

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

109

CR-1735-2016

Date of decision: 16.11.2023

SHASHI GUPTA (DECEASED) THROUGH LR**..Petitioner****Versus****STATE OF PUNJAB & ORS****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. R.D. Bawa, Advocate
Mr. Samuel Gill, Advocate
and Mr. Randhir Bawa, Advocate
for the petitioner.

Mr. Vikas Arora, AAG, Punjab.

ANIL KSHETARPAL, J(Oral)

1. The Executing Court has refused to implement the decree on the ground that the decree holder namely late Smt. Shashi Gupta has died issueless and the petitioner namely Sh. Vinod Gupta, her brother claims the property on the basis of a Will executed by late Smt. Shashi Gupta. The correctness of the aforesaid order has been challenged in this revision petition.

2. Smt. Shashi Gupta was working as a mathematics mistress in the Government School run under the aegis of Punjab Government. On 19.04.2003, the suit filed by her was decreed to the following effect:-

“It is ordered that the suit of the plaintiff for declaration is decreed with costs and a decree for declaration is passed in favour of the plaintiff to the effect that she is entitled to get her pay fixed in the revised pay scale sanctioned by the Punjab Govt. w.e.f. 1.1.1978 and from 1.1.1986 thereafter of future for the post of Mistress after granting all the due annual grade increments and consequential benefits with arrears and interest at the rate of 12% p.a. She is also entitled to the pay illegally

withheld for the period from October 1973 to 2.2.1975 with interest at the rate of 12% p.a. The defendants are further directed to complete service book of the plaintiff and put her at the right place in the seniority list. Decree sheet be prepared and file be consigned.”

3. The correctness of the aforesaid decree was upheld in appeal by the Appellate Court vide judgment dated 28.02.2004. She (decree holder) filed the execution petition. During the pendency of the execution petition, late Smt. Shashi Gupta died on 21.12.2009. Sh. Vinod Gupta filed an application under Order XXII Rule 3 of the Code of Civil Procedure, 1908, to bring him on record on the basis of a registered Will executed by late Smt. Shashi Gupta on 02.07.2009 in his favour. However, the Executing Court as noticed above, dismissed the execution petition on the ground that the Will propounded by the petitioner is required to be proved in accordance with law and the same is not the subject matter of the execution petition. Moreover, Sh. Vinod Gupta is not one of the legal heir because there is no nomination made in his favour.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the petitioner contends that pursuant to the decree passed by the Civil Court, late Smt. Shashi Gupta became entitled to certain financial benefits. She could bequeath the aforesaid property by a registered Will. He submits that the Executing Court could call upon the petitioner to prove the Will in accordance to the provisions of the Indian Evidence Act, 1872, however, the Executing Court should not have dismissed the execution petition on that ground solely.

6. On the other hand, the learned counsel representing the State of Punjab contends that the Will was never brought to the notice of the department and therefore, the department is not liable to pay the aforesaid amount.

7. This Court has considered the submissions of the learned counsel representing the parties.

8. It is unfortunate that the Executing Court has failed to understand the basic concept of estate left behind by the deceased, which can include immovable as well as movable property. In this case, late Smt. Shashi Gupta left behind an executable decree, which constituted her estate. She could bequeath the same by executing a testamentary disposition i.e. Will. The Executing Court has committed an error while observing that such Will is required to be proved and the same cannot be permitted to be proved in execution petition. The purpose and object of the Executing Court is to implement the decree passed by the Court of competent jurisdiction. It can take all steps for the implementation of the decree passed. If the Court had any doubt about the genuineness of the Will, the Executing Court could call upon the petitioner to prove the Will by leading cogent evidence, however, in this case, the Presiding Judge of the Executing Court has committed a manifest error while passing the order of dismissal. There is also no substance in the argument of the learned counsel representing the State of Punjab that the aforesaid Will is not in the knowledge of the department. Whereas, on account of the decree passed by the Civil Court, late Smt. Shashi Gupta became entitled to the financial benefits, and those benefits constituted the accrued right and those rights consequently, became an

estate, and that estate could have been bequeathed by a testamentary disposition.

9. Keeping in view the aforesaid facts and discussion, the impugned order passed by the Executing Court on 17.01.2015, is set aside. The Executing Court is requested to proceed with the execution petition in accordance with the provisions of law.

10. The parties through their learned counsel are directed to appear before the Executing Court on 08.12.2023.

11. Disposed of accordingly.

12. All the pending miscellaneous applications, if any, are also disposed of.

November 16th, 2023

(ANIL KSHETARPAL)
JUDGE

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