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

**CR-764-2018 (O&M)
Date of decision : 21.05.2019**

Paras Jain

... Petitioner

Versus

Bimal Parshad Jain and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sachin Gupta Ladwa, Advocate for
Ms. Tanvi Jain, Advocate
for the petitioner.

Mr. Amandeep Singh, Advocate for
Mr. S.K. Aggarwal, Advocate
for respondent Nos.1 and 2.

Mr. Aayush Goyal, Advocate for
Mr. Vishal Aggarwal, Advocate
for respondent No.3.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order, whereby the application of the petitioner-Paras Jain, for impleadment as legal representative of the plaintiff-Magan Mala Jain, on the basis of the registered Will dated 02.03.2016, has been dismissed.

The plaintiff-Magan Mala Jain instituted the suit against Bimal Parshad Jain, father of the applicant/petitioner, for recovery of ₹ 1,25,000/- along with interest @ 18% per annum, w.e.f. December 2010, on various grounds. During the pendency of the aforementioned suit, she died and left behind two children, namely, Mudit Kumar Jain and Alok Kumar Jain and

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husband-Bimal Parshad Jain. The aforementioned persons were allowed to be impleaded, in an application vide order dated 04.09.2017. The petitioner moved an application under Order 1 Rule 10 of CPC for impleadment on the basis of the registered Will, which has been declined.

Mr. Sachin Gupta Ladwa, learned counsel appearing on behalf of the petitioner submitted that in such a scenario, all the legal representatives should be brought on record subject to a rider that the petitioner-applicant would be entitled to seek probate or declaratory decree qua the Will. In support of his contentions, relied upon the *ratio decidendi* culled out by Hon'ble the Supreme Court in **“Suresh Kumar Bansal V/s Krishna Bansal and another” 2010(1) RCR (Civil) 839, .**

Per contra, learned counsel appearing on behalf of the respondents submitted that once the order dated 04.09.2017 remained unchallenged, the application under Order 1 Rule 10 of CPC could not have been entertained for impleadment as legal representatives. The petitioner should have moved the application much before as the plaintiff died on 29.05.2017. The petitioner/applicant has an independent remedy, thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Ladwa.

The law with regard to the impleadment of the natural legal representatives and the legal representatives deriving the interest from the Will, is no longer *res integra* in view of the *ratio decidendi* culled out in **Suresh Kumar Bansal's case** (supra). Para No.9 of the judgment reads as under:-

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"9. Having heard the learned counsel for the parties and after going through the impugned order as well as the application for substitution of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff, we are of the view that the impugned order of the High Court is liable to be interfered with and the application for impleadment filed at the instance of the appellant on the basis of the Will alleged to have been executed by the deceased plaintiff must be allowed and the appellant must be impleaded in the suit along with the natural heirs and legal representatives of the deceased plaintiff, subject to grant of probate by a competent court of law. It is true that in the impugned order, the High Court has made it clear that the finding regarding genuineness of the Will was made only for the purpose of deciding the application for impleadment filed at the instance of the appellant. But, in our view, if at this stage, the appellant is not permitted to be impleaded and in the event an order of eviction is passed ultimately against the tenant/respondent, the tenants will be evicted by the natural heirs and legal representatives of the deceased plaintiff who thereby shall take possession of the suit premises, but if ultimately the probate of the alleged Will of the deceased plaintiff is granted by the competent court of law, the suit property would devolve on the appellant but not on the natural heirs and legal representative of the deceased. Therefore, in the event of grant of probate in favour of the appellant, he has to take legal proceeding against the natural heirs and legal representatives of the deceased plaintiff for recovery of possession of the suit premises from them which would involve not only huge expenses but also considerable time would be spent to get the suit premises recovered from the natural heirs and legal representatives of the deceased plaintiff. On the other hand, if the appellant is allowed to carry on the eviction petition along with the natural heirs and legal representatives of the deceased plaintiff, in that case decree

can be passed for eviction of the tenant when the appellant shall not be entitled to get possession from the tenants in respect of the suit premises until the probate in question is granted and produced before the Court. Therefore, ultimately if the court grants a decree for eviction of the tenant/respondent from the suit premises, such decree shall be passed subject to production of probate by the appellant. That apart, since the question of genuineness of the will cannot be conclusively gone into by the court in a proceeding for substitution in a pending eviction suit and in view of the fact that an application was made at the instance of the appellant for impleadment as a legal representative of the deceased on the basis of the Will which is yet to be probated, in our view, best course open to the court is to allow impleadment of the appellant in the eviction proceeding, thereby permitting him to proceed with the eviction suit along with natural heirs and legal representatives of the deceased plaintiff, but in case the decree is to be passed for eviction of the tenant from the suit premises such eviction decree shall be subject to the grant of probate of the Will alleged to have been executed by the deceased plaintiff. At the same time, it is clear that in case the Will of the deceased plaintiff is found not to be genuine and probate is not granted, the court shall proceed to grant the eviction decree in favour of the respondent no.1 and not in favour of the appellant. It is well settled that in the event, the Will is found to be genuine and probate is granted, only the appellant would be entitled to get an order of eviction of the tenants/respondents from the suit premises excluding the claim of the natural heirs and legal representatives of the deceased plaintiff. The Code of Civil Procedure enjoins various provisions only for the purpose of avoiding multiplicity of proceedings and for adjudicating of related disputes in the same proceedings, the parties cannot be driven to different Courts or to institute different proceedings touching on

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different facets of the same major issue. Such a course of action will result in conflicting judgments and instead of resolving the disputes, they would end up in creation of confusion and conflict. It is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order XXII Rule 5 of the Code of Civil Procedure is only for the purposes of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the Will of the deceased plaintiff so that all the legal representatives namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit. In view of our discussions made hereinabove, we are, therefore, of the view that the High Court as well as the trial Court were not at all justified in rejecting the application for impleadment filed at the instance of the appellant based on the alleged Will of the deceased plaintiff at this stage of the proceedings."

Since the Court below seized of the controversy with regard to the recovery, would be able to adjudicate the Will or hold an enquiry under Order 22 Rule 5 of CPC, the impleadment of the applicant/petitioner should be on a condition of seeking either a declaratory decree or probate.

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Keeping in view the aforementioned facts, the impugned order, under challenge, is hereby set aside being fallacious and infirm and the petitioner is permitted to be impleaded as legal representative only for the purpose of pursuing the suit, but entitled to take the benefit only on obtaining probate or declaratory decree qua the registered Will, aforementioned.

With the aforesaid observations, the present revision petition stands disposed of.

21.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**