



258 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2694-2019 (O&M)
Date of decision : 27.09.2024

Vandana Gaba & ors. Petitioners

versus

Sunil Kumar & anr. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Prateek Sodhi, Advocate
for the petitioners.

Mr. A.P.S.Sandhu, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

1 Challenge is to the order dated 02.04.2019 (Annexure P-6) passed by Civil Judge (Jr. Division), Amritsar whereby Madhur grandson of defendant No.2 has been allowed to be impleaded as legal representative of Gopal Krishan. For convenience parties hereinafter are referred to by their original position in the suit i.e. the petitioners as plaintiffs and respondents as defendants.

2 Parties are related to each other. Plaintiffs are daughters of defendant No.2-Gopal Krishan and sisters of defendant No.1-Sunil Kumar. Plaintiffs filed suit seeking declaration to the effect that *Tabdeel Malkiat Nama* dated 16.03.2018 executed by Sudershan Kumari w/o Gopal Krishan in favour of defendant No.1 and another *Tabdeel*



Malkiat Nama of even date i.e. 16.03.2018 executed by Gopal Krishan in favour of defendant No.1 pertaining to property bearing house No.35 comprised in Khasra No.86 as detailed out in the head note of the plaint are illegal, null and void and are result of fraud, misrepresentation and undue influence. It was claimed that Sudershan Kumari, mother of the plaintiffs and defendant No.1 and widow of defendant No.2 died intestate on 15.04.2018 leaving behind the 5 legal heirs who are party to the original suit. The daughters being the natural legal heirs have been wrongly ignored. Sudershan Kumari mother of the plaintiffs was not in good health prior to her death on 15.04.2018. *Tabdeel Malkiat Nama* executed on 16.03.2018 i.e. less than a month prior to her death was a result of fraud and misrepresentation. Similarly it was claimed that defendant No.2-Gopal Krishan is suffering from Parkinson disease since long and thus on account of his mental infirmity, he is not in control of his mental faculties. Any *Tabdeel Malkiat Nama* executed by him in the said state is result of undue influence, fraud and misrepresentation perpetuated at the instance of defendant No.1.

3 Suit was contested by the defendants.

4 During the pendency of the suit, plaintiffs filed application seeking appointment of guardian of defendant No.2. It is claimed in the revision petition that vide order dated 22.10.2018 guardian of defendant No.2 was appointed by the Court. However, before filing of written statement on behalf of defendant No.2 through guardian, defendant No.2 died on 18.12.2018. Even though all the legal heirs of Gopal Krishan were already on record, an application was moved at the behest of



Madhur grandson of defendant No.2 i.e. son of defendant No.1 propounding WILL dated 24.05.2018 in his favour.

5 The aforesaid application stands allowed vide impugned order.

6 Learned counsel for the plaintiffs while assailing the impugned order submits that the Trial Court erred in allowing Madhur to be impleaded as LR on the basis of the said WILL. It was claimed that the WILL is a forged document. It was further claimed that the WILL in favour of Madhur pertains to the other properties and not to the present property and thus impleadment of Madhur in the present *lis* as LR of defendant No.2 cannot be sustained.

7 *Per contra* learned counsel for the respondent, however, submits that defendant No.2 having intended to bequeath his estate in favour of Madhur, he has been rightly impleaded as LR of defendant No.2.

8 I have heard learned counsel for the parties and have gone through the records of the case. .

9 While issuing notice of motion, this Court on 30.04.2019 passed the following order :-

CM No.9604-CII of 2019

Prayer in this application is for preponing the date of hearing fixed in the main case.

For the reasons mentioned in the application, the prayer for preponement is allowed and the main case is taken up on Board today itself.

CM stands disposed off.

CR No.2694 of 2019

Ld. Counsel for the petitioners-plaintiffs submits inter alia



that substitution of Madhur as a consequence of demise of the original defendant No.2 on the strength of the Will purportedly executed in his favour on 24.05.2018 is uncalled for in the present case, since the property bequeathed in favour of the said substituted defendant is totally different from that which is the subject matter of the present suit. In response to a specific query of the Court, Ld. Counsel for the petitioners further submits, on instructions, that the genuineness and veracity of the aforesaid Will in the circumstances cannot be questioned in the pending suit, and to that extent, he concedes that any submissions pertaining to genuineness and validity of the Will, which have otherwise been noted in the impugned order were not called for.

Notice of motion for 24.05.2019 i.e. the date already fixed.

In the meantime, operation of the impugned order shall remain stayed.”

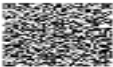
10 The issue thus is : -

Whether Madhur the impleaded LR can be held to be entitled to be impleaded as LR of Gopal Krishan-defendant No.2.

11 Section 2 (11) of the Code of Civil Procedure, 1908 defines legal representatives and is reproduced as under :-

Section 2 (11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;

12 In the present case, it is not in dispute that claim of Madhur to be impleaded as legal representative is based upon WILL alleged to be executed by defendant No.2 dated 24.05.2015. It is also not in dispute that the WILL if valid can speak only after the death of testator. The instant lis relates to a property which is claimed to have been transferred by Gopal



Krishan in favour of defendant No.1 during his life time. It has the validity of the said transfer deed which is under challenge in the present suit. Thus it can be axiomatically held that even if the defendants succeed in the case, Madhur will have no right, title or interest in the suit property. On the other hand in case plaintiffs succed, the result of suit will not effect rights of Madhur.

13 In view of above, this Court finds that the impugned order passed by the Trial Court cannot be sustained as Madhur has no right in the estate left by Gopal Krishan which is subject matter of the instant suit and thus would not fall within the ambit of Section 2(11) CPC to be impleaded as legal representative.

14 Resultantly, the present revision petition is allowed. The impugned order dated 02.04.2019 (Annexure P-6) is set aside.

(PANKAJ JAIN)
JUDGE

27.09.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No