



**115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 05.02.2025

CR-1354-2014

Balwinder Kaur

....Petitioner

Versus

Balpreet Singh and others

....Respondents

CR-2538-2014 (O&M)

Balpreet Singh and another

....Petitioners

Versus

Jaspal Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Madhu Dayal, Advocate
for the petitioner in CR No.1354 of 2014.

Mr. Tejinderbir Singh, Advocate
for the petitioner in CR No.2538 of 2014 and
for respondents No.1 and 2 in CR No.1354 of 2014.

Mr. Rajiv Joshi, Advocate
for respondent No.1 and 2 in CR No.2538 of 2014.

PANKAJ JAIN, J. (ORAL)

By way of present order, I intend to dispose off two revision petitions directed against order dated 19.12.2013 passed by Executing Court whereby applications filed by Balwinder Kaur and Jaspal Kaur & Milanveer Singh, under Order I Rule 10 CPC read with Section 151 CPC seeking impleadment, have been decided.



2. The issue relates to execution of a decree of specific performance in a suit instituted at the behest of one Gursharan Singh. Suit filed by Gursharan Singh was decreed by this Court in RSA No.1118 of 1999 vide judgment dated 11.08.2009. During the pendency of the Regular Second Appeal, Gursharan Singh died on 09.06.2004. His daughter Deep Shikha was impleaded as his legal heir. Deepshikha was represented through special power of attorney namely Jaswinder Singh. Execution has been filed by Balpreet Singh and Johnpreet Singh, who claim themselves to be assignees of the decree under Deepshikha daughter and LR of decree holder Gursharan Singh.

4. During the pendency of the execution, two sets of applications were filed seeking impleadment as legal heirs of decree-holder. One application was filed by Balwinder Kaur sister of Gursharan Singh, who claimed to be beneficiary under Gursharan Singh propounding registered Will dated 30.10.2001. The other application has been filed by Jaspal Kaur and her minor son namely Milanveer Singh. Jaspal Kaur claims to be legally wedded wife of Gursharan Singh and that he fathered Milanveer Singh. The said two applications have been decided by impugned order. Application filed by Balwinder Kaur, who claims to be beneficiary under Gursharan Singh on the basis of registered Will, stands declined. Application filed by Jaspal Kaur and Milanveer Singh stands allowed and they have been ordered to be impleaded as legal heirs of Gursharan Singh to the extent of their share.



5. Civil Revision No.1354 of 2014 is at the behest of Balwinder Kaur, who is aggrieved of dismissal of her application.

6. Civil Revision No.2538 of 2014 is at the best of Balpreet Singh and Johnpreet Singh, who claim themselves to be assignees of the decree challenging impleadment of Jaspal Kaur and Milanveer Singh.

7. Ms. Madhu Dayal, Advocate while assailing the impugned order submits that registered Will has been wrongly ignored by the Executing Court merely for want of probate. She submits that there is no requirement of probate order. The Court should have accepted the registered Will as the scope under Order XXII Rule 5 CPC is merely summary in nature. The applicant was claiming under decree-holder. In terms of the mandate of Section 47 CPC, the issue was to be determined by the Executing Court. Executing Court having failed to discharge its statutory obligation, the impugned order cannot be sustained.

8. Mr. Tejinder Bir Singh, Advocate, counsel representing the petitioners in CR No.2538 of 2014, has attacked the order claiming that Trial Court erred in allowing the application filed by Jaspal Kaur and her minor son Milanveer Singh referring to certain admissions whereas there is no admission on record. He thus submits that the Executing Court totally misread the record which led to perverse findings and thus the impugned order cannot be sustained.

9. Per contra, Mr. Joshi submits that even if Balpreet Singh and Johnpreet Singh are held to be assignees, they shall remain assignees only to



the extent of share of Deepshikha. Deepshikha will only succeed to certain share. Her right is not to the exclusion of Jaspal Kaur and Milanveer Singh. There is a marriage certificate on record showing that Jaspal Kaur was legally wedded wife of Gursharan Singh. The minor son Milanveer Singh was born from lions of Gursharan Singh. Thus, both of them are entitled to succeed to the decree in favour of Gursharan Singh. He further submits that the copy of mutation No.846 w.r.t. exchange of land, dated 13.06.2002 was also placed on record which reveals that Deep Shikha along with Milanveer Singh were mentioned as children of Gursharan Singh by Gursharan Singh himself. He transferred 5 Killas of land to each of them. He thus submits that under Order XXII Rule 5 CPC, the Executing Court was required to undertake the summary inquiry. There being no infirmity in the order, the same needs to be sustained. In order to buttress his arguments, he relies upon ratio of law laid down in the case of **Varadarajan vs. Kanakavalli and others, AIR 2020 Supreme Court 740** wherein Supreme Court relying upon the law laid down in **Dashrath Rao Kate vs. Brij Mohan Srivastava, (2010) 1 SCC 277** observed as under :

“11. The judgment in Mohinder Kaur was referred to and approved by this Court in a judgment reported as *Dashrath Rao Kate v. Brij Mohan Srivastava, 2009(4) RCR (Civil) 912 : (2010) 1 SCC 277*. In the said case, the High Court came to the conclusion that since the inquiry under Order 22, Rule 5 of the Code was of a summary nature, it was limited only to the determination of the right of the appellant therein to be impleaded as the legal representative. This Court in the said case held as under:



"21. As a legal position, it cannot be disputed that normally, an enquiry under Order 22, Rule 5 CPC is of a summary nature and findings therein cannot amount to res judicata, however, that legal position is true only in respect of those parties, who set up a rival claim against the legatee. For example, here, there were two other persons, they being Ramesh and Arun Kate, who were joined in the civil revision as the legal representatives of Sukhiabai. The finding on the will in the order dated 9-9-1997 passed by the trial court could not become final as against them or for that matter, anybody else, claiming a rival title to the property vis-a-vis the appellant herein, and therefore, to that extent the observations of the High Court are correct. However, it could not be expected that when the question regarding the will was gone into in a detailed enquiry, where the evidence was recorded not only of the appellant, but also of the attesting witness of the will and where these witnesses were thoroughly cross-examined and where the defendant also examined himself and tried to prove that the will was a false document and it was held that he had utterly failed in proving that the document was false, particularly because the document was fully proved by the appellant and his attesting witness, it would be futile to expect the witness to lead that evidence again in the main suit.

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25. Dr. Kailash Chand, learned counsel appearing for the respondent, also relied on ruling in *Vijayalakshmi Jayaram v. M.R. Parasuram [AIR 1995 Andhra Pradesh 351]*. It is correctly held by the Andhra Pradesh High Court that Order 22, Rule 5 is only for the purpose of bringing legal representatives on record for conducting of proceedings in which they are to be brought on record and it does not



operate as res judicata. However, the High Court further correctly reiterated the legal position that the inter se dispute between the rival legal representatives has to be independently tried and decided in separate proceedings. Here, there was no question of any rivalry between the legal representatives or anybody claiming any rival title against the appellant-plaintiff. Therefore, there was no question of the appellant-plaintiff proving the will all over again in the same suit.

26. The other judgment relied upon is the Full Bench judgment of the Punjab and Haryana High Court in *Mohinder Kaur v. Piara Singh [AIR 1931 Punjab and Haryana 130]*. The same view was reiterated. As we have already pointed out, there is no question of finding fault with the view expressed. However, in the peculiar facts and circumstances of this case, there will be no question of non-suiting the appellant-plaintiff, particularly because in the same suit, there would be no question of repeating the evidence, particularly when he had asserted that he had become owner on the basis of the will (Ext. P-1)."

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

11. Section 2(11) of the Code of Civil Procedure, 1908 defines 'legal representative' as under :

"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. Order XXII Rule 5 CPC prescribes procedure for determination of question as to legal representative and reads as under :

“5. Determination of question as to legal representative.

—Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

[Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.]”

13. In view of above, any person, having a right to represent the estate of the deceased person, falls within the ambit of ‘legal representative’ as defined under Section 2(11). The definition includes any person who intermeddles with the estate of the deceased. The scope of inquiry to determine the issue w.r.t. the legal representative is summary as held by Supreme Court in *Varadarajan’s* case (supra). Thus, the Executing Court was required to hold summary inquiry to determine the legal representative. From the perusal of the impugned order, it is evident that the Executing Court has not based its order upon the marriage certificate produced on record or on the entries in the mutation proceedings. Rather, the Executing Court has relied upon certain admissions made by execution petitioners. Even if the conclusions recorded by the Executing Court are to be held valid, the same are not backed by cogent reasons. Observations w.r.t. admissions



are foreign to the record of the case. There is no such admission made by Johnpreet Singh or Balpreet Singh. The finding recorded is not based on record.

14. Mr. Joshi may be right in contending that even if Johnpreet Singh and Balpreet Singh are held to be assignees to the right of Deep Shikha, they cannot be allowed to represent the estate that fell to the share of Jaspal Kaur and Milanveer Singh, the minor son but he also does not dispute that admission referred to in impugned order is not borne out from record.

15. In view of above, without commenting on the merits of the case, the impugned order is set aside. The matter is remanded back to the Executing Court to decide afresh without being prejudiced by any observation made herein-above. The Court is sanguine that the Executing Court shall decide the issue afresh within **3 months** from the date of receipt of certified copy of this order.

16. The instant revision petitions are disposed off accordingly.

17. Pending application(s), if any, shall also stand disposed off.

18. A copy of this order be kept on the file of other connected case.

February 05, 2025
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned : Yes
Whether reportable : Yes