
(1989) 01 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5954 of 1987

Himesh Sabhlok

APPELLANT

Vs

Indian Tele Communication Deptt., Chandigarh and Others

RESPONDENT

Date of Decision : 18-01-1989

Acts Referred:

Telegraph Act, 1885 — Section 7

Citation : AIR 1989 P&H 224 : (1989) 95 PLR 658

Hon'ble Judges : Jai Singh Sekhon, J

Bench : Single Bench

Advocate : S.S. Nijjar, for the Appellant; H.S. Brar, Senior Standing Counsel, Govt. of India and Raj Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Jai Singh Sekhon, J.—Smt. Kaushalya Sabhlok, mother of the petitioner and respondent 3 had been allotted telephone No. Chandigarh-43454. She passed away on 27-1-1986. The petitioner being the son of the deceased applies for the transfer of the said telephone in his name, but the telephone was disconnected in Sept. 1986. The petitioner then resorted to filing the present writ petition under the provisions of Article 226 of the Constitution of India, mainly on the ground that under para A 1.2 of the instructions issued by the Director General, P&T, New Delhi on 22-7-1983, in the event of death of a person to whom the telephone is allotted, the telephone connection may be transferred to one of the children residing at the station by mutual consent if the spouse of that person is not living. It is averred that the petitioner is the only son of the deceased living at Chandigarh and rather in India, and that the other son respondent 3 has been residing in America for the last 34 years. Respondent No. 3 wrote a letter to respondent 1 to the effect that he will not be responsible for the dues of the telephone and, therefore, the same may be disconnected. The petitioner then approached the telephone authorities from time to time stressing on the above mentioned ground that since respondent No. 3 the other son of the deceased is

living outside India, no question of mutual consent arises. But ultimately vide letter dt. 31-7-1987 (copy annexure P-6) the telephone authorities directed the petitioner to furnish a "No Objection Certificate" from respondent No. 3 in order to enable them to take further action in the matter of transfer of the telephone in his name.

2. In the return filed by respondent No. 3 brother of the petitioner, it was contended that the petitioner had concealed the factum of house No. 730, Sector 8-B at Chandigarh along with its fittings and fixtures including the telephone in question having fallen to the share of the answering respondent on the basis of family settlement dt. 9-2-1986 which was duly acted upon (photostat copy annexure R-1) between the parties after the death of their mother Smt. Kaushalya. It was further clarified that another house along with its fittings and fixtures and also a telephone installed therein, located at Solan belonging to the mother of the petitioner and the answering respondent had fallen to the share of the petitioner and that he is enjoying that telephone facility. It was also maintained that thereafter the petitioner started living in the house at Chandigarh as a tenant under respondent 3 vide rent note (Annexure R-2) dt. 4-3-1986. The remaining allegations of the petitioner were controverted.

3. In the return filed by respondents 1 and 2, it was contended that the mutual consent of the heirsof the deceased is required for the transfer of telephone connection, as per rules, besides stressing that the mutual consent has otherwise become inevitable due to devolvement of House No. 730, Sector 8-B at Chandigarh in the name of respondent 3 on the basis of family settlement.

4. Mr. S.S. Nijjar, learned counsel for the petitioner tried to make out a case that as per paragraph A 1.2, of instructions Ann. P-1 if no spouse of the deceased is alive, then the telephone connection of the deceased should be transferred to one of his children residing at the station by mutual consent of those children only who are residing at that station and that the consent of the other children of the deceased not living at that station is not required. Mr. H.S. Brar, Senior Standing Counsel for the Union of India on the other hand, maintained that the requirement of mutual consent would be applicable to all the children of the deceased irrespective of the fact of their residing at the station as it is a question of succeeding to the property of the deceased. The provisions of Rules for transfer of telephones as appended to the writ petition as Annexure P-1 run as under : --

"Rules for transfer of Telephones"

A : Telephone taken in the personal name of an individual.

A-1 : On the death of the Hirer, the telephone provided under any category shall be transferred as provided below : --

A-1-1 : If the deceased has left a Will :

If the property is bequeathed to one person, the telephone may be transferred to

that person. If the property is bequeathed to more than one person, the telephone may be transferred to that person whose name is mentioned in the will for the specific purpose. If there is no such person mentioned in the will, the telephone may be transferred to any one of the beneficiaries in whose favour consent is given by the other beneficiaries.

A-1.2 : In the absence of a Will :

The telephone may be transferred to the widow/widower of the deceased. In case of more than one widow, telephone may be transferred to one of them by mutual consent. In case the widow/widower is not alive or does not wish to retain the telephone the telephone may be transferred to one of the children residing at the station by mutual consent.

In case the widow/widower is not alive and there are also no children, the telephone may be transferred to the legal successor. In case there are more than one legal successor, the telephone may be transferred to one of them by mutual consent of all the successors."

The bare perusal of the above referred instructions leaves no room for doubt that if the deceased had left a will specifically providing the telephone connection, such connection shall be transferred in the name of that person but in case the will is silent in this regard, then the telephone connection shall be transferred to one of the beneficiaries in whose favour the consent is given by the other beneficiaries. In case the deceased dies without executing any will, and not leaving behind any spouse alive, the telephone connection had to be transferred in the name of one of the children of the deceased residing at the station by mutual consent of the other children. It is further provided that in case there is no living spouse or child of the deceased, then the telephone connection may be transferred to the legal successor and in case there are more than one legal successor such connection may be transferred to one of them by mutual consent of all the successors. Thus, it is absolutely clear that the mutual consent of the legal heirs of the deceased for transferring the telephone connection to one of them is required in order to transfer their rights in the said telephone in favour of the concerned legal heir. Thus, the requirement of mutual consent would be applicable to all the children of the deceased even if one of them is residing outside India as is in the present case.

5. The matter does not rest here as by way of family settlement (copy Annexure R1). house No. 730. Sector N-B at Chandigarh, wherein the telephone in question is installed, had fallen to the share of respondent 3 along with all - fittings and fixtures. This memorandum of family settlement was executed by the petitioner as well as by respondent 3 on 9-2-1986, whereas the house located at Solan belonging to the deceased along with all fittings and fixtures and also a telephone installed therein had fallen to the share of the petitioner. This memorandum of family settlement was filed along with the written statement, but strangely enough, the petitioner has not controverted the facts contained

therein or in the written statement in this regard by filing any reply. So, it has to be taken that the factum of partition of moveable and Immovable properties of the deceased by way of family settlement is not disputed by the petitioner. On the other hand, he had taken this very house on rent from his brother respondent 3 vide rent note (copy Annexure R-2). If that is so, then the telephone connection being a fixture in the said house had fallen to the share of respondent No. 3 and respondent 2 was well within its right to disconnect this connection on receipt of communication from respondent 3 especially when the petitioner had failed to obtain the consent of respondent 3 for getting the said telephone connection transferred in his name.

6. For the foregoing reasons, this writ petition fails and is hereby dismissed. However, there is no order as to costs in view of the peculiar circumstances of the case.