

(1964) 09 P&H CK 0047
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 177 of 1963

Harbhajan Singh	Vs	APPELLANT
Chanan Singh and Others		RESPONDENT

Date of Decision : 03-09-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1964) 09 P&H CK 0047

Hon'ble Judges : Shamsheer Bahadur, J

Bench : Single Bench

Advocate : K.C. Nayar, for the Appellant; H.L. Sarin, for Respondent No. 2, Messrs M.S. Jain and V.C. Mahajan and Mr. Chanan Singh, Respondent in person., for the Respondent

Final Decision : Dismissed

Judgement

Shamsheer Bahadur, J.—This judgment will dispose of two petitions, Civil Revision Nos. 177 and 208 of 1963, both arising out of the judgment of the Subordinate Judge, Phillaur, appointing Pritam Singh second respondent in both the petitions as a legal representative of Smt. Santi to proceed with the suit which she had filed before her death.

2. For a full comprehension of the dispute between the different persons who claim the right to be appointed as legal representatives of deceased Smt. Santi, the following pedigree-table is set out

Smt. Santi succeeded to the estate of her husband Chint Singh who died on the 29th of March, 1960. Subsequently on the 19th of April, 1960 she bequeathed her house and haveli in village Bhalowal, tehsil Phillaur to the respondent Pritam Singh whom she described as her nephew. Reference was also made in this will to a gift of land which she made in favour of Chanan Singh father of Pritam Singh. As stated in the will Ex. A.1 made in favour of Pritam Singh, a gift had been made in favour of Chanan Singh on 12th of April, 1960. On 22nd of

November, 1961, Smt. Santi filed a suit for possession of the land measuring 243 kanals 11 marlas which had been gifted to Chanan Singh on the ground that the deed of gift had been executed as a result of fraud and was not binding on her. This case after the evidence had been recorded was at the stage of arguments when Smt. Santi died on 23rd of August, 1962.

3. On the death of Smt. Santi there were three sets of claimants who moved the Court for continuing the suit as legal representatives of Smt. Santi. Smt. Dhan Kaur and Naranjan Singh claimed their right as niece and nephew respectively of Chint Singh, the deceased husband of Smt. Santi. Pritam Singh claimed to succeed as a legatee of Smt. Santi under the will Exhibit A-1 of the 19th of April, 1960. Harbhajan Singh son of Naranjan Singh and grandson of Lehna Singh also claimed as a legatee under the subsequent will of 7th of January, 1961, Exhibit A.W. 12A. All these three petitions were disposed of by Shri V.P. Bhatnagar, Subordinate judge, Phillaur on the 30th November, 1962.

It was held by the learned Judge that the will propounded by Harbhajan Singh was a suspicious document and as many as seven circumstances were set out for this conclusion including the failure of the proper (sic) have it registered. The relationship of Smt. Dhan Kaur and Na(sic) Singh, as set out in the pedigree-table was found to have been prov(sic) the learned Judge but being of the view that the intention of Smt. Santi was to leave her entire property including the house and haveli mentioned in the will Exhibit A.1 to Pritam Singh his claim has been preferred to that of Smt. Dhan Kaur and Naranjan Singh. Pritam Singh on the very day when he was appointed legal representative to continue this suit filed by Smt. Santi made a statement withdrawing it and the suit was consequently also dismissed on the 30th of November, 1962. Aggrieved by the order appointing Pritam Singh as legal representative, Harbhajan Singh has instituted the petition for revision No. 177 of 1963 and Smt. Dhan Kaur and Naranjan Singh have moved this Court in Civil Revision petition No. 268 of 1963, As stated aforesaid both these petitions, arising as they do from the same order, would be disposed of in this judgment.

4. On behalf of Pritam Singh who has been represented before me by his learned counsel Mr. Sarin, two preliminary objections have been raised. It is contended in the first instance that no petition for revision lies from an order appointing a person as a legal representative of the deceased to continue the suit filed by him. It is further urged that the suit to continue in which Pritam Singh was appointed legal representative having been dismissed, the petitions for revisions have in any event become infructuous. On merits it is the case of Mr. Sarin that the trial Judge has appraised the two testamentary dispositions which had been made in favour of the respondents Pritam Singh and Harbhajan Singh, the former being a registered document and the later and unregistered one and the Courts' conclusion on the question of fact is unassailable in these proceedings.

5. In support of his first preliminary objection Mr. Sarin submits that the Court below had undoubted jurisdiction to decide the dispute which was raised before

him about the relative merits of the different claimants to be appointed legal representatives of the deceased Smt. Santi. If a court is vested with the jurisdiction to decide a matter, even an erroneous adjudication of it becomes unchallengeable in revision. An authority of the Supreme Court in *Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi*, has been cited in support of this proposition and my special attention has been drawn to the passage in the judgment of Mr. Justice Kapur who speaking for the Court observed at page 497 - "In *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, , both these judgments of the Privy Counsel as also the previous judgments in *Amir Hassan Khan v. Sheo Bakhsh Singh* 11 Ind. App. 273 (P.C.), and *Balakrishna Udayr v. Vasudeva Aiyar* 44, Ind App. 261: AIR 1917 P.C. 71, were reviewed and it was held that section 115, Civil Procedure Code, applies to matters of jurisdiction alone, the irregular exercise or non exercise of it. or the illegal consumption of it. Thus if a Subordinate Court had jurisdiction to make the order it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have effected the ultimate decision, then the High Court has no power to interfere. But if on the other hand it decides a jurisdictional fact erroneously and thereby assumes jurisdiction not vested in it or deprives itself of jurisdiction so vested men the power of interference u/s 115, Civil Procedure Code, becomes operative."

On basis of this authority it is submitted by Mr. Sarin that no illegality or irregular exercise of jurisdiction having been asserted much less proved, the decision, even if erroneous must be upheld in revision.

6. Mr. Nayar and Mr. V.C. Mahajan for the petitioners have on the other hand argued that in the context of events the Court below acted illegally in appointing Pritam Singh to continue with the suit which was brought by Smt. Santi against his own father. This attack in my view is mainly on the ground of impropriety and there seems to be nothing illegal or irregular in the exercise of jurisdiction by the Court.

Mr. Nayar has asked me to follow the Division Bench judgment of the Calcutta High Court in *Kanailal Mitra Vs. Pannasashi Mitra*, in which it was held that-

the order in so far as it decided the question of the right of the petitioner to get himself substituted in the place of the deceased was an order under Order 22, Rule 5 and the petitioner not having any right of appeal against that order could apply for revision u/s 115 of the Code of Civil Procedure.

The only basis on which the argument was addressed before the Calcutta Bench was that the order impugned was not appealable and therefore a revision could be entertained. This authority does not deal with the basic principle which has been enunciated in the decision of the Supreme Court in *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, , relied on by Kapur J. in *Chaube Jagdish Prasad's* case (supra). A similar observation applies to the other Bench decision of the Orissa High Court in *Radha Krishna Mohapatra Vs. Bhuyan Sri Shyam*

Sundar Mohapatra and Others, , were also it was held that an order under Order 22, rule 5, CPC is not appealable u/s 104 and a revision was therefore competent.

7. The other question raised by Mr. Sarin as a preliminary objection is also of substance. It is argued that the order sought to be revised having been superseded by a subsequent decree of the Court leading to the dismissal of the suit, the revisions have become infructuous, the reason being that the principle of res judicata would not operate as a bar to a subsequent suit which may be brought on the same cause of action by the parties aggrieved. Reliance has been placed on a Bench authority of Sir Asutosh Mookerjee and Suhrawardy JJ. In Nanibala Dasi and Another Vs. Ichhamoyee Dasi and Others, . where it was held that the right of appeal from interlocutory orders ceases after disposal of the suits and this principle applies even to cases where there are preliminary and final decree, and even where the decree is not formally drawn up.

There is a decision of the Punjab High Court of Sir Shadi Lal Chief Justice and Abdul Qadir J. in AIR 1934 465 (Lahore) in which it was held that-

Where in a proceeding under Order 22 rule 5 a certain person is or is not held to be the legal representative of a deceased party the same question can be reagitated in a separate suit and is not barred by the rule of res judicata.

Backett J. in AIR 1941 Lahore 142 was also of the view that "a decision under rule 5 of Order 22 should be limited to the purpose of carrying on the suit and cannot have the effect of conferring any right to heirship or the property" and for this reason does not operate as a res judicata. Backett J. also observed that on the death of a plaintiff a person relying on the will executed in his favour by the deceased plaintiff can be brought on record as his legal representative even though no probate has been taken of the will.

8. Both the learned counsel for the petitioners have contested the proposition that a revision is no longer competent after a suit had been dismissed and have made a special reference to the Full Bench decision of Din Muhammad, Teja Singh and Achhru Ram JJ. in AIR 1945 298 (Lahore) , where it was observed by Mr. Justice Achhru Ram speaking for the Court that-

It is not an inflexible rule that where another remedy by way of a regular suit is open, revisional jurisdiction should under no circumstances be exercised.

In that case it was directed that the suit should be tried on merits from the stage when the aggrieved party was refused permission to continue its suit as a representative of the deceased plaintiff.

9. On a consideration of the authorities I am inclined to agree with the contention raised by Mr. Sarin that the petition for revision is incompetent. On merits as well I think the petition must fail. The will set up by Harbhajan Singh has been rejected because the attesting witnesses were held to be interested parties and the evidence of Dr. Thaman who deposed that the testator was of sound disposing mind was found to be unacceptable. The earlier will executed in

favour of Pritam Singh was preferred mainly on the ground that it was a registered document and the trial Judge observed that adverse inference has been drawn against the will propounded by Harbhajan Singh because it was not registered. This is a very relevant circumstance to be taken in considering the question about the validity of the wills. In Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another, it was held by their lordships of the Supreme Court that where a will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. Before Sub-Registrar Smt. Santi admitted the execution of the will and as observed by their Lordships of the Supreme Court in Rani Purnima Debi's (supra) case such evidence goes a long way to prove execution and the disposing mind of the person making the will. The registration in such circumstances will dispel the doubt as to the genuineness of the will.

10. For the reasons set out aforesaid these petitions for revisions fail and are dismissed with costs.