

Sukhchain Singh Vs General Public and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 28, 2015

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 22 Rule 5
Succession Act, 1925 - Section 387

Citation: (2015) 179 PLR 409

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: Sanjiv Gupta, for the Appellant

Final Decision: Disposed off

Judgement

K. Kannan, J

The petitioner is aggrieved against an order passed during the pendency of the succession certificate proceedings where on

the death of one of the petitioners Narender Singh, persons claiming to be widow and children of Narender Singh have been permitted to be

impleaded as parties. The petitioner is a brother who claims to have filed his own independent civil suit for declaration that Narender Singh was a

bachelor and the so-called marriage of the person who is now impleaded along with the children are not the legal representatives of Narender

Singh. The Court has allowed for the impleadment to be made and the petitioner's contention is that some form of enquiry must be conducted

under Order 23 Rule 5 CPC and the impleadment could not have been ordered. It is his further contention that the petitioner's right must be

protected by the fact that there is a civil suit pending and any adjudication under the succession certificate proceedings ought not to give room for

withdrawal of the amount due to the estate of Narender Singh by the persons claiming to be the legal heirs of Narender Singh. I find that the

objection of the petitioner is a needless kneejerk reaction, for, the proceedings under Part X of the Indian Succession Act are themselves summary

in nature and they cannot finally operate on the heirship relating to the property. The proceedings are only to ensure that the outstandings are

collected by persons who have a prima facie right for the amounts to be claimed on behalf of the deceased and any person who receives the same

will receive it as a trustee for all the legal heirs. It is in that context that statute recognizes under Section 387 of the Indian Succession Act that no

decision under this Part upon any question of right between any parties shall be held to bar the trial of the same question in any suit or in any other

proceeding between the same parties and nothing contained in the Part will constitute res judicata. There is hardly anything for his apprehension

that adjudication before the authorities will take away his right and imperil the rights canvassed by him in the civil suit.

2. The petitioner refers to me some decisions rendered by the Supreme Court under Order 22 Rule 5 CPC in regular suits. What may apply for

impleadment under regular suit need not really be a serious bar for consideration of the application in summary fashion in succession proceedings.

If a person claims to be a legal representative and the Court allows for such application, it does not conclude the situation of whether he is a legal

heir or not. Legal representative is a wider expression than legal heir and any person claiming to be such a legal heir through a civil suit will be able

to secure a final adjudication without in any way being fettered by adjudication rendered by the authorities under the Indian Succession Act.

3. Having regard to the subsequent institution of a civil suit, the Court may consider the provision under Section 387 of the Indian Succession Act

and find out feasibility allowing for an adjudication within a short period in the civil suit itself that will make unnecessary another proceedings before

the succession proceedings as well. However, if the Court decides to render a quick adjudication under succession proceedings, the Court may

take appropriate care to ensure that the share claimed by the petitioner is properly protected at the time of discharge of money by obtaining

security or in some way imposing condition which can make meaningful the full-fledged adjudication in the civil suit.

4. It has been the experience of our Courts that application filed under the Indian Succession Act even for succession proceedings take long time

of several years as though it were a suit if the case were to be really taken up in summary fashion, it can be disposed of immediately but if it is going

to allow for parties to let in evidence on all aspects and if it were to be taken as though it is a civil action then such a process need not be gone

through and it would be advisable that the civil court adjudication itself may be taken up early and the matter disposed of which will give finality to

the rights of parties. With these observations, the civil revision is disposed of.