

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

CR-3294-2021 (O&M)

Date of Decision: February 02, 2022

Andrea Aftab Pauro and another

...Petitioners

VERSUS

Shivinder Pal Singh Maan and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.S.S.Salar, Advocate
for the petitioners.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

Challenge in the present revision petition is to the order dated 12.10.2021 (Annexure P-10), whereby the lower Court allowed the application for impleadment of legal representatives of plaintiff No.5 Alape Kaur (deceased) and to set aside the order, only to the extent of impleadment of Giuseppe Pauro as one of the legal representative of Alape Kaur.

During the pendency of the civil suit for declaration and injunction, the plaintiffs filed an application for impleading LR's of deceased Alape Kaur-plaintiff No.5, who had died during the pendency of the suit. In the said application, it had been averred that Alape Kaur had executed a registered Will dated 14.08.2019, in favour of her son Andrea

Aftab Pauro and daughter Amrita Pauro and both of them, have already

been impleaded as plaintiffs No.6 and 7. Also, it has been averred that Alape Kaur was legally separated vide order dated 16.07.1993 from her husband and therefore, he has no connection with deceased Alape Kaur.

Reply to the said application was filed, wherein, it has been averred that the husband of Alape Kaur was necessary party.

After hearing the counsel for the parties concerned, the lower Court, vide impugned order dated 12.10.2021 had allowed the application for impleadment of LRs of Alape Kaur-plaintiff No.5 (since deceased). Besides impleading, Andrea Aftab Pauro and Amrita Pauro, who are son and daughter of deceased Alape Kaur, the lower Court had also impleaded Giuseppe Pauro-husband of deceased Alape Kaur (plaintiff No.5), as legal heir.

Feeling aggrieved by the aforesaid order to the extent of impleadment of Giuseppe Pauro as legal heir of plaintiff No.5-Alape Kaur, the children of Alape Kaur (since deceased) have filed the present revision petition.

At the very outset, it is pertinent to mention that plaintiffs had filed an application for impleading LRs of Alape Kaur, on the basis of the Will dated 14.08.2019, executed by the deceased in favour of her children, who are petitioners in the present petition. The copy of the Will has been placed on record as Annexure P-5. Even though, in paragraph 2 of the Will, it is mentioned that deceased was married to Giuseppe Pauro but however, she had further stated about herself to have legally separated from Giuseppe Pauro. Nowhere, she had stated about having taken divorce. Attention is drawn to the order dated 16.07.1993, which is placed on record as Annexure

District Judge, Delhi in the petition filed under Section 28(1) of the Special Marriage Act, but however, in the order, it was observed as herein given:-

4. The marriage between the parties cannot be dissolve straightway in view of the provisions of Section 28(2) of the Special Marriage Act. Therefore, the records be consigned and petitioners are advised to patch up their differences and try to live together as husband and wife. In case they are unable to do so, then, they may file their second joint petition for dissolution of their marriage within the prescribed period.”

As such, it is evident that marriage, as such, was not dissolved by way of decree of divorce, vide abovesaid order. However, the parties were living separately. Annexure P-9 is the order passed by the Court of Padova, which reveals that there was litigation between Alape Kaur and her husband Giuseppe Pauro and the consensual separation was approved, meaning thereby, that they were legally separated. Also, in the Will, in paragraph 8, it is specifically mentioned by Alape Kaur that she has estranged relations with her husband and is legally separated. In the light of the same, she had bequeathed her property in favour of her son and daughter, who are present petitioners.

Learned lower Court had wrongly observed that in the Will, there is mention of the deceased to have got divorce from her husband vide judgment and decree dated 16.07.1993. It is not so mentioned. Even in the Will, there is mention of legal separation and also in the application filed, for impleading the LRs, the words used are about the deceased to have been legally separated from her husband. The Will is in favour of the children. The impleading of LRs, during the pendency of the suit, is only for the purposes of pursuing the litigation. Thus, the Will, as such, for the limited purpose, can be taken into consideration.

In the light the observations aforesaid, the impugned order dated 12.10.2021 is partly set aside and only present petitioners, who are son and daughter of deceased, on the basis of the Will, are allowed to be impleaded as LR's of deceased Alape Kaur, only for the limited purposes of pursuing the suit, in which the present application for impleading of LR's has been filed.

The present revision petition stands allowed accordingly.

February 02, 2022
Vgulati/sonu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No