

(1999) 09 P&amp;H CK 0028

## High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 4898 of 1998

Pardeep Singh

APPELLANT

Vs

Smt. Usha Sod

RESPONDENT

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**Date of Decision:** Sept. 7, 1999**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 5

**Citation:** (2002) 1 CivCC 612 : (2002) 1 RCR(Civil) 675**Hon'ble Judges:** Amar Dutt, J**Bench:** Single Bench**Advocate:** B.R. Mahajan, for the Appellant; V.K. Kataria and Ramesh Kumar, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Amar Dutt, J.

The revision petition seeks to challenge the order dated 8.10.1998 passed by the Civil Judge (Sr. Division), Amritsar.

2. In a suit filed by father of the petitioners for partition and possession of the share of the property in dispute a decree was passed by the Sr. Sub Judge, Amritsar on 4.12.1981. This order was upheld by the Addl. Distt. Judge, Amritsar on 28.10.1986. On 5.3.1987, Jagdish Rai filed an application for passing of the final decree. During the pendency of this application, Jagdish Raj died. Thereupon the petitioners who are the sons of Jagdish Rai moved an application for being impleaded as legal representatives of the deceased on the basis of a registered will dated 4.10.1986 which was alleged to have been executed by the deceased in their favour. One of their sisters Usha Rani had also moved on application for being impleaded as a party on the ground that she was one of the natural heirs. The executing Court, taking into consideration the arguments addressed before it, brought all the three applicants on record as legal representatives without deciding the validity of the Will

as it was of the opinion that as disputed questions of fact and law are likely to be involved therein and, therefore, the same should be got settled separately. Hence, this revision petition.

3. I have heard Sh. B.R. Mahajan, Advocate for the petitioners And Sh. Vinod Kumar Kataria, Adv. for the contesting respondent and have carefully considered their respective submissions.

4. It has been contended on behalf of the petitioners that till the final decree is passed, the Court was obliged to determine the rights of the parties in a partition suit and, therefore, it had erred in the exercise of its jurisdiction in not deciding the question as to who was the legal representative as required by the provisions of Order XXII Rule 5 CPC. In support of this submission, reliance has been placed on the law laid down in [Phoolchand and Another Vs. Gopal Lal](#) ; [A. Jayaraj Vs. A. Kumaravel and Others](#), and Mima Kaur v. Surjit Singh 1997(2) CC 528 and it has been submitted that the Court should have decided the question as to who was entitled to be impleaded as a legal representative of Jagdish Rai.

5. A perusal of the judgment in Phool Chand's case (supra) indicates that the Apex Court was primarily dealing with the question whether in a suit for partition a preliminary decree can be amended and their Lordships had observed:

"We are of opinion that there is nothing in the CPC which prohibits the passing of more than one preliminary decree if circumstances justify. Use same and that it may be necessary to do so particularly in partition suits when after the preliminary decree some parties die and shares of other parties are thereby augmented. We have already said that it is not disputed that in partition suits the Court can do so even after the preliminary decree is passed. It would in our opinion be convenient to the Court and advantageous to the parties, specially in partition suits, to have disputed rights finally settled and specification of shares in the preliminary decree varied before a final decree is prepared. If this is done, there is a clear determination of the rights of the parties to the suit on the question in dispute and we see no difficulty in holding that in such cases there is a decree deciding these disputed rights, if so, there is no reason why a second preliminary decree correcting the shares in a partition suit cannot be passed by the Court. So, far therefore as partition suits are converted we have no doubt that if an event transpires after the preliminary decree which necessitates a change in shares, the Court can and should do so, and if there is a dispute in that behalf, the order of the Court deciding that dispute and making variation in shares specified in the preliminary decree already passed is a decree in itself which would be liable to appeal. We should however like to point out that what we are saying must be confined to partition suits."

To the same effect are the observations made in [Nanja Naicken Vs. Rangammal](#) .

6. In Nima Kaur's case (supra), the Andhra Pradesh High Court relied upon these observations and went to the extent of saying that a partition suit is deemed to be

pending till the passing of the final decree and, therefore, the application for impleading the party can be entertained even during the proceedings for passing of final decree.

7. I fail to see how what has been observed in the aforesaid cases is of any assistance for deciding this revision in which the Executing Court has only passed an order for bringing on record all the persons claiming to be heirs of Jagdish Rai without deciding the question of the validity of the Will. Normally, the Court would have been obliged to decide such a question while disposing of the inter se claim of the applicants under Order XXII Rule 5 CPC but since the decision would have involved adjudication upon the validity of the will, the Court has refrained from going into the matter and directed the parties, if so advised to have their right determined in a separate suit and for the purpose of the execution application has brought all the claimants on record to represent the estate of the deceased. The view taken by the Court below is in conformity with the decision of the Full Bench of this Court *Mohinder Kaur v. Piara Singh* AIR 1981 H&P 130, in which it is held that determination as to who is the legal representative, under Order XXI Rule 5 CPC is only for the purpose of bringing legal representatives on record for the conduct of legal proceedings and does not operate as *res judicata* and the inter se dispute between the rival legal representatives has to be tried and decided in separate proceedings. In view of the law laid down by the Full Bench in *Mohinder Kaur's* case (*supra*), this Court in *Charanjit Singh and others, v. Bhartinder Singh and Ors.* (1987) 91 P.L.R. 403 has made the observations to the following effect:

"In view of this the proper course to follow is to bring all the legal representatives on record so that they vouchsafe the estate of the deceased for ultimate benefit of the real legal representatives. This would also avoid delay in disposal of the suit. In this case the death had occurred on 31st August, 1983 and the trial court took two years and 8 months in determining as to which of the contesting parties is the legal representative and wrote 17 pages in passing the order. If the course suggested above had been followed, all the time and writing long order could have been avoided leaving the parties to get this matter settled in succession. I hope that the Subordinate Courts would keep this procedure/course in view while deciding such type of applications."

8. In view of these observations, the trial court while refusing to decide the validity of the will, in my opinion, has not committed any error of jurisdiction and as such the impugned order suffers from no infirmity.

9. The revision petition is accordingly dismissed and the impugned order is upheld.