
(1999) 09 P&H CK 0130
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1618 of 1999

Suresh Chand Chaudhary

APPELLANT

Vs

Shashi Prabha Nangia and Others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1(5)
Succession Act, 1925 — Section 276

Citation : (1999) 3 CivCC 485 : (1999) 123 PLR 848 : (1999) 4 RCR(Civil) 195

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : B.S. Bedi, for the Appellant; A.P. Bhandari and Amit Bhandari for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—This is a civil revision and has been directed against the order dated 22.9.1998 passed by the Additional District Judge, Faridabad, who dismissed the petition of the petitioner u/s 276 of the Indian Succession Act.

2. The brief facts of the case can be described in the following manner:-

Petitioner Suresh Chand Chaudhary and his real brother Ramesh Chand Chaudhary filed a petition u/s 276 of the Indian Succession Act for the grant of probate in respect of last Will dated 4.11.1993 executed by Smt. Karunavati widow of Puran Chand Chaudhary, who was the mother of the petitioners and respondents Nos. 2 and 3. The case set up by the petitioners was that Smt. Karunavati executed last Will on 4.11.1993 and the said Will was also duly registered in the office of Sub-Registrar, Palwal and was attested by Shri I.C. Taneja, Advocate and Shri Budhi Nambardar of Palwal. On the basis of that Will the petitioners applied for probate.

The matter came up for hearing before the Court of Additional District Judge, Faridabad on 22.9.1998 in the presence of Shri K.D. Bhardwaj, Advocate, who

gave the appearance on behalf of the petitioners and petitioner No. 1 Ramesh Chand Chaudhary was also present. On behalf of respondents Nos.2 and 3 Shri S. Nangia, Advocate was present. In the presence of the aforesaid persons, the following order was passed by the Court of Additional District Judge, Faridabad:-

"Petitioner No. 1 Ramesh Chand Chaudhary and Shri K.D. Bhardwaj, Advocate for both the petitioners have made a joint statement withdrawing this petition. They have stated that the lands detailed in para-1 and 1(a) of the petition already stand mutated in favour of the petitioners on the strength of the disputed Will dated 4.11.1993 and further that the Civil Court at Delhi is already seized of the matter with regard to property detailed in para 1(c) of the petition. They have further made statement that this withdrawal of the petition will be without prejudice to the rights of the parties in respect of the property detailed in para 1(c) of the petition regarding which the dispute is already pending before the civil Court at Delhi. In view of the same, this petition shall stand dismissed as withdrawn. File be consigned to records."

As a result of this order, the petition u/s 276 of the Indian Succession Act was dismissed as withdrawn. Aggrieved by the said order, the present revision.

3. I have heard Mr. B.S. Bedi, Advocate on behalf of the petitioner, Mr. A.P. Bhandari, Advocate, on behalf of respondents Nos. 1 and 2 and with their assistance I have gone through the records of this case.

4. The learned counsel for the petitioner has challenged the order dated 22.9.1998 on the two grounds: (1) That the withdrawal of the petition was a fraudulent act on the part of a lawyer who was never authorised to make a statement on behalf of the present petitioner. (2) That by virtue of Order 23 Rule 1 (5) of the CPC the petition could not be dismissed by the Court.

5. Both the submissions raised by the learned counsel for the petitioner are totally devoid of any merit. First of all, I would like to meet with the second proposition which has been set up by the learned counsel for the petitioner. Order 23 Rule 1 (5) reads as under:-

"Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under Sub-rule (1), or to withdraw, under Sub-rule(3), any suit or part of a claim, without the consent of the other plaintiffs."

A reading of the above would show that if a suit is instituted on behalf of more than one plaintiff and if one plaintiff withdraws or abandons his claim, such withdrawal is not legal in the absence of the consent of the other co-plaintiff. But in the present case Mr. K.D. Bhardwaj, Advocate was the legal representative and authorised agent of both the petitioners. Petitioner No. 1 was present in person. His Interest was also indivisible with petitioner No. 2. Mr. K.D. Bhardwaj, Advocate and petitioner No. 1 Mr. Ramesh Chand Chaudhary made a joint statement before the Court for the withdrawal of the petition. In these

circumstances, it can be safely concluded that both the petitioners withdrew the petition u/s 276 of the Indian Succession Act. So far as the authority of Mr. K.D. Bhardwaj is concerned, he was a lawyer representing the petitioners. He was an attorney and, therefore, any statement made by the attorney is binding upon the petitioners.

6. Faced with this difficulty, the learned counsel for the petitioner submitted that the petition could not be withdrawn because the present petitioner Suresh Chand Chaudhary and his brother Ramesh Chand Chaudhary were contesting the civil suit filed by respondents Nos. 2 and 3 in the Court of Civil Judge at Delhi. I do not agree with this contention. To give contest to that civil suit is the independent right of the petitioner and his brother, who can always say that on the basis of the Will dated 4.11.1993 the entire estate of Smt. Karunavati had been inherited by them.

In view of the above discussion, I do not see any illegality in the impugned order. The revision stands dismissed.