
(2018) 05 SHI CK 0057
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 40 of 2017

Yoginder Singh

APPELLANT

Vs

Neelam Kumari

RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 6 Rule 17

Citation : (2018) 187 AIC 834

Hon'ble Judges : SURESHWAR THAKUR

Bench : Single Bench

Advocate : R.K. Gautam, Gaurav Gautam, Bimal Gupta, Vineet Vashisht

Final Decision : Allowed

Judgement

Sureshwar Thakur, J.

1.The plaintiff instituted a suit, wherein, he sought rendition of a declaratory decree, for setting aside the testamentary disposition executed by one

Prithi Singh vis-a-vis one Dev Kanya, also, sought a declaratory decree, of, sale deed executed, on 8.10.2009, by defendant No.2 vis-a-vis defendant

No.1 also being set aside. However, during the pendency of the suit, an application cast, under the provisions of Order 6, Rule 17 of the CPC, was

preferred before the learned trial Court, by the plaintiff, wherein, he sought leave of the court, to incorporate in the plaint, the hereinafter reproduced

paragraph No.7-A:- â??7A That the defendant No.1 on 27.07.2015 got the mutation of succession attested in her favour of the suit alnd on the basis

of an illegal & fraudulent Will dated 28.10.1994, whereas, the deceased Dev Kanya neither executed any will nor she was competent to execute the

Will of the suit land in favour of any person and at the most she could only dispose off her 1/7th share by way of Will which she disposed of by her

last valid Will of 10.07.2007. The AC IInd Grade, Paonta Sahib in connivance with defendant No.1 attested the mutation behind the back of the

plaintiff and other legal heirs of deceased Dev Kanya without any notice to them. And, the plaintiff only came to know when he approached the patwari

in the last week of September, 2016, for procuring the latest jamabandi of the suit land. Hence, a cause of action has arisen to the plaintiff to challenge

the said succession of the suit land in favour of defendant No.1, during the pendency of this suit, the last week of September, 2016, when he came to

know about the said fact and is still continuing. B) in the prayer clause after the words "the deed dated 8/10/09" and before the words

"executed" the words and the will dated 28.10.1994 and revenue entry/mutation on the basis of said will are to be inserted. where within, he

cast averments, for setting aside, the mutation attested on 27.07.2015 vis-a-vis defendant No.1, in sequel to a Will executed by him, on 28.10.1994, by

one Dev Kanya, given Dev Kanya being incompetent to execute the apposite Will.

2. The learned trial Court, declined the apposite leave to the plaintiff, on the trite ground, (a) of, given the occurrence of demise of co-defendant No.2,

one Dev Kanya, during the pendency of the apposite lis, and, her estate thereat, opening to succession, (b) thereupon, causes of action being both

segregable, and, independent vis-a-vis all cause(s) of action, embodied, in the extant suit, and, (c) also assigned the further reason of the aforesaid

causes of action rather being espousable, through, a separate suit. The aforesaid reasons assigned by the learned trial Court, for declining the apposite

leave, upon, the apt application, are, flimsy, and, devoid of any legal strength, for the reasons (a) with the plaintiff, casting, a piercing challenge, to the

succession, by co-defendant Dev Kanya, to the estate of one Prithi Singh, under, a purported testamentary disposition made in her favour; (b) with

Dev Kanya, expiring, during the pendency of the suit, whereafter, defendant No.1 vis-a-vis whom, she executed a testamentary disposition, hence,

proceeding to produce it, before, the revenue officer concerned, for ensuring an apposite order, of attestation of mutation vis-a-vis her estate hence

being recorded by him, (c) thereupon, with the apposite investing, of, title vis-a-vis the suit land, upon, Dev Kanya, rather occurring under a will

purportedly executed vis-a-vis her, by one Prithi Singh, and, with the aforesaid Will, being, cast a challenge through an apposite averment borne in the

plaint, (d) hence, with the aforesaid challenge being made, during, the life time of Dev Kanya, and, after her demise, defendant No.1, producing, the

latter's Will, for ensuring attestation of mutation vis-a-vis her estate hence being recorded in his favour, (e) hence, beget a sequel of their being no

indiligence, on the part of the plaintiff, to initially, in the plaint, embodying, the aforesaid factum, conspicuously when Dev Kanya was alive thereat,

and, was impleaded as co-defendant No.2 in the suit. Rather the apposite causes, of, action for a challenge being thrown, to the testamentary

disposition, made by Dev Kanya vis-a-vis defendant No.1, arose only, upon, the former's demise, also, arose when it was produced, before, the

Revenue Officer concerned, for attestation, of, mutation in consonance therewith.

3. The aforesaid discussion, unfolds, the trite factum of there, being the closest entwinement(s) inter se the relief canvassed initially in the plaint,

pointedly, vis-a-vis the valid and due execution, of a testamentary disposition vis-a-vis Dev Kanya, by one Prithi Singh, and, also vis-a-vis the further

concomitant purported disability, of Dev Kanya, to further execute a Will, vis-a-vis the estate acquired by her, from, one Priti Singh, upon co-

defendant No.1. The close entwinement(s), inter se the aforesaid trite factum(s), was, hence insegregable, and, thereupon, all were concomitantly

espousable, through, the plaintiff concerting to seek leave of the Court, to beget averments, in consonance therewith, in the extant suit, rather than the

learned trial Court, proceeding to assign untenable and specious reasons, for theirs being segregable, from, the initially cast averments, and, reliefs in

the plaint, and, hence, theirs constituting causes of action, independent, from, the ones, initially canvassed in the plaint. More so, when the aforesaid

reasons, would beget the ill sequel, of promoting multiplicity(ies) of litigation, whereas, it being an underlined trite principle of law, that causes of action

holding interconnectivity rather being enjoined to be joined in the same suit, rather, than the litigants concerned being driven to file separate suits, on

purported untenably segregable cause(s) of action.

3. For the foregoing reasons, the instant petition is allowed and the impugned orders are set aside. Consequently, the plaintiff's/petitioner's application,

cast under the provisions of Order 6, Rules 17 of the CPC, is allowed, and, he is directed to within four weeks, from today institute the amended plaint,

before the learned trial Court. The parties are directed to appear, before, the

learned trial Court on 23rd May, 2018. However, it is made clear that the observations made hereinabove shall have no bearings on the merits of the case. No order as to costs. All pending applications also stand disposed of .

Records be sent back forthwith.