

(1987) 09 P&H CK 0104
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1676 of 1987

Smt. Hardial Kaur

APPELLANT

Vs

Pokhar Singh (deceased) Represented by his Legal
Representatives and Others

RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47(3)

Citation : (1987) 09 P&H CK 0104

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : R.L. Sarin, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Goyal, J.—Shrimati Nihal Kaur and Respondents Nos. 1 to 3 filed a suit for possession of land measuring 115 Kanals 18 Marias against Respondents Nos. 5 to 7, which was dismissed by the trial Court. On appeal, the dismissal of the suit filed by Respondents Nos. 1 to 3 was confirmed, but the judgment of the trial Court qua Nihal Kaur was reversed and a decree in her favour for possession of the suit land passed. During the pendency of the Second Appeal filed by Respondents Nos. 5 to 7, which was dismissed by this Court on September 23, 1986, Nihal Kaur died and Respondents Nos. 1 to 3 were impleaded as her legal representatives. The present execution proceedings were instituted by Respondents Nos. 1 to 3 and a warrant of possession was issued for the delivery of the land in dispute. Before the warrant could be executed, the Petitioner Shrimati Hardial Kaur filed objections that she being the widow of Bachan Singh, a son of Nihal Kaur, was entitled to 1/4th of the share of the property, the 3/4th having devolved on the second son and the two daughters, namely, Tara Singh, Sama and Dhan Kaur; that the alleged will in favour of the decree-holders was a forged and fictitious documents; and that she may be allowed to execute the decree for the benefit of the heirs of Nihal Kaur. Her objections were dismissed

by the executing Court as not maintainable Aggrieved thereby, she has come up in this revision.

2. The learned Counsel for the Petitioner, relying on *Mangat and Ors. v. Surja* (1979) 81 P.L.R. 201, contended that the order passed in the R. S. A. impleading Respondents Nos. 1 to 3 as legal representatives, does not operate as res judicata and that the executing Court is bound to decide the question as to who is the legal representative of the decree holder by virtue of Sub-section (3) of Section 47 of the CPC (hereinafter referred to as "the Code"). There can be no dispute with the proposition that the order passed in the R.S.A. impleading Respondents Nos. 1 to

3. as legal representatives does not operate as res judicata nor bars any person to claim the property of the deceased as her heir. The question, however, is as to whether it can be done through a suit or the matter can be raised in execution by a person who was not party to the decree. Sub-section (3) of the Code provides that where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purpose of this section, be determined by the Court This provision, however, cannot be read in isolation and is only supplementary to the main provision contained in Sub-section (1). The executing Court would be competent to take cognizance of the question of representatives of a party only if it arises between the parties to the suit and relates to the execution, discharge or satisfaction of the decree. Reference in this regard may be made profitably; to *Esak, Haji Abubakar Tar Mohamed v. Jimabai and others* AIR 1936 Sind 166. and *Smt. Kalabati and Another Vs. Chandranarain Mandal and Others*, . In the present case, the objector is not claiming to be a representative either of the decree holder or the judgment debtor. The question of legal representatives of Nihal Kaur had already been settled prior to the decree and the executing Court cannot go behind the decree or investigate into pre decree matters. The executing Court would be competent to take cognizance of such a question only if the decree holder or the judgment debtor has died after the passing of the decree or there has been, in any manner, assignment of their rights. The remedy of the Petitioner therefore, is by a separate suit and not u/s 47(3) of the Code, which, as stated at the Bar, she had already resorted to No fault, therefore, can be found with the impugned order and this petition is accordingly dismissed. No costs.