
(2013) 07 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : C.R. No. 4151 of 2013

Col. Raghbir Singh Shergill	Vs	APPELLANT
General Public and Others		RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Succession Act, 1925 — Section 192, 193, 276

Citation : (2013) 07 P&H CK 0017

Hon'ble Judges : L. N. Mittal, J

Bench : Single Bench

Advocate : Mamohan Singh and Mr. M.P. Gupta, for the Appellant; B.B. Sethi and Mr. Satnam Singh, for the Respondent

Final Decision : Dismissed

Judgement

L. N. Mittal, J.—Petitioner Col. Raghbir Singh Shergill has filed this revision petition under Article 227 of the Constitution of India impugning order dated 01.06.2013 (Annexure P-15) passed by District Judge, Ropar, thereby dismissing petitioner's application for mesne profits and possession of disputed property in proceedings pending for grant of probate of Will u/s 276 of the Indian Succession Act, 1925 (in short - the Act). I have heard learned senior counsel for the petitioner and perused the case file.

2. Learned senior counsel, relying on judgment of Hon'ble Supreme Court, in the case of Uma Devi Nambiar and Others Vs. T.C. Sidhan (Dead), , contended that the petitioner, in view of Sections 192 and 193 of the Act, is entitled to possession of the suit property and is also entitled to mesne profits thereof.

3. I have carefully considered the aforesaid contention, which cannot be accepted. Under Chapter VII, which includes Sections 192 and 193 of the Act, an independent petition for seeking relief of possession against person in wrongful possession has to be filed and that has to be decided finally by the concerned court. In the instant case, probate proceedings are still pending. Sections 192

and 193 of the Act do not provide that during pendency of probate proceedings, interim order can be passed directing the probate petitioner to be put in possession of the disputed property. Similarly, by way of interim order, mesne profits cannot be granted to the petitioner unless he succeeds in establishing the Will. Learned District Judge has maintained the right of the petitioner to claim mesne profits if he ultimately succeeds in establishing the Will.

4. Counsel for the petitioner referred to order dated 07.09.2012 (Annexure P-6) passed by this Court, whereby the appointment of petitioner, as executor of the Will ordered by the lower court, was upheld by this Court in Civil Revision petition preferred by the opposite party. However, since probate proceedings are still pending, the question of granting possession or mesne profits to the petitioner by interim order does not arise.

5. Counsel for the petitioner has also relied on judgment of Hon''ble Supreme Court in the case of FGP Ltd. Vs. Saleh Hooseini Doctor and Another, and also on a judgment of Calcutta High Court namely Bali Ram Dhote Vs. Bhupendra Nath Banerjee and Others, . These judgments do not help the petitioner at this stage. The petitioner has not filed petition in the trial court under Sections 192 and 193 of the Act and rather petitioner has simply filed probate petition u/s 276 of the Act.

6. For the reasons aforesaid, I find that at this stage, by interim order, the petitioner is not entitled to possession of the disputed property or mesne profits thereof, from the opposite party. Dismissed in limine, without meaning to express any opinion on merits of the probate petition.