
(2005) 03 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : C.M.P.M.O. No. 134 of 2003

Smt. Arun Prabha and Another	Vs	APPELLANT
Smt. Sheela Devi and Others		RESPONDENT

Date of Decision : 17-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, 96

Citation : (2005) 2 ShimLC 15

Hon'ble Judges : V.K. Gupta, C.J

Bench : Single Bench

Advocate : Bhupender Gupta and Neeraj Gupta, for the Appellant; G.D. Verma and Romesh Verma, for the Respondent

Judgement

V.K. Gupta, C.J.—Civil First Appeal u/s 96 of the of Civil Procedure was filed by Sant Lal, Shila Devi and Pushpa Paul, Appellants No. 1, 2 and 3 respectively in the Court of learned District Judge, Solan against the judgment and decree dated 27th June, 1998 in Civil Suit No. 39/1 of 97/85 in which Smt. Sumitra daughter of Shri Shiv Dutt was Defendant No. 1 and Smt. Mohindra Kumari, Smt. Arun Prabha and Smt. Sharda Kumari were Defendants No. 2, 3 and 4 respectively. Smt. Shila Devi and Pushpa Paul, Appellants No. 2 and 3 undoubtedly were parties in Civil Suit No. 39/1 of 97/85. In the Civil Suit apart from Appellant No. 1 Sant Lal, Dharam Singh was the first co-paintiff but since Dharam Singh subsequently died, Shila Devi and Pushpa Paul, being his widow and daughter respectively joined Sant Lal as the co-Appellants in the aforesaid first appeal.

2. The Civil suit was filed by Plaintiffs, Dharam Singh and Sant Lal for declaration to the effect that they were owners in possession of a particular piece of land and a mutation attested in the name of one late Lachhmi Devi and another mutation attested in the names of the Defendants in the said suit was illegal, void ab initio and inoperative qua the rights of the Plaintiffs. In the said Civil Suit the aforesaid two Plaintiffs had also asked for consequential relief of permanent prohibitory injunction to restrain the Defendants therein from causing interference in the suit

land in any manner. The suit was dismissed by the trial Court on 27th June, 1998 against which the aforesaid first appeal was filed, as has been noticed at the outset. During the pendency of the first appeal the first Respondent Sumitra Devi died. She died on 11th October; 1998. Consequent upon her death, Appellant Sant Lal filed an application under Order 22 Rule 4 of the Code of Civil Procedure. In the said application, he made the following prayer:

It is, therefore, respectfully prayed that the name of Smt. Sumitra may please be deleted from the array of Respondents and Sh. Sant Lal Appellant No. 1 may be treated as legal representative of deceased Smt. Sumitra.

3. The learned District Judge proceeded to consider and dispose of the said application and in the process framed the following three Issues:

1. Whether the Appellant Shri Sant Lal is the sole legal heir of Smt. Sumitra Respondent No. 1 as alleged? OPA.

2. Whether Smt. Sumitra executed a valid Will dated 24.8.1998 in favour of daughters of her late sister Shakuntla Devi, namely, Smt. Aruna Prabha and Sharda Devi as alleged? OPR.

3. Relief.

4. On Issue No. 1 he held Sant Lal Appellant No. 1 as the sole legal heir of deceased Sumitra Devi. With respect to Issue No. 2 he held, found and declared that Sumitra Devi had not executed any Will in favour of Arun Prabha and Sharda Kumari, Respondents. Operative part of the impugned order dated 11th June, 2002 reads thus:

24. For the foregoing reasons, findings and observations, it is concluded that Sant Lal Appellant is the sole heir and legal representative of Smt. Sumitra Devi, deceased being her first cousin. She has no other surviving heir than the said Sh. Sant Lal, Appellant. The name of Smt. Sumitra Devi be deleted from the title of the plaint and memorandum of the appeal. The application stands allowed to the extent as observed hereinbefore.

5. Whether Sant Lal Appellant was the sole legal representative of deceased Sumitra Devi on any basis, or whether he was not the sole legal representative of deceased Sumitra Devi, or whether Respondents Arun Prabha and Sharda Kumari were the legal representatives of deceased Sumitra Devi on the basis of an alleged Will which they claimed was executed on 24th August, 1998, or whether they were not the legal representatives of deceased Sumitra Devi were and could not be questions and issues which might have fallen for consideration in the aforesaid application under Order 22 Rule 4 CPC because these were outside the scope of the suit filed by Dharam Singh and Sant Lal, Plaintiffs, or the appeal filed by the present three Appellants against the judgment and decree dated 27th June, 1998. The fact remains that Sumitra Devi, Respondent No. 1 had died during the pendency of the appeal and, therefore, her name ought to have been deleted. That alone simplicitor should have been done by the learned District

Judge, looking to the prayer in the application I am saying so because none of the parties in the appeal, neither Sant Lal Appellant, nor the Respondents therein had prayed that deceased Sumitra Devi be substituted by legal representatives, of course, other than Sant Lal Appellant. No such prayer was made for substitution of her legal representatives nor did any party inform the appeal Court that she, in fact, left behind legal representatives who were not parties to the suit or in the appeal. The learned District Judge should not have declared Sant Lal, Appellant as the sole legal representative of Respondent Sumitra Devi in the aforesaid appeal because neither there was occasion for doing so nor it could have been done since Sant Lal Appellant could not have stepped into the shoes of Sumitra Devi who, both in the suit as well as in the appeal, was on the opposite side of the Appellant. This was outside the scope of Order 22 Rule 4 Code of Civil Procedure.

6. The parties, both Appellant Sant Lal as well as Respondents Arun Prabha and Sharda Kumari had always their respective subsisting rights of claiming the legal heirship with respect to the estate of the deceased Sumitra Devi on the basis of their conflicting claims but those claims could not form the subject matter of any adjudication in the aforesaid application under Order 22 Rule 4 Code of Civil Procedure. Both the parties were at absolute liberty and they are at absolute liberty even today to agitate and establish their aforesaid claims, conflicting as these might be, in appropriate proceedings independent of the aforesaid appeal and in my opinion the appropriate proceedings perhaps could be the filing of suits by them for agitating and establishing their legal heirship to the estate of the deceased Sumitra Devi. That being my view, I have also no hesitation in holding, therefore, that the finding in the impugned order on Issue No. 2 should be treated as non-est and similarly it should not operate as res judicata in so far as the conflicting claims of the parties with respect to the legal heirship to the estate of deceased Sumitra Devi. I am fortified in this view of mine by a Single Bench judgment of this Court in the case of Suraj Mani and Another Vs. Kishori Lal, and by a Full Bench judgment of Punjab and Haryana High Court in the case of Mohinder Kaur and Another Vs. Piara Singh and Others,

Based on the aforesaid observations, this petition is allowed. The impugned order to the extent indicated hereinabove, is set aside with the consequence that the name of Sumitra Devi, Respondent No. 1 shall stand deleted from the array of parties in so far as the appeal is concerned. The learned District Judge shall proceed to hear and dispose of the appeal on its merits and in the light of the observations made in this judgment.

The record of the learned appeal Court be sent back immediately to that Court where the parties through their learned Counsel are directed to appear on 25th April, 2005.

CMP No. 265 of 2003.

In view of the disposal of the main petition, this application is also disposed of

and the interim order dated 23rd July, 2002 shall stand vacated.