

[117] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-459-2023

Date of Decision :14.03.2023

Indu Aggarwal and others ...Petitioners

versus

Madhu Mittal and othersRespondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Kunal Mulwani, Advocate *with*
Mr. Vikas Thakur & Mr. Ritwik Garg, Advocates
for the petitioners.

Mr. Deepak Thapar, Advocate for respondent No.1.

B.S. Walia, J. (Oral)

[1] Challenge in the instant petition is to order (Annexure P-5) dated 17.11.2022 passed by the learned Civil Judge (Senior Division), Rohtak vide which application filed by the petitioner-defendant Nos.1, 2 and 5 for stay of proceedings of the subsequent suit filed by the respondents-plaintiffs, till disposal of the petition filed by the petitioners-defendants for probate of the Will, was dismissed.

[2] Brief facts of the case leading to the filing of the instant petition are that probate petition was filed by petitioner No.3/defendant No.5 *qua* the Will executed by Shri Bhaskar Gupta before Hon'ble the High Court of Uttarkhand at Nainital in case titled as 'Ashok AggarwalversusVidhu Jindal and others'. Proceedings in the aforesaid probate petition are pending adjudication. In the meantime, respondent No.1-plaintiff, filed a civil suit for declaration with consequential relief of permanent injunction and mandatory injunction in the Court of the learned

Civil Judge (Senior Division), Rohtak, with the following prayer:-

“ It is thus most respectfully prayed that a decree for declaration to the effect that the (i) alleged unregistered WILL dated 28.06.2019 and (ii) the alleged Will allegedly executed on 26.06.2006 and allegedly registered on 30.06.2006 with the O/o Sub Registrar, Rohtak allegedly executed by Sh. Bhaskar Gupta are illegal, null and void and not binding on the rights of the plaintiff and as such the plaintiff is not bound, by the same and that the plaintiff is joint owner in possession of the suit properties to the extent of 1/5 share and a decree for permanent injunction restraining the defendants from alienating the suit properties detailed in para No.2 of the plaint and from changing the nature of the suit properties or creating third party interest or disposing of the same in any manner may kindly be passed in favour of plaintiff against the defendant with costs.”

[3] An application was filed in the aforesaid civil suit by the petitioners i.e. defendant Nos.1, 2 & 5 under Order 7 Rule 11 CPC and Order 1 Rule 10(2) CPC with the prayer in the alternative, that if the application under Order 7 Rule 11 CPC did not succeed, then the proceedings in the civil suit be stayed by invoking the provision of Section 10 CPC till the disposal of the probate petition.

[4] Vide order (Annexure P-5) dated 17.11.2022, the learned Civil Judge (Senior Division), Rohtak, dismissed the application for stay of the suit during the pendency of the probate proceedings while allowing the withdrawal of the application under Order 7 Rule 11 CPC in the light of decision in 'Kanwarjit Singh Dhillon versus Hardyal Singh Dhillon and others', Civil Appeal No.4890 of 2007, decided on 12.10.2007, 'Krishna Kumar Birla versus Rajendra Singh Lodha and others', 2008(2) RCR

452/2019 and CM Appl. 12663/2019, decided on 31.10.2019, 'Delhi Development Authority versus Vijaya C. Gurshaney and others', Civil Appeal No.34 of 1995 and 'Joginder Singh and others versus Balwinder Kaur and others', 2012(1) RCR (Civil) 897 which, inter alia are on the point that the Probate Court can only decide the question of genuineness of Will and not any question of title or of the existence of the property itself, that the testamentary Court while granting probate or letters of administration does not even consider the motive behind execution of a testamentary instrument and is only concerned with finding out whether or not the testator executed the testamentary instrument of his free will, that grant of probate or letters of administration does not confer title to property but merely enables administration of the estate of the deceased. The learned trial court held that it is always open to a person to dispute title even though probate or letters of administration have been granted and the matter directly and substantially in issue in both the proceedings i.e. in the probate proceedings (before Hon'ble the Uttarkhand High Court at Nainital) and the issue in the civil suit in case titled as 'Madhu Mittal versus Smt. Indu Aggarwal and others' pending before the Civil Judge (Senior Division), Rohtak was not the same.

[5] Learned counsel for the petitioners vehemently contends that the aforementioned finding by the learned Civil Judge (Senior Division), Rohtak, is contrary to the record, as perusal of the prayer clause in the civil suit reveals that the suit is for a declaration that

(i) alleged unregistered WILL dated 28.06.2019 and

(ii) alleged Will allegedly executed on 26.06.2006 and allegedly registered on 30.06.2006 with the O/o Sub Registrar, Rohtak allegedly

on the rights of the plaintiff and as such the plaintiff was not bound by the same and further that the plaintiff was joint owner in possession of the suit properties to the extent of 1/5 share.

[6] Learned counsel contends that it is not the case of the plaintiffs that Shri Bhaskar Gupta, the alleged testator was not the owner of the property in question. The grievance of the respondents-plaintiffs in the civil suit is that the Will executed by said Shri Bhaskar Gutpa was illegal, null and void and not binding on the rights of the plaintiff. Learned counsel contends that the question whether the Will was legal, genuine, can only be decided by the Probate Court, therefore, in view of the genuineness of the Will being the subject-matter of the probate proceedings, the said issue could not be gone into by the learned Civil Court.

[7] Despite query, learned counsel for respondent No.1-plaintiff has not been able to point out from the plaint or otherwise a position contrary to the submission made by learned counsel for the petitioners.

[8] Accordingly, in view of the decision in **Kanwarjit Singh Dhillon's case (Supra)**, **'Krishna Kumar Birla's case (Supra)**, and **'Delhi Development Authority's case (Supra)** of the Probate Court being the only competent Court to decide genuineness of the Will, the civil suit filed by respondent No.1-plaintiff, challenging the genuineness of the Will is liable to be stayed till the decision by Hon'ble the Uttarkhand High Court at Nainital in the probate proceedings initiated by petitioner No.3.

[9] In view of the position noted above, impugned order(Annexure P-5) dated 17.11.2022 is set aside. Prayer for stay made in the application before the learned trial court in the alternative is allowed. Proceedings in

probate proceedings by Hon’ble the Uttarkhand High Court at Nainital in case titled as ‘Ashok AggarwalversusVidhu Jindal and others’

[10] Petition *allowed* as above.

(B.S. Walia)
Judge

14.03.2023
'Rajneesh'

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