

(2010) 08 P&H CK 0051
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1350 of 2002

Dayal Singh

APPELLANT

Vs

Hira Singh

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Hindu Succession Act, 1956 — Section 8
Penal Code, 1860 (IPC) — Section 198
Succession Act, 1925 — Section 372

Citation : AIR 2011 P&H 17 : (2010) 4 CivCC 476

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—The Petitioner has challenged order of Civil Judge (Senior Division), Chandigarh dated 11.05.2000 and order of Additional District Judge, Chandigarh dated 09.01.2002 by which a petition filed by Respondent Hira Singh u/s 372 of the Indian Succession Act, 1925 (for short "the Act") for issuance of succession certificate in respect of the estate of Labh Singh son of Roor Singh has been allowed.

2. Brief facts of the case are that Roor Singh had two sons namely Hira Singh (Respondent), Labha Singh and two daughters namely Bachan Kaur and Gurdial Kaur. The Petitioner is the son of Gurdial Kaur. The dispute is with regard to the estate of Labh Singh who died intestate and issueless. After the death of Labh Singh, his brother Hira Singh (Respondent) filed a petition u/s 372 of the Act seeking the issuance of succession certificate in respect of the estate of Labh Singh (deceased). In the said petition, the Respondent had alleged that:

3. The family or other near No. The deceased was un- relation of the deceased married and died issueless. and their respective There is no other relation of residence: the deceased except the Pe- titioner being the brother of the

deceased.

3. In para No. 7 of the petition, it was alleged by the Respondent that "the deceased died intestate and the Petitioner is the only legal heir entitled to the succession certificate of deceased Labh Singh being the brother of the deceased."

4. In the petition filed u/s 372 of the Act, only General Public was arrayed as Respondent. However, Dayal Singh (Petitioner), who happened to be the son of Gurdial Kaur (sister's son of Hira Singh and Labh Singh), filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 [for short "CPC"] for impleading him as a Respondent. The said application was allowed by the learned Court below vide its order dated 23.01.1998. Dayal Singh then contested the petition by filing written statement in which he categorically alleged that Hira Singh (Respondent) did not approach the Court with clean hands. He deliberately did not disclose the names of other relatives of deceased-Labh Singh. He alleged that the sister of Labh Singh namely, Bachan Kaur widow of Balas Singh was alive at the time when the petition u/s 372 of the Act was filed and had died during the pendency of the petition, whereas Hira Singh did not disclose about her and had rather repeatedly alleged in the petition that there is no other relative of deceased-Labh Singh except for him. The contents of the petition filed u/s 372 of the Act were also verified by Hira Singh to be correct to his knowledge and belief. Hira Singh filed replication in which he did not deny the fact that his sister Bachan Kaur was alive at the time when the petition u/s 372 of the Act was filed by him, rather a vague reply was given that Dayal Singh and other sons of his sister are not necessary party to the present petition, the sisters of Labh Singh have expired and their sons are not entitled to any share in the property left by deceased-Labh Singh.

5. In order to substantiate his case, Hira Singh appeared as PW1 and examined Gurdev Singh as PW2 and Sukhdev Vaid scribe as PW3. On the other hand, the Petitioner/Respondent had examined Bhuri Singh as RW1 and himself appeared as RW2. Hira Singh, while appearing as PW1, has stated in his examination-in-chief that "there is no other claimant except for him." This statement was made by him in the year 1998. Gurdev Singh PW2, who is the son of Bachan Kaur, has categorically stated that his mother was alive in the year 1995 and had died in the year 1998, meaning thereby when the petition was filed by Hira Singh and when he had made the statement before the Court as PW1, Bachan Kaur was alive.

6. The learned Court below, however, allowed the petition of Hira Singh vide its order dated 11.05.2000 and granted him succession certificate of his brother's estate on his furnishing indemnity bond in the sum of Rs. 60,000/- with one surety in the like amount to indemnify a better claim subsequently, if any. Petitioner Dayal Singh challenged the order of the learned Trial Court before learned Additional District Judge, Chandigarh, by way of filing an appeal, who also dismissed his appeal by repeating the same observations.

7. Aggrieved against the orders of both the Courts below, the present revision petition has been filed by Dayal Singh son of Gurdial Kaur in which notice of motion was issued on 07.03.2002 and operation of the impugned order was stayed. The revision petition was admitted on 20.01.2004 and the interim order was allowed to continue.

8. Opening his arguments, learned Counsel for the Petitioner has submitted that the petition filed by Respondent-Hira Singh u/s 372 of the Act is an act of fraud and misrepresentation and also contrary to the provisions of Section 372 of the Act and as such the revision petition is not only required to be allowed and impugned orders are liable to be set aside, but also Hira Singh is liable for prosecution in terms of Section 372(2) of the Act. On the contrary, learned Counsel for Respondent-Hira Singh has submitted that Bachan Kaur, even if she was alive, she had bequeathed her property by way of Will in favour of Hira Singh, therefore, there is nothing wrong in the petition which was filed by Hira Singh for seeking succession certificate in respect of the estate of Labh Singh.

9. I have heard learned Counsel for both the parties and have perused the record with their able assistance.

10. Before referring to the submissions made by learned Counsel for both the parties, it would be relevant to refer to some provisions of law which have been invoked by learned Counsel for the Petitioner in this case:

Section 372 of the Indian Succession Act. 1925.

372. Application for certificate. -- (1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a Plaintiff, and setting forth the following particulars, namely:

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the Petitioner claims;
- (e) the absence of any impediment u/s 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the persons verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed

to have committed an offence u/s 198 of the Indian Penal Code, 1860 (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

Section 8 of the Hindu Succession Act. 1956 and Schedule attached therewith.

"8. General rules of succession in the case of males. --The property of a male Hindu dying intestate shall devolve according to the provisions of this chapter --

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased.

THE SCHEDULE Class II

I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation. -- In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

Section 198 of the Indian Penal Code. 1860

198. Using as true a certificate known to be false. -- Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

11. Section 372 of the Act provides for a right to file an application to the District

Judge duly signed and verified in the manner prescribed by the CPC giving the detail about the death of the deceased, ordinary residence of the deceased at the time of his death, the family or other near relatives of the deceased and their respective residences, the right in which the Petitioner claims, absence of any impediment u/s 370 or under any other provision of the Act or any other enactment to the grant of the certificate or to the validity thereof and debts and securities in respect of which the certificate is applied for. It also provides that if the petition contains an averment verified by the Petitioner knowing fully it to be false, the person shall be deemed to have committed an offence u/s 198 of the Indian Penal Code, 1860.

12. In the present case, the dispute is with regard to Clause 372(c) of the Act as the objection raised by the Petitioner is that Respondent Hira Singh deliberately did not disclose in the petition that his sister Bachan Kaur is very much alive and besides her there is another heir of Labh Singh i.e. his sister's son Dayal Singh (Petitioner). Section 8 of the Hindu Succession Act, 1956 [for short "Act of 1956"] categorically provides that the property of a Hindu dying intestate shall devolve firstly, upon the heirs specified in Class I of the Schedule; secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule; and thirdly and lastly, upon the agnates and cognates of the deceased. Bachan Kaur was admittedly the sister of Labh Singh and Hira Singh. From the evidence available on record, it is dealt that she was alive when the petition u/s 372 of the Act was filed by Respondent-Hira Singh. Sister is a Class II heir as per Schedule and finds mention in entry No. (II). She has the equal right as that of the brother which is claimed by Hira Singh in this case. Sister's son, who in the present case is the Petitioner being son of Gurdial Kaur, is also a Class II heir as mentioned in entry No. (IV) in Schedule of the Class II heirs. Needless to mention that Hira Singh had deliberately, in order to mislead the Court, impleaded only General Public as a Respondent and had alleged in the petition u/s 372 of the Act that there is no other relative of deceased-Labh Singh except for him and has also verified this fact to be correct, whereas as per evidence on record both, Bachan Kaur (sister) and Dayal Singh (sister's son), were alive at the time when the petition was filed. Thus, Hira Singh is guilty of "suppresso veri and suggestio falsi" as he has tried to suppress the fact of availability of other relatives of deceased-Labh Singh and has also made a false averment before the Court that he is the only living relative of his deceased-brother. The act and conduct of Hira Singh is highly deplorable and is deprecated. It is needless to mention that provisions of Section 372 of the Act with regard to disclosure of any relative of deceased are mandatory in nature. It is provided in the Statute only in order to provide a safeguard from usurpation of the property of the person like Labh Singh who was bachelor, issueless and died intestate by a person like Hira Singh who deliberately did not disclose the presence of other relatives of deceased-Labh Singh.

13. In view of the aforesaid discussion, I have found the present revision petition meritorious, the same is hereby allowed and the impugned orders are set aside

with costs throughout.