

(1994) 03 P&H CK 0010

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 1059 of 1992 and C.M.A. No. 1392-CII of 1993

Raj Kumari

APPELLANT

Vs

Prem Chand

RESPONDENT

Date of Decision: March 2, 1994

Acts Referred:

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

Citation: (1994) 107 PLR 726

Hon'ble Judges: G.C. Garg, J

Bench: Single Bench

Advocate: J.R. Mittal, Baldev Singh and Surinder Garg, for the Appellant; M.L. Sarin and Alka Sarin, for the Respondent

Judgement

G.C. Garg, J.

This revision petition was disposed of by V.K. Jhanji, J. on January 18, 1993 by passing the following order:

"Atam Parkash son of Ram Baksh Tiled a suit for redemption of mortgage, which is being contested by the respondent. During the pendency of the suit, Atam Parkash dies. An application was filed by Krishna and Payal for being brought on record as they claimed themselves to be widow and minor daughter of the deceased. Shanti Devi also filed an application for the same purpose as she claimed herself to be mother of the deceased. On these applications, issues were framed and parties granted opportunity to produce evidence. Before these applications could be decided, the petitioner also filed an application for being impleaded as plaintiff in place of Atam Parkash This application was declined by the trial Court. The said order is now being impugned in the present revision petition.

3. After hearing learned counsel for the petitioner, I am of the view that the order under revision cannot be sustained. The application of the petitioner was rejected summarily without affording him an opportunity to produce evidence. The

petitioner was entitled to prove that she could be impleaded as plaintiff in place of Atam Parkash, deceased, being his widow. From the order, I find that the application filed by Krishna and Payal, and Shanti for being brought on record as legal representatives are pending, and they have yet to prove their entitlement for the said purpose. The petitioner has also stated that succession certificate which was issued in favour of Krishna and Payal was stayed on the application filed by the petitioner. In the proceedings for grant of succession certificate, the petitioner has already made an application that the affidavit alleged to have made by her in those proceedings was forged one. Considering that the petitioner has a bona fide claim against other applicants who are claiming themselves to be legal representatives, the trial Court ought to have decided her application too along with the application filed by the applicants.

4. At this stage, Mr. J.C. Nagpal, Advocate appearing for the respondents, states that after the motion hearing, the brief of the case was taken away from him by his clients and, therefore, he is not in a position to assist the Court, and thus, may be permitted to withdraw. His prayer is allowed.

5. Consequently the revision petition is allowed and impugned order is set aside. The trial Court is directed to decide the application of the petitioner in accordance with law.

Sd/- V.K. Jhanji

Judge"

January 18, 1993.

2. On an application moved on behalf of respondents 2 and 3, Krishna and Payal, the order was recalled by his Lordship by order dated April 8, 1993. In the circumstances the revision petition was again listed for final hearing.

3. After hearing the learned counsel for the parties at some length, no case is made out to take a view different than the one taken by V.K. Jhanji as reproduced above. This petition is, thus, disposed of in terms of the order dated January 18, 1993. The parties through their counsel have been directed to appear before the trial Court on March 31, 1994. A direction will issue to the trial Court to dispose of the application as expeditiously as possible, preferably within four months of the date fixed for their appearance.