

115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6001-2015(O&M)
Date of decision : 01.05.2024

Raj Pal

...Petitioner

Vs.

General Public and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Viren Jain, Advocate
for the petitioner.

None for the respondents.

ANIL KSHETARPAL, J. (Oral)

1. Through this revision petition, the orders passed by the Courts below while dismissing the petitioner's application for the grant of succession certificate is challenged.

2. In order to comprehend the issues involved in the present case, some relevant facts, in brief, are required to be noticed.

3. Late Sh. Lachhman Dass Oswal was owner of the property, which was acquired by the Ludhiana Improvement Trust for the public purpose. The proceedings for assessment of the market value of the land was pending before the Land Acquisition Tribunal (hereinafter referred to as the 'Tribunal'). Sh. Lachhman Dass Oswal died on 27.01.1982. His two children, namely Sh. Dharam Pal Oswal and Sh. Raj Pal Oswal filed an application for permission of the Court to come on record as the legal representatives by virtue of an unregistered Will dated 15.01.1982. The aforesaid application was allowed with the observations that the legal representatives shall be entitled to claim

compensation after getting the succession certificate from the competent court. Ultimately, Sh. Lachhman Dass Oswal was held entitled to the compensation of Rs. 11,36,522.40/- vide award dated 01.10.1986.

5. Thereafter, Sh. Dharam Pal Oswal and Sh. Raj Pal Oswal filed a petition for the grant of succession certificate on the ground that they are entitled to the compensation by virtue of the Will dated 15.01.1982. In the aforesaid proceedings, Sh. Tej Pal Oswal, the third son of late Sh. Lachhman Dass Oswal was also impleaded as party. The application for the grant of succession certificate was dismissed by the trial Court while dismissing petitioner's application for permission to lead secondary evidence in order to prove the Will dated 15.01.1982. The appeal filed by the petitioner was also dismissed.

6. Learned counsel representing the respondent is not present, though the case has been called twice.

7. Heard the learned counsel representing the petitioner at length and with his able assistance perused the paper-book.

8. Learned counsel representing the petitioner submits that the trial court has erred in dismissing the application for succession certificate as well as application for secondary evidence on the same date. He further contends that the existence of the Will was not in dispute and no application for permission to lead secondary evidence was required to be filed. He submits that the petitioner should be granted one opportunity to prove his case.

9. This Court has considered the submission made by the learned counsel for the petitioner.

10. In fact, after examining the provisions of Indian Evidence Act, 1872, the Code of Civil Procedure, 1908 and the High Court Rules and Orders, in *“Madan Lal Vs. Shankar and others”*, RSA-327-1989, decided on 01.11.2018, this Court came to the conclusion that there is no provision for filing an application for permission to lead secondary evidence.

11. In Civil Revision application No. 82 of 2016, decided on 10.11.2017, the Bombay High Court also held that such applications are being filed under misconception, which has now turned into epidemic. Even, the Supreme Court in *‘Dhanpat Vs. Sheoram (Deceased) through LRs and others’*, 2020 SCC online SC 606, has held that there is no requirement of filing the application for permission to lead secondary evidence.

12. In this case, the petitioners’ application to bring them on record as legal representatives of late Sh. Lachhman Dass Oswal was allowed on 12.06.1986. The amount of compensation is still lying with the Tribunal. In this situation, it was obligatory on the court to permit the petitioners to produce evidence to prove their case. After the evidence had been led, the Court was required to examine whether the evidence so led was primary or secondary. At that stage, the Court can examine whether the petitioner has successfully proved the existence, validity and genuineness of the Will or not. It was also not appropriate for the trial Court to dismiss the application for the grant of succession certificate on the same date when the application for permission to lead secondary was dismissed.

13. Keeping in view the aforesaid discussion, the impugned orders are set aside. The matter is remitted back to the trial Court for deciding the fresh.

The Court will also issue notice to respondent No.2, namely, Sh. Tej Pal Oswal.

14. The revision petition stands disposed of.
15. All the pending miscellaneous applications, if any, are also disposed of.

01.05.2024
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No