
(2009) 02 P&H CK 0085
In the Punjab And Haryana At Chandigarh

Mehtab Singh

APPELLANT

Vs

Jogender Singh and Others

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Succession Act, 1925 — Section 278

Citation : (2009) 154 PLR 385

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.

CM No. 2145-CII of 2009

1. For the reasons mentioned in the application, delay in re-filing the appeal is hereby condoned. CM is disposed of. FAO No. 625 of 2009.

2. Hanmat Singh Kehari had purchased "Kisan Vikas Patra" (hereinafter called the KVPs) of the value of Rs. 1,32,000/-. He had one son Sardanand who predeceased him leaving behind three sons, namely Jogender Singh, Jaswinder Singh and Manjeet Singh Kehari passed away on 16.3.2003. The three grand sons filed a petition in the Court of Civil Judge (Senior Division) Rohtak (exercising the powers of District Judge under the provisions of Section 278 of Indian Succession Act), against Mehtab Singh and General Public, for the issuance of a Succession Certificate in respect of KVPs amounting to Rs. 1,32,000/- from sub post office, Kansala, Tehsil and District Rohtak, on the ground that they are the only legal heir of deceased Hanmat Singh Kehari. No one had put in appearance on behalf of General Public, despite publication, therefore, vide order dated 14.1.2005, respondent No. 2/General Public was proceeded against ex-parte. However, Mehtab Singh (appellant) contested the petition on the ground that Hanmat Singh Kehari had constituted him as his nominee in his KVPs being his nephew as he was looking after him during the

period of his ailment and had borne all the expenses for his medicines and other necessities till his death. It was further averred by Mehtab Singh (appellant), that KVPs were in his possession which were misplaced. Consequently, he had lodged an FIR in Police Station, Kansala. The grand sons of Hanmat Singh Kehari filed a replication to the written statement filed by Mehtab Singh (appellant) refuting his claim and denying the averments made in the written statement.

3. In the pleadings of the parties, following issues were framed:

1. Whether the plaintiffs are entitled to grant of Succession Certificate for the Estate of deceased Hanmat Singh Kehari as prayed for on the ground as in the petition? OPP

2. Whether only respondent No. 1 is entitled to receive the estate of deceased Hanmat Singh, if so to what effect? OPR

4. Both the parties led their respective evidence. The learned Court below while relying upon a decision of this Court in the case of Jiwan Kaur Vs. Jasbir Kaur and Others, held that nominee is holder in due course and is treated in law as a trustee on behalf of actual claimant, but he cannot seek precedence over actual claimant. The learned Court below thus vide its order dated 21.7.2008 allowed the petition for Succession Certification and ordered that Succession Certificate of the amount mentioned in the KVPs from Ex.P-3 to Ex.P-16 be issued in favour of grand sons of Hanmat Singh Kehari in equal share on filing of requisite stamp papers. It is against this order that Mehtab Singh (appellant) has come up in appeal before this Court.

5. Mr. S.K.Sud, learned Counsel for the appellant has vehemently argued that the appellant being the nominee duly constituted by the deceased Hanmat Singh Kehari, has a right to claim Succession Certificate to KVPs purchased by Hanmat Singh Kehari during his life time. However, he could not cite any law contrary to the one followed by the learned Court below in Jiwan Kaur's (supra), in which it has been categorically held that nominee is holder in due course and is treated in law as a trustee on behalf of actual claimant, but he cannot seek precedence over actual claimant. The present respondents (claimants/grand sons) are the legal heirs of deceased Hanmat Singh Kehari and have precedence over the nominee in the matter of succession.

6. In view of the above, I do not find any error in the order passed by the Court below. The appeal is, thus, found to be devoid of any merit and is hereby dismissed in limine without any order as to costs.