
(2009) 01 P&H CK 0167
In the Punjab And Haryana At Chandigarh

Daljit Kaur

APPELLANT

Vs

Hari Singh and Others

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2009) 2 CivCC 660 : (2009) 154 PLR 54 : (2009) 3 RCR(Civil) 243

Hon'ble Judges : Ajay Kumar Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This second appeal at the instance of defendant-Daljit Kaur is against the concurrent findings recorded by the two courts below.

2. Hari Singh, plaintiff claiming himself the only legal heir of one Karam Singh filed a suit for recovery of rupees one lac along with interest against the defendants, deposited by said Karam Singh with defendant Nos. 2 and 3 which were engaged in the business of financing and investment at Kurali. Karam Singh died on 3.9.1995 and thereafter the plaintiff came to know that one Ajmer Singh had got prepared a forged Will purported to have been executed by plaintiff's father, Karam Singh, in which Daljit Kaur daughter of Ajmer Singh had been shown to be his nominee. The plaintiff requested Daljit Kaur to get the money from the aforesaid defendants No. 2 and 3 and give the same to him but she refused. The plaintiff filed a suit for permanent injunction against Daljit Kaur and defendant Nos. 2 and 3 which was decreed and thereafter the plaintiff approached the defendant company for withdrawal of the amount along with interest but they refused and stated that the money had been given to defendant No. 1 without getting the guarantee indemnifying the loss to the legal heirs. This led the plaintiff to file the instant suit.

3. In her written statement, defendant No. 1 pleaded that owing to maltreatment of Karam Singh by his son, the plaintiff, the former shifted his residence to Kurali

and started living with her father. Even on the death of said Karam Singh, his last rites were also performed by her father and it was in these circumstances, Karam Singh had developed affection with them and out of this, he executed a Will with regard to his assets and properties and nominated her as his nominee. It was pleaded that in view of the will, the plaintiff had no right to the amounts of Karam Singh lying in the banks whereas she had every right to get the same.

4. Defendant Nos. 2 and 3 filed written statement taking objection that the suit was barred by Order 2 Rule 2 of the CPC as the plaintiff had earlier filed a suit for permanent injunction against the defendants which had been dismissed as against defendant No. 3 and decree had been passed only against defendant No. 1. In view of the decision in the earlier suit, the injunction was granted only against Ajmer Singh and the said suit was the result of mala fide. The plaintiff had not produced any succession certificate. It was further pleaded that the sum of rupees one lac which had been deposited with them by Karam Singh showing his niece, Daljit Kaur as his nominee, had already been rightly disbursed to her.

5. The trial Court decreed the suit on 13.9.2005. Appeal carried by Daljit Kaur was dismissed on 30.8.2006 by the first appellate court.

6. I have heard learned Counsel appearing for the appellant and have gone through the record with his assistance.

7. The question for adjudication that arises in this appeal is regarding the rights of a nominee vis-a-vis the rights of the legal heirs of the deceased.

8. The nomination only authorizes the person to receive the amount on the payment of which the person making the payment is validly discharged of its liability. However, the legal heirs of the deceased are entitled to the same in accordance with law of succession. The succession may be testamentary or intestate. The amount does not belong to the nominee and it remains the property of the legal heirs.

9. It is not in dispute that Karam Singh had deposited the amount with defendant Nos. 2 and 3 and he died on 3.9.1995. The status of the plaintiff is of a Class-I heir of the deceased, Karam Singh, being his son as per Hindu Succession Act, 1956 (in short "the Act")- Admittedly, in the present case, defendant No. 1-appellant was only a nominee, appointed by Karam Singh in his Will.

10. The plaintiff is, thus, entitled to receive the amount after the death of Karam Singh. The defendant No. 1-appellant was only entitled to receive the amount on behalf of the legal heir and she, under the provisions of the Act, was duty bound to hand over the same to the legal heir of Karam Singh.

11. In view of the clear enunciation of legal position as stated above, the trial court had rightly decreed the suit in favour of the plaintiff who is the legal heir of deceased Karam Singh and appellant-defendant No. 1 being nominee was liable to return the amount to the plaintiff which she had received from defendant Nos. 2 and 3.

12. It was also held that defendant Nos. 2 and 3 were liable to return the amount as they allowed the amount to be taken despite pendency of the litigation and despite the decision in the suit for permanent injunction. Further, the trial court as well as the first appellate court found on the basis of evidence on record that the suit was not barred by the provisions of Order 2 Rule 2 of the Code as a fresh cause of action had arisen to the plaintiff after the amount in question was withdrawn by defendant No. 1.

13. Before this Court, nothing could be pointed out by the learned Counsel appearing for the appellant, which may persuade this Court to interfere with the concurrent findings of fact of the courts below. No substantial question of law is shown to have arisen in this appeal for the consideration of this Court.

14. In view of the above, there is no merit in the appeal and the same is accordingly dismissed in limine.

Before parting with the order, it must be noticed that there is a delay of 126 days in filing the present appeal. Since the appeal has been heard and dismissed on merits, it is not considered necessary to pass any order on the application seeking condonation of delay which otherwise stands disposed of.