

**(2011) 12 SHI CK 0079**

**In the High Court Of Himachal Pradesh**

**Case No : Regular Second Appeal No. 362 of 2011**

Avtar Singh

APPELLANT

Vs

Sh. Nirmal Singh

RESPONDENT

**Date of Decision : 15-12-2011**

**Acts Referred:**

Evidence Act, 1872 — Section 63, 68

**Citation : (2011) 12 SHI CK 0079**

**Hon'ble Judges : V.K. Sharma, J**

**Bench : Single Bench**

## Judgement

V.K. Sharma, Judge

1. The appellant, who was defendant no. 2 in the learned trial Court is aggrieved by concurrent findings of fact returned against him by both the learned Courts below in a suit for recovery of Rs. 59,478/- along with interest @ 12% per annum filed against him by respondent no. 1 being the plaintiff, in which respondent no. 2-Bank was impleaded as a co-defendant.

2. Bereft of details factual matrix is that one Shri Dalipa @ Dalipu had invested a sum of Rs. 59,478/- with defendant no. 1-State Bank of Patiala in a savings bank account, in which he had nominated defendant no. 2 as his nominee. On the death of the said Shri Dalipa @ Dalipu, the amount was withdrawn by defendant no. 2 in his capacity as nominee of the deceased account holder. However, the plaintiff set-up a Will stated to have been executed by Sh. Dalipa @ Dalipu in his favour, on the basis of which, Succession Certificate Ext. PW1/A, was issued in his favour. Consequently, he filed the aforesaid suit for recovery against defendant no. 2, in which defendant no. 1-Bank, was also impleaded as a party.

3. Both the learned Courts below have concurrently held that the plaintiff is entitled to the suit amount along with interest @ 6% per annum from the date of decree, that is, 23.1.2008 till realization.

4. The appeal is sought to be admitted on the following substantial questions of

law as at pages 12 and 13 of the paper book:

(1) Whether learned Courts below while passing the impugned judgment and decree have misread and misinterpreted the pleadings, oral and documentary evidence on record.

(2) Whether the learned Courts below are right in passing the decree for recovery of amount when the alleged Will dated 13.10.1996 was not at all proved in accordance with Sections 63 and 68 of the Evidence Act.

(3) Whether the first Appellate Court could have decided the validity of succession certificate Ext. PW1/A by looking into Ext. D-3 being counter-claim no. 1/2 of 2000 wherein the plaintiff had sought succession certificate for account no. 7711 of late Shri Dalipa as well as Ext. PW1/A wherein the Court itself has mentioned the case of the plaintiff for succession certificate pertaining to account no. 7711 of late Shri Dalipa with State Bank of Patiala.

(4) Whether by virtue of Ext. PW1/B succession certificate (Ext. PW1/A) pertaining to account no. 7717 can be issued by the learned Court.

(5) Whether the findings of both the Courts below are contrary to pleadings, oral and documentary evidence led by the parties and are perverse.

5. The conflict of interests between the plaintiff and defendant no. 1 is on the basis of their respective status as holder of Succession Certificate and nominee. It is by now settled that a nominee receives the benefits only on the strength of his status as such and is accountable to the legal representatives of the deceased.

6. In the present case, though admittedly defendant no. 2 was a nephew of Shri Dalipa @ Dalipu, yet the fact remains that the latter had executed a Will in favour of the plaintiff, on the basis of which, Succession Certificate Ext. PW1/A, based on judgment, Ext. PW1/B, was issued in his favour. Admittedly, defendant no. 2 was a party to the proceedings relating to Succession Certificate, Ext. PW1/A, and judgment, Ext. PW1/B, which have since attained finality. It being so, to my mind, no substantial questions of law arises for determination in the present appeal, which is dismissed accordingly.

7. The appeal is disposed of in the above terms, so also pending application(s), if any.