

(2000) 07 P&H CK 0049

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2552 of 1982

Nand Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: July 17, 2000**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 5
- Succession Act, 1925 - Section 214

Citation: (2001) 2 CivCC 560 : (2001) 1 RCR(Civil) 44**Hon'ble Judges:** Swatanter Kumar, J**Bench:** Single Bench**Advocate:** Mr. Hemant Gupta, for the Appellant;**Judgement**

@JUDGMENTTAG-ORDER

Swatanter Kumar, J.

Challenge in this revision is to the order dated 24.5.1982 passed by learned District Judge, Chandigarh.

Learned counsel appearing for the petitioners contends that the impugned order suffers from an error of jurisdiction as under the provisions of the Code of Civil Procedure, it is not mandatory for the petitioner to obtain succession certificate before the legal representatives of a deceased can be brought on record and permitted to execute an already instiluted execution petition. For this purpose, he relies upon a judgment of Division Bench of this Court in the case titled as [Inder Sain and another Vs. Man Singh Gujjar](#) .

2. Despite the fact that this petition has been on the regular Board of this Court since last week and has been called out repeatedly, nobody appears on behalf of the Union of India. Even today, nobody has put in appearance despite intimation being sent to the counsel for the Union of India. Resultantly. I would proceed to decide

this case in absence of counsel for the respondents.

3. Though, as already noticed, the matter in issue in the present case is squarely covered by the judgment of this Court in the case of Inder Sain (supra) but still reference to the basic facts would be necessary.

4. The land belonging to Sita Devi was acquired by the Land Acquisition Collector in accordance with the provisions of Land Acquisition Act. She died on 4.10.1980. The award was passed during her life time. Thereafter applications were filed for recovery of compensation awarded for the land acquired by way of acquisition. One application was filed by Nand Singh and Ram Singh, brothers of late husband of Sita Devi while the other application was filed by Om Parkash and Baldev Singh, sons of Bharat Singh, another brother of late husband of Sita Devi. The evidence was led by the parties before the learned trial court. The learned trial court came to the conclusion that u/s 214 of the Indian Succession Act parties should obtain a succession certificate to pursue the execution and to enjoy the fruit of the decree in their favour. Some judgments have been referred. It is contended by the petitioners that under Order 22 Rule 5 of the CPC legislation (legislature ?) has imposed an obligation upon the court to determine as to who is the legal representatives of the deceased in a suit or execution. Division Bench of this court would be binding upon this court. As such I do not wish to discuss the merit or demerit of this contention. In the case of Inder Sain (supra), the court held as under :-

"When the petitioners were impleaded as legal representatives in the suit itself, the provisions of Section 214 or para 3 of the Punjab and Maryana Rules, Vol. II. Ch. 6(S) would not be applicable. It was not at all necessary for the petitioners to obtain succession certificate to enable them to file application for execution of the decree in which they were already decree holders. There is no requirement of obtaining succession certificate, as provided in Order 22 of the Civil Procedure Code, to enable the legal representatives of the deceased party to the suit to be substituted as such. As decree holders they were fully entitled to file application for execution of the decree. Section 214 is not at all applicable."

5. In view of the aforesaid judgment of the Division Bench, this revision petition is accepted with no order as to costs. The impugned order 24.5.1982 passed by the learned District Judge, Chandigarh is set aside. The learned executing court is directed to proceed with the execution application and more particularly when the evidence has already been recorded, as noticed in the impugned order.

6. Revision allowed.