

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

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**CR no.2706 of 2014 (O&M)
Date of Decision: 15.03.2019**

Jangir Singh

...Petitioner

Vs.

General Public and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. M.S. Rana, Advocate,
for the petitioner.

Ms. Abha Rathore, Advocate,
for respondent no.11.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order passed by the learned Additional District Judge, dated 28.02.2014, by which though an application filed by the petitioner seeking that Probate case no.2 of 2010 be revived (which had earlier been adjourned *sine die* vide an order dated 15.09.2011), was allowed, however, the probate case itself was dismissed as not being maintainable.

A perusal of the impugned order shows that the reason for dismissal was that the executor of the will, the probate of which is sought (one Charanjeet Singh Lekhi), was not proved to have actually died, he and his family allegedly having gone missing in the year 1984.

On October 05, 2018, this Court had passed the following order in the present petition:-

“Learned counsel for the petitioner has produced an order of the High Court of Delhi dated 16.04.2010, passed in Civil Suit (OS) 1511/1991, from which he points to paragraph 7, wherein it is recorded as

follows:-

“7. Defendant no.2, Charanjeet Singh Rekhi, who has settled the matter with the plaintiff, expired on 10th October, 2006 and his legal representatives have been impleaded vide order dated 27th March, 2008. “

He therefore submits that respondent no.9 herein, i.e. Charanjeet Singh Rikhi, has died and consequently, the will which the petitioner sought to be probated can be probated and consequently the impugned order needs to be set aside.

On query, he submits that the said civil suit is still pending in the Delhi High Court.

Still further, he submits that the petitioner has also instituted a suit at Gurugram, seeking that 'civil death' of Charanjeet Singh Rikhi be declared, as his whereabouts are not known for the last more than 7 years.

As regards the legal heirs of Charanjeet Singh Rikhi, who are referred to in the order of the Delhi High Court, he submits that he was not supplied the certified copy of that order, in view of the fact that the petitioner is not a party to that suit.

Ms. Abha Rathore, learned counsel for respondent no.11, would take instructions as to whether the said respondent, i.e. Harish Ahuja, is a party to the civil suit of 1991 stated to be pending at the Delhi High Court.

If so, all relevant orders of the Delhi High Court would be placed on record.

If learned counsel for the petitioner wishes to place on record the orders passed in the civil suit instituted by him at Gurugram, he may do so.

Adjourned to 16.11.2018.”

Mrs. Rathore, learned counsel for respondent no.11, submits that the said suit is still pending before the Delhi High Court though an application filed by the present petitioner under Order 1 Rule 10 of the CPC in that case had been dismissed in the year 2011, with that order having become final.

It is to be noticed that respondent no.11 is a person who has filed a suit in the High Court of Delhi seeking specific performance of an agreement contended to have been entered into between him and Charanjeet Singh Lekhi and his wife Manjeet Kaur on 27.04.1989.

Learned counsel for the petitioner on the other hand, submits that actually the agreement was contended to have been entered into with the attorney of Charanjeet Singh Lekhi and his wife Manjeet Kaur.

Be that as it may, the order impugned in the present petition having given reasoning that Charanjeet Singh Lekhi has not been proved to have died, either by way of any death certificate produced before that court, or by way of any civil court decree declaring him to have 'suffered a civil death', I see no reason to entertain this petition, for the simple reason that obviously probate of a will the executor of which is not proved to have died, cannot be granted.

Learned counsel for the petitioner submits that the petitioner has in fact filed a civil suit in Gurgaon seeking a declaration that Charanjit Singh having remained missing for more than 30 years now, he be declared to be no longer living.

Naturally, if he succeeds in that suit, he would be at liberty to move appropriate proceedings for probate of the will, though the court seized of those proceedings at that stage would satisfy itself as to whether there are any other natural legal heirs of Charanjeet Singh Lekhi (if he indeed has died), who would need to be impleaded as necessary parties to such proceedings.

With the aforesaid observations, this petition is dismissed.

15.03.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes