

129 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6479-2019 (O&M)

Date of decision: 05.09.2023

Rajesh Ahluwalia

..Petitioner

Versus

Ajesh Kumar and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Robin Gill, Advocate for the petitioner

Mr. Sanjeev Kumar Aggarwal, Advocate
for respondent no.1 and 2

Mr. Pankaj Bali, Advocate for
Mr. Parveen Sharma, Advocate for respondent no.4

ANIL KSHETARPAL, J (Oral)

1. Through this revision petition filed under Article 227 of the Constitution of India, the petitioner (defendant no.1 in the pending suit) has assailed the correctness of the order passed by the trial court, while declining his prayer for treating issue no.1 as the preliminary issue.

Issue no.1 is extracted as under:-

“1) Whether the plaintiffs are preferential natural legal heirs of the deceased Narinder Kumar in the presence of defendant no.3 and have locus standi to file and maintain the present suit? OPP.”

2. Learned counsel representing the petitioner, while referring to the pedigree table reproduced in para 1 of the plaint, contends that the suit filed by the plaintiffs will not be maintainable as the Will executed by Sh.Narinder Kumar in favour of Sh.Rajesh Ahluwalia (petitioner herein) has never been challenged and in any case, even if the Will is

executed, Sh.Krishan Kumar Ahluwalia, being the preferential class II heir, would succeed to the property. Therefore, the plaintiffs would not get any share in the property.

3. For treating the issue as a preliminary issue, the parameters are laid down in Order XIV of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

4. Keeping in view the aforesaid facts, the revision petition is disposed of, without expressing any opinion on the merits of the case with liberty to the petitioner to file an application under Order VII Rule 11 of CPC, which if filed, shall be decided within a period of two months.

5. Learned counsel representing the respondents has no objection to the aforesaid liberty.

6. Disposed of.

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

05.09.2023

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE