of the various legal heirs. He submits that defendant No.1 had contested the status of Manjit Kaur as a widow and had also challenged the execution of the Will in her favour.

Learned counsel has referred to Order 22 Rule 5 CPC to contend that it was the duty of the Court to first determine the inter se rights between the various legal heirs.

In the considered opinion of this Court, there is basic fallacy in the arguments of the learned counsel for the petitioners.

Learned trial Court has correctly chosen to implead all the legal heirs for the purpose of prosecuting the suit so as to avoid the delay in the decision of the case. It is not in dispute that the petitioners never filed any application for being impleaded as a party. The application was filed by

only Manjit Kaur, however, the Court allowed all the legal heirs to be brought on record for the purpose of prosecuting the suit.

Learned counsel for the petitioners has relied upon the judgment passed by the Hon'ble Supreme Court in *(2015) 1 RCR (Civil) 223, Karedla Parthasaradhi Vs. Gangula Ramanamma (D) Through LRs and others.*

This Court has with the help of the learned counsel for the petitioners gone through the judgment passed by Hon'ble the Supreme Court. The aforesaid judgment would not apply in the present case as noticed petitioners never filed any application claiming to be the legal heirs. Only Manjit Kaur filed an application claiming to be widow and also claimed succession on the basis of the testamentary document. Still, the learned trial Court ordered all the legal heirs to be brought on record. The petitioners have filed revision petition without even choosing to contest the claim made by Smt. Manjit Kaur before the trial Court.

The Full Bench of this Court in the case reported as *AIR 1981, Punjab and Haryana, 130, Mohinder Kaur and another Vs. Para Singh and others*, have clearly laid down that in no case a decision under Order 22 Rule 5 CPC would operate as res judicata between the same parties or their successors-in-interest in a subsequent proceedings.

Hon'ble the Full Bench has noticed that the essence of decision under Order 22 Rule 5 CPC is only for orderly conduct of the proceedings with a view to avoid the delay in the final decision of the suit. The conclusion arrived at by the Hon'ble Full Bench, is extracted 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.”

Such being the position, this Court does not find any good ground to interfere with the order passed by the trial Court.

Hence, both the revision petitions are dismissed.

23.02.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No