

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(118)

CR-382-2023

Date of Decision : January 20, 2023

Gulsher and others

.. Petitioners

Versus

Shamshad Ahmed (deceased) through his LR Parween and another

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mukul Aggarwal, Advocate, for the petitioners.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present civil revision petition, one Shamshad Ahmed got a decree in his favour dated 05.10.2019. In order to execute the said decree, said Shamshad Ahmed filed an Execution Petition No.168 of 2019 which was in respect of a house and for recovery of the cost.

During the pendency of the said execution petition, on 14.05.2020, Shamshad Ahmed died. After which date, his wife namely Parveen @ Nahid moved an application to be impleaded as legal heir of the deceased in the execution proceedings. On 13.08.2021, said application filed by the wife of Shamshad Ahmed was allowed and she was impleaded as a legal heir in the said execution proceedings.

Thereafter, petitioners, who are the brothers of Shamshad Ahmed later on filed an application that there is an unregistered hand written 'Will' of Shamshad Ahmed dated 05.01.2020 according to which, Shamshad Ahmed had stated that he had a decree in his favour for which he filed an execution and in case, he dies before the execution of the said

decree, the petitioners should get the sale deed executed through the Court.

On the basis of said unregistered Will dated 05.01.2020, an application was moved to treat the petitioners as legal heirs instead of the wife of the deceased Shamshad Ahmed. The said objections have been dealt with by the Court below and vide order dated 21.12.2022, the said objections have been dismissed that the benefit being claimed by the petitioners is on the basis of unregistered Will, which is yet to be proved and as there is no probate proceedings initiated qua the alleged Will even after a period of more than two and half years of the death of Shamshad Ahmed, petitioners are not entitled for any benefit of the alleged Will purportedly to have been executed on 05.01.2020 and hence, cannot be treated as legal heirs of deceased Shamshad Ahmed at this stage. The said order is under challenge in the present civil revision petition.

Learned counsel for the petitioners argues that in the present case, the wife of the deceased Shamshad Ahmed has wrongly been impleaded as a legal heir as the said order dated 13.08.2021 has been passed without noticing the factum of the unregistered will dated 05.01.2020 which is in the favour of the petitioners. Learned counsel for the petitioners submits that once a dispute arises qua the legal heirs, the same should have been dealt with in accordance with Order 22 Rule 5 of the Code of Civil Procedure so as to hold an enquiry and thereafter decide the execution proceedings.

I have heard learned counsel for the petitioners and have gone through the record with his able assistance.

Decree-holder Shamshad Ahmed had filed execution petition for the execution of the decree dated 05.10.2019. It is a conceded fact that

as of now, the said alleged 'Will' dated 05.01.2020 has not been proved. The said unregistered 'Will' was also not brought in operation by the alleged beneficiaries by getting a probate in their favour. The trial Court has rightly concluded that keeping in view the fact that as per the petitioners even, they were given the right to contest the execution petition after the death of the decree-holder but they never approached the Executing Court to be impleaded as legal heir and it was only after one year of passing of the order dated 13.08.2021 by which the wife of the decree-holder was impleaded as legal heir, the present application was filed and that too without there being any probate, which fact creates a doubt.

Learned counsel for the petitioners conceded before this Court that no proceedings were ever initiated by the petitioners qua the execution even upto the date of filing the application in question.

That being so, no infirmity is found in the order passed by the trial Court that till the probate of the said 'Will' is obtained, the objections being raised by the petitioners qua the execution cannot be entertained, hence, the order impugned cannot be faulted with.

Further, the question with regard to the Order 22 Rule 5 of the CPC, in the present case, the wife of the decree-holder had already been brought on record as legal representative. Once, the legal heir has already been brought on record and concededly at that time, no objections were raised by the petitioners despite having knowledge of the execution petition, arguments being raised cannot be accepted that the Court should have again started an enquiry to find out the admissible legal representative under Order 22 Rule 5 of the CPC.

No other point has been raised.

Keeping in view the above, no ground is made out for any interference by this Court.

Dismissed.

January 20, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes