

220

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. **CR-6277-2015 (O&M)**
Date of decision : 19.04.2024

Inderjit Singh ... Petitioner(s)

Versus

Avtar Singh through his alleged wife Harjinder Kaur ... Respondent(s)

2. **CR-7297-2016 (O&M)**

Avtar Singh (since deceased) through his LR Harjinder Kaur ... Petitioner(s)

Versus

Inderjeet Singh ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Dheeraj Mahajan, Advocate
for the petitioner in CR-6277-2015 and
for the respondent in CR-7297-2016.

Mr. Mudit Gosain, Advocate for
Mr. Ashish Aggarwal, Advocate
for the respondent in CR-6277-2015 and
for the petitioner in CR-7297-2016.

ALKA SARIN, J. (ORAL)

1. The present order shall dispose off both the above-captioned revision petitions (**CR-6277-2015** and **CR-7297-2016**).
2. Brief facts relevant to the present *lis* are that Avtar Singh filed a suit seeking relief of possession and mandatory injunction against his own son, namely, Inderjit Singh who is the petitioner in **CR-6277-2015**. The suit

was decreed vide judgment and decree dated 11.08.2005. An appeal was preferred by Inderjit Singh which was dismissed vide judgment and decree dated 18.01.2010. Execution was filed by Avtar Singh. However, during the pendency of the execution petition, Avtar Singh died on 24.03.2011. In the execution petition, an application was filed by Harjinder Kaur, who is the petitioner in **CR-7297-2016**, claiming herself to be the legal heir of Avtar Singh. Harjinder Kaur filed an application in the execution proceedings that she had a right to represent the estate of deceased Avtar Singh being his legally wedded wife. It was also the stand taken by Harjinder Kaur that Avtar Singh had left behind a son and a daughter who had both been disinherited. It is apt to note that the judgment debtor in the present case was only Inderjit Singh and not the daughter. Vide the impugned order dated 06.08.2015 the Executing Court returned a finding on issue No.1 that Harjinder Kaur failed to prove that she was the legally wedded wife of Avtar Singh. However on issue No.2 the Executing Court gave a totally contrary finding. Aggrieved by the same, **CR-6277-2015** has been preferred by Inderjit Singh and **CR-7297-2016** has been preferred by Harjinder Kaur challenging the impugned order dated 06.08.2015 qua finding on Issue No.1.

3. Learned counsel for the petitioner in **CR-6277-2015** and for the respondent in **CR-7297-2016** would contend that there was not an iota of evidence on the record and findings were given by the Executing Court simply on the basis of marked documents which had not been exhibited and therefore it could not be held that Harjinder Kaur was the legally wedded

wife of Avtar Singh. Having held so, the Executing Court had permitted Harjinder Kaur to pursue the execution proceedings only on the ground that Inderjit Singh had been disinherited by his father - Avtar Singh. It is further the contention of the learned counsel that even if the Court had to go into the issue as to whether Inderjit Singh would step into the shoes of Avtar Singh, the Court could have done it on its own and decided the issue whether a disinherited son could claim any right.

4. *Per contra*, the learned counsel for the respondent in **CR-6277-2015** and for the petitioner in **CR-7297-2016** has candidly admitted that none of the documents produced by Harjinder Kaur were proved on the record and all were marked documents. It is however the contention of the learned counsel that inadvertently a wrong application was filed under Order 1 Rule 10 CPC and the application ought to have been filed under Order 22 Rule 3 CPC.

5. I have heard the learned counsel for the parties.

6. In the present case admittedly there is no evidence on the record to show that Harjinder Kaur was the legally wedded wife of Avtar Singh. All the documents on the record produced by Harjinder Kaur were marked documents. The Executing Court on the basis of the pleadings and the evidence on the record came to a conclusion that merely on the basis of the marked documents it could not be held that Harjinder Kaur was the legally wedded wife of the deceased - Avtar Singh. Having held that, the Executing Court allowed the application permitting Harjinder Kaur to be impleaded as a party. There is no reason forthcoming as to how Harjinder Kaur who was

held to be not the legally wedded wife of Avtar Singh would have any right, title or interest to pursue the proceedings. The Executing Court has given contrary findings in the same order.

7. In view of the above, this Court deems it appropriate to set aside the impugned order dated 06.08.2015 and remand the matter to the Executing Court to decide afresh. Parties through their counsel to appear before the Executing Court on **13.05.2024**. Pending applications, if any, also stand disposed off.

19.04.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO