

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

TA-440-2024 (O&M)
Date of decision: 08.04.2024

Asha Jaswal
...Petitioner

Versus

General Public
...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Vaibhav Tanwar, Advocate for the petitioner
(Through Video conferencing).

VIKAS SURI, J.

1. This is a petition filed under Section 24 of the Code of Civil Procedure, 1908 by the petitioner Smt. Asha Jaswal for transfer of the case registered as CS/1676/2023, filed under Section 276 of the Indian Succession Act, 1925 (for short 'the Act') for grant of probate, titled as *Asha Jaswal vs. General Public*, pending before the Civil Judge (Senior Division-II) Patiala and the case registered as SUCC/59/2023, filed under Section 372 of the Act for grant of succession certificate, titled as *Asha Jaswal vs. General Public*, pending before the Addl. Civil Judge (Senior Division-I) Patiala to the Civil Judge (Junior Division-III), SAS Nagar, Mohali or any other Court of competent jurisdiction at SAS Nagar, Mohali.
2. It is pleaded that the petitioner is the mother of Smt. Archisha Jaswal, who was Squadron Leader in the Indian Air Force on

the administrative side and was posted at Pathankot Air Base. Smt. Archisha Jaswal i.e. daughter of the petitioner, was married with one Shivank Thakur. The daughter and son in-law of the petitioner were involved in a matrimonial dispute from the beginning of their marriage and a few months prior to her death, the daughter had also lodged a complaint with SSP, Pathankot against her husband and in-laws on the ground of mental harassment and demand of dowry. On 15.07.2023, she was attacked by one Makhan Kumar in her official accommodation and she succumbed to the injuries on 22.07.2023 at Command Hospital, Chandimandir, Panchkula. Smt. Archisha Jaswal had executed a Will dated 17.01.2020 (Annexure P-1), whereby she had bequeathed her moveable and immoveable properties in favour of her mother i.e. the petitioner herein. As per the said Will, certain percentage of DSOPF/AFPPF and AFGIS/LIC/other insurance etc. was to devolve upon her husband Shivank Thakur.

3. It is further pleaded that the petitioner along with her daughter resided at Patiala for a few months on rental basis. However, due to the nature of the job of her daughter, she had no permanent place of residence. The petitioner has filed a case under Section 276 of the Act for grant of probate in respect of all moveable and immoveable properties, on the basis of Will dated 17.01.2020, which has been registered as CS/1676/2023 and is pending in the Court of Civil Judge (Senior Division-II) Patiala. The prayer made in the said case reads as thus:-

“It is therefore most respectfully prayed that Suit for declaration to the effect that plaintiff is entitle to

have all the moveable, immoveable properties (including Flat no. Q-903 AWHO Harbhanjan Vihar, Sector 114 Mohali Distt. Mohali), cash in form of bank savings & Fixed deposits, insurance money, Car namely Tata nexon bearing number HP-72-D-3111, Motorcycle bearing number CH-01-CE-2487 and any other properties in name of her daughter namely Archisha Jaswal now deceased as per will executed by Archisha Jaswal on 17-Jan-2020 in favour of Plaintiff may kindly be decreed and a judgment/decreed in form of probate may kindly be passed.”

The petitioner has also filed a case under Section 372 of the Act for grant of succession certificate in respect of the aforesaid properties, on the basis of Will dated 17.01.2020, which has been registered as SUCC/59/2023 and is pending in the Court of Addl. Civil Judge (Sr. Divn.-I), Patiala.

4. It is further pleaded that the petitioner has now shifted her permanent place of residence to Flat No.H-403, Jal Vayu Towers, New Sunny Enclave, Sector 125, Greater Mohali Kharar, SAS Nagar, Mohali. The son in-law of the petitioner, namely Shivank Thakur, has filed a civil suit bearing No.CS/730/2023 whereby he has challenged the Will dated 17.01.2020 executed by his wife i.e. the daughter of the petitioner, which is pending in the Court of Civil Judge (Jr. Divn.-III) SAS Nagar, Mohali. By way of the said civil suit, he has prayed for a decree of declaration to the effect that he be declared as owner in possession of the aforesaid flat and as a consequential relief, he be declared as sole legal heir of his wife and further declaration that the Will dated 7.01.2020 is non-est & void-ab-initio. It is submitted that the said matter is now

pending for 29.04.2024 at SAS Nagar, Mohali. The petitioner has put in appearance in the aforesaid civil suit and is contesting the same. The petitioner having shifted her residence from Patiala to SAS Nagar, Mohali and all the three proceedings noticed above involving common questions of fact and law are pending in different Court and to avoid multiplicity of litigation and resultant conflicting decisions regarding the same subject matter, the petitioner seeks transfer of two cases pending at Patiala to SAS Nagar, Mohali, by way of the present petition.

5. I have heard learned counsel for the petitioner and perused the material available on record with his able assistance.

6. In the present case, relationship of the parties or the pendency of three proceedings regarding the inheritance of the estate of the deceased Smt. Archisha Jaswal, is not in dispute. For considering the prayer made in the present petition, it would also be useful to refer to the provisions of Sections 271 and 371 of the Act, which read as thus:-

“271. Disposal of application made to Judge of district in which deceased had no fixed abode.—

When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely, or limited to the property within his own jurisdiction.

371. Court having jurisdiction to grant certificate.—The District Judge within whose jurisdiction the deceased ordinarily resided at the time of

his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this Part.”

7. A perusal of the aforesaid provisions would show that when an application is made for grant of probate to the judge of a District in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the said judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district. The proceedings under Section 276 of the Act for issuance of a probate with regard to Will dated 17.01.2020, was filed at Patiala by averring that the petitioner along with her daughter resided at Patiala for a few months on rental basis and that the testator in question had no permanent place of residence due to the nature of her job in the Indian Air Force. It cannot be disputed that by virtue of the provisions under Section 371 of the Act, the District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death or if at that time, he had no fixed place of residence, the judge within whose jurisdiction any part of the property of the deceased may be found, may grant a succession certificate under Part X of the Act. Moreover, the disputed immoveable property i.e. Flat Q-0903 at Harbhajan Vihar, AWHO, Sector 114, Mohali, is situated within the territorial jurisdiction of the Court where the aforesaid referred proceedings are sought to be transferred.

8. The prayer made in the suit instituted by the son in-law of the petitioner, which is pending before the Courts at SAS Nagar, Mohali, reads as thus:-

“It is therefore prayed that present Suit for declaration to the effect that plaintiff is true owner in possession of Flat No Q-903 AWHO Harbhajan Vihar, Sector 114, Mohali District SAS Nagar, Car Tata Nexon Registration No HP-72-D-3111 and Motorcycle No CH-01- CE-2487 as all the payments were made by him and bought in the name- of Archisha AND for declaration that the will dated 17-01-2020 is nonest, Void ab-initio and not binding upon the rights of the plaintiff and with consequential relief that plaintiff is sole legal heir of late Archisha Jaswal and has right to all moveable like cash, bank saving accounts, Fixed Deposits etc and immovable property left by Archisha Jaswal AND for permanent injunction restraining the defendant from interfering in the peaceful possession of the plaintiff and not alienate above mentioned flat, car and motorcycle, may kindly be decreed in the interest of justice AND/OR any other relief as this court deems fit in the facts and circumstance of the case, in the interest of justice.”

9. It is evident from the record that all the three proceedings pertain to inheritance of the estate of the daughter of the petitioner, namely Archisha Jaswal. The said proceedings, by the very nature of the rival claims made therein, would be intricately connected with each other, involving common questions of fact and law.

10. In the light of the above, I am of the considered view that the two cases pending before the respective Courts at Patiala, are liable

to be transferred to the Court of competent jurisdiction at SAS Nagar, Mohali and preferably be heard and disposed of by the same Presiding Officer. Resultantly, the present petition is disposed of with the following directions:-

- a) The civil suits filed by the petitioner, registered as CS/1676/2023 and SUCC/59/2023, pending before the respective Courts at Patiala are transferred to a Court of competent jurisdiction at SAS Nagar, Mohali.
- b) The District Judge, Patiala is directed to transfer complete record pertaining to the aforesaid cases to District Judge, SAS Nagar.
- c) The parties are directed to appear before the District Judge, SAS Nagar, on 08.05.2024.
- d) The District Judge, SAS Nagar, will assign the said petition to the Court of competent jurisdiction.

- 11. The petition is disposed of.
- 12. Pending applications, if any, also stand disposed of.
- 13. Copy of this order be sent to both the District Judges concerned, for information and necessary compliance.

April 08, 2024
sumit.k

(VIKAS SURJ)
JUDGE

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