

(2020) 02 P&H CK 0192

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 6148 Of 2017 (O&M)

Uma Jain

APPELLANT

Vs

Satish K. Oswal And Another

RESPONDENT

Date of Decision: Feb. 24, 2020

Acts Referred:

- Civil Procedure Code, 1908 - Order 1 Rule 10
- Constitution Of India, 1950 - Article 227

Hon'ble Judges: Alka Sarin, J

Bench: Single Bench

Advocate: Neeraj Sharma, Rahul Sharma

Final Decision: Allowed

Judgement

Alka Sarin, J

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 19.07.2017 passed by the Trial

Court whereby the application under Order 1 Rule 10 of the Code of Civil Procedure, 1908, (hereinafter to be referred to as "CPC") filed by the

petitioner has been dismissed .

In brief, the facts relevant to the present lis are that Sital Parsad Oswal was the owner to the extent of half share of the property in dispute, measuring

3 kanals 11 marlas 115 square feet bearing Khasra No.89, G.T. Road, Near Khalsa College, Amritsar. Sital Parsad Oswal is stated to have died on

14.04.1999 leaving behind his wife Dayawati, his son Satish Oswal and two daughters, namely, Usha Jain and Uma Jain. Sital Parsad Oswal, during

his lifetime, executed a Will dated 22.12.1992 in favour of his wife Dayawati thereby bequeathing a life interest in her favour. The property was

thereafter to vest in his two daughters Usha Jain and Uma Jain (petitioner). Dayawati filed Probate Petition No.30 of 2000 before the Delhi High

Court in which the petitioner, respondent No.1 and Usha Jain were arrayed as parties. In the probate petition, details of the immovable property

included the half share, as mentioned in the present petition. Dayawati died on 05.06.2010 and the probate petition is now stated to be represented by

the petitioner and her sister Usha Jain as the property vested in them after the death of Dayawati as per the Will of their father dated 22.12.1992.

Satish K. Oswal, respondent No.1 herein, filed a suit for separate possession by partition by metes and bounds of the suit property measuring 3 kanals

11 marlas 115 square feet, Khewat Khatoni No.53/76 in the estate of Tehsil Amritsar-1, District Amritsar. The respondent No.1 in his suit claimed

that Sital Parsad Oswal, his father, had died on 14.04.1999 and left behind a Will dated 07.04.1999 in his favour and on the basis of the said Will he

had become owner of the suit property. In the suit, he claimed separate possession on the basis of the Will dated 07.04.1999. The sisters have not

been arrayed as a party in the said suit. The said suit, in fact, has been filed against respondent No.2 herein on the ground that she was a tenant who

had renounced her tenancy and, thus, the respondent was entitled to get possession of the property. The petitioner herein filed an application for being

impleaded as a defendant in the present suit which has been dismissed by the Trial Court vide order dated 19.07.2017. Hence, the present revision

petition.

I have heard the learned counsel for the parties.

It has been contended by the learned counsel for the petitioner that in view of the fact that the petitioner and her sister had inherited the suit property

by way of Will dated 22.12.1992 executed by their father and qua which the probate was pending, they were necessary parties in the suit. It was

further contended that in the present suit two particular issues had been framed, - one qua the Will propounded by respondent No.1, which has

purportedly been executed by Sital Parsad Oswal on 07.04.1999 and the other issue was qua the Will dated 22.12.1992 executed by Sital Parsad

Oswal in favour of his wife Dayawati and daughters Usha Jain and Uma Jain (petitioner). Learned counsel for the petitioner laid emphasis on issue

No.6, which reads as under:-

“6. Whether Shital executed will dated 22.12.1992 in favour of Daya Wati, Usha Jain and Uma Jain? OPD”

It is vehemently contended that the onus of issue No.6 was on the defendant and the defendant not being a legal heir of Sital Parsad Oswal would

have no interest in leading any evidence qua the said Will. In fact, the issue directly related to the petitioner and in case the petitioner is not impleaded

as party irreparable loss would be caused to the petitioner.

Per contra, the learned counsel for respondent No.1 has contended that in the written statement filed by defendant-respondent No.2 Pratibha Puri, it

has been averred that a valid Will had been executed by Sital Parsad Oswal on 22.12.1992. Even the probate petition has been mentioned in the

written statement. He further supported the order passed by the Trial Court wherein it has been held that since the suit was not for declaration but for

separate possession by partition against defendant-respondent No.2, hence, the question of inheritance was not to be decided and, as such, the

petitioner was not a necessary party to the suit.

Admittedly, the probate petition is pending in the Delhi High Court with regard to the Will dated 22.12.1992 executed by Sital Parsad Oswal in favour

of his wife Dayawati and daughters Usha Jain and Uma Jain (petitioner). In the present suit, two specific issues have been framed, one qua the Will

propounded by the plaintiff-respondent No.1 dated 07.04.1999 purported to have been executed by Sital Parsad Oswal and the other issue is regarding

the Will dated 22.12.1992 executed by Sital Parsad Oswal in favour of Dayawati, Usha Jain and the petitioner. That being so, this Court is of the

opinion that petitioner would be a necessary party to the suit. Once specific issues have been framed regarding the Will dated 22.12.1992, the same

cannot be decided in the absence of the petitioner.

In view of the above observations, this Court is of the considered opinion that the petitioner is a proper and necessary party to the suit. Consequently,

the order dated 19.07.2017 is set aside and the application filed by the petitioner under Order 1, Rule 10 CPC is allowed.

In view of the above, the present revision petition is allowed.