
(1994) 05 MP CK 0013
In the Madhya Pradesh High Court
Case No : C.R. No. 170 of 1992

Smt. Sarmishtha Devi Surve and Others	APPELLANT
Vs	
Lal Saheb Surve and Others	RESPONDENT

Date of Decision : 03-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5
Succession Act, 1925 — Section 222, 63

Citation : AIR 1996 MP 13 : (1995) 40 MPLJ 618 : (1995) MPLJ 618

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : D.K. Katare, for the Appellant; N.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

One Sadashivrao Surve had three sons, they are Dattaji Rao, Lal Saheb Surve, Cheema Saheb Surve. Satyawati and Indumati are the widows of Sadashivrao Surve. Smt. Sharmishtha widow of Tatyasaheb Surve filed a suit for partition. In these proceedings, Smt. Satyawati and Smt. Indumati were also parties. A preliminary decree was passed. It was during the pendency of further proceedings, which were being prosecuted with a view to secure a final decree, Smt. Satyawati and Smt. Indumati died. It is stated that Smt. Satyawati left a Will dated 20th of January, 1983 and Smt. Indumati left a Will dated 17th of February, 1979. On the basis of these two Wills applications were filed under Order 22, Rule 5 of the CPC by Shambhajirao and Jairaj. They are the grandsons of Lalasaheb Surve and Cheemasahab Surve. The trial Court examined the matter in terms of Order 22, Rule 5 of the CPC and came to a conclusion that the Wills are genuine and allowed the two applicants to represent the estate of the deceased. They were brought on the record as legal representatives. It is this order which has been challenged by the present applicants.

It may be seen that the determination of question as to who is a legal representatives of a deceased plaintiff or defendant under Order 22, Rule. 5 of the CPC is only for a limited purpose. The very idea is that the proceedings which are pending be conducted in an orderly manner. This provision has been enshrined with a view to avoid delay in the disposal of the suits and other pending proceedings. Any decision given in proceedings under Order 22, Rule 5 of the Code of Civil Procedure, 1908 is not a final determination. It is further clear that such a decision does not operate as *res judicata*. This view was expressed by a Full Bench of Punjab and Haryana High Court in *Mohinder Kaur and Another Vs. Piara Singh and Others*, . Similar view was expressed in *S. Charanjit Singh v. Bharatinder Singh* (AIR 1988 P &a 123). The learned counsel for the petitioner has placed reliance on a decision given by this Court in *Ram Shankar v. Balakdas* (AIR 1992 MP 224). According to him, the applicants should have approached a Probate Court. On the other hand, the learned counsel appearing for the non-applicants has placed reliance on a decision of this Court in *Madan Gopal v. Smt. Ramjiwanibai* (1986 JLJ 806).

I have considered the matter. I am of the view that the course adopted by the trial Court in permitting the applicants to prefer a petition under Order 22, Rule 5 of the CPC was just and proper. This arrangement is for a limited purpose. This is not a final determination of the question with regard to the genuineness of the Will, The requirements of obtaining probate or resorting to such other remedies which are available to the person claiming under the Will will have to be resorted to. With these observations, the present petition is dismissed.

After this order was dictated, the learned counsel for the non-applicants stated that the persons in whose favour the order has been passed has not been impleaded in the present petition. As no adverse order has been passed against them, I think this omission can be ignored. It is again brought to my notice that wrong parentage has been mentioned with regard to one person in the memo of parties. Any mention of the wrong parentage will not have any effect on the controversy in dispute.