
(1988) 10 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3331 of 1986

Smt. Jagmohan Kaur and Others

APPELLANT

Vs

Shri Surinder Singh Talab and Others

RESPONDENT

Date of Decision : 03-10-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 115

Citation : (1990) 97 PLR 604

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Baldev Mahajan, for the Appellant; H.L. Sarin and Ritu Bahri, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—This petition is directed against the order dated 6-10-1986 passed by the learned Sub Judge, 1st Class, Amritsar, whereby he dismissed an application under Order, 1 Rule 10 of the CPC (for short "the Code"), filed by the petitioner in a pending suit.

2. The facts in brief are that Smt. Banarso died on 14-10-1983. She was survived by her husband Jai Ram Singh three sons namely, Surinder Singh, Jaswant Singh and Amarjit Singh and two daughters namely Jagmohan Kaur and Baljit Kaur. Jai Ram Singh died in the month of May, 1984 Amarjit Singh died on 8-2-1984 and he is survived by his daughter Manjit Kaur minor. Surinder Singh plaintiff- respondent No. 1 filed a suit on the strength of a will dated 22-11-1982 which was alleged to have been executed by Smt. Banario and claimed on the basis of the said will that he has solely and exclusively inherited her estate The other natural heirs of Smt. Banarso who had been impleaded as defendants to suit were proceeded against ex-parte and ultimately an ex -parte decree dated 10-8-1984 was passed in favour of respondent No. I.

3. It is not in dispute that the other heirs of Smt. Banarso then filed an

application for setting aside the aforesaid ex-parte decree which is still pending decision before the Court which passed the decree. During the pendency of the said application, execution of the ex-parte decree has been stayed.

4. Surinder Singh respondent No. 1, then filed the instant suit seeking mandatory injunction against the Punjab and Sind Bank respondent No. 1 to direct it to allow him to the locker of Smt. Banarso in the said Bank. The main stay for his claim in this suit is that by virtue of the will dated 22-11-1982 he has solely and exclusively inherited the estate of Smt. Banarso deceased. The petitioners who are the other natural heirs of Smt. Banarso on coming to know about the institution of the said suit filed an application under Order 1, Rule 10, of the Code for being impleaded as defendants to the suit. This application has, however, been dismissed by the learned trial Court vide the impugned order.

5. I have heard the learned counsel for the parties. I am of the considered view that the learned trial Court has erred in the exercise of its jurisdiction in passing the impugned order. When the proceedings in the application for setting aside the ex-parte decree obtained by respondent No. 1 on the strength of the will dated 22-11-1982 of Smt. Banarso are still pending and even the execution of the said decree has been stayed, respondent No. 1 ought not to have hastened to file the present suit. If he has done so, the petitioners, without doubt, are necessary parties to the same as their rights as heirs of the deceased are yet to be adjudicated upon and decision one way or the other is to be taken. Mr. M. L. Sarin, the learned Senior Advocate, on behalf of respondent No. 1, has no doubt contended that the best way was to decide the application filed by the petitioners for setting aside the ex parte decree but that is not within the power of the petitioners to get decided. The law takes its own course and the law's delays are proverbial. In the circumstances obtaining in the present case, I am of the considered view that the petitioners ought to be impleaded defendants to the instant suit.

6. Consequently, I allow this revision petition, set aside the impugned order dated 6-10-1986, without any order as to costs. I allow the application of the petitioners under Order-1, Rule 10, of the Code. They are directed to be impleaded as defendants to the suit.

7. The parties through their counsel are directed to appear before the trial Court on 7-11-1988.