

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

**CR 2367 of 2019 (O&M)**

**Date of Decision: February 17, 2022**

Manav Pabbi and another ...Petitioners  
Versus  
Krisha Kishore Sahnian and others  
... Respondents

**CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. Rahul Rampal, Advocate  
for the petitioners.

Mr. Aayush Gupta, Advocate  
for the respondent No. 1.

**FATEH DEEP SINGH, J. (Oral)**

In a petition under Section 276 of the Indian Succession Act, 1925 ( in short, '**the Act**') an application under Order 6 Rule 17 CPC seeking amendment of the petition was moved by the applicant/petitioner Krisha Kishore Sahnian. The Court of learned Additional District Judge Ludhiana vide impugned order dated 29.03.2019 allowed the application for amendment of the petition to one under Section 278 of the Act.

Aggrieved over this very order, the opposite side the present petitioners have come up in this revision.

Heard Mr. Rahul Rampal, Advocate for the petitioners and Mr. Aayush Gupta, Advocate for respondent No. 1 and perused the record.

Section 276 of the Act provides for grant of probate to a Will. Section 278 of the Act enables issuance of letter of administration in favour of the parties. In a similar situation, the Hon'ble Supreme Court in **Shambhu Prasad Agarwal and others Vs. Bhol Ram Agarwal 2000(9) SCC 714** dwelling on the question if such an amendment can be allowed or not has clearly held as follows:-

*“We find that it is not disputed that Matadin Agarwal was a legatee under the Will. It is true that Matadin Agarwal ought to have applied for issue of letters of administration and not for probate. However, this did not debar his heirs to get the probate petition*

*amended. The trial court rejected both the applications of the appellants on the ground that since the probate petition filed by the legatee related to his personal right, therefore, no right accrued to the appellants for their substitution in his place. This view, according to us, is not correct. Matadin Agarwal, as stated above, was a legatee and not an executor under the Will. It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this not applicable where the heirs of a legatee apply for issue of letters of administration. It is not disputed that today the appellants can file a petition for issue of letter of administration. Since considerable time has elapsed, we fee that the interest of justice demands that the proceedings should come to an end as early as possible and we should not dismiss*

*this appeal merely on highly technical ground”.*

More so, a Division Bench view of Calcutta High Court in **Balai Lall Banerjee and others Vs. Debaki Kumar Ganguly and others 1984 AIR (Calcutta) 16** has held that proceedings under the Act are not strictly speaking a civil suit and that proceedings for grant of probate and letter of administration cannot follow within straightjacket of a suit and therefore what prejudice is likely to be caused to the opposite side over such an amendment which is only to rectify the Section under which the invocation has been made before the Court. The Courts in dispensation of justice are not supposed to fall prey to such hypertechnicalities and, therefore, the law cited by the appellants **Food Corporation of India Vs. M/s Krishna Rice & General Mills 1990(2) PLR 383; Chappidi Satyanarayanamma and another Vs. Chappidi Dhanalkshmi and others 2015(3) CiCC 262; Hari Singh Vs. Dalip Singh 2002(3) R.C.R. (Civil) 49; Harbilas Vs. Balbir Singh 2017(1)**

**R.C.R. (Civil) 662; Mukesh Vs. State, (Delhi) and others, 2018(246) DLT 6 and Vishavjit Singh Vs. Stat of Punjab and others, LPA 300 of 1986 decided on 26.04.2014** are not factually applicable. It is not disputed that the original petitioners have laid their claim over the estate of the deceased on the basis of a Will and so is the purpose of grant of letter of administration though the procedure are bit different and therefore to the mind of this court none of the claimants be it the executors or a legatee are likely to have any disadvantage from such an amendment and rather to establish a legal right of the parties, the Courts can in appropriate cases mould the final relief as deem it appropriate in the ends of justice. The plea that is sought to be raised that a petition for probate cannot not be converted into one for grant of letter of administration at this stage could not be convinced by the counsel for the appellant by any logical and legal reasons. What is the moot point before the Court is the very legality and enforceability of dispensation

made by the deceased and it is highly inconsequential or immaterial under what provisions of law a party has come about.

The learned lower Court has dealt at depth and has come to a very justifiable conclusion and this Court did not find any illegality and perversity in the impugned finding which needs to be upheld and accordingly the present revision being without any merits stands dismissed.

February 17, 2022  
amit rana

(FATEH DEEP SINGH)  
JUDGE

|                           |   |        |
|---------------------------|---|--------|
| Whether reasoned/speaking | : | Yes/No |
| Whether reportable        | : | Yes/No |