

**HIGH COURT OF PUNJAB AND HARYANA
BENCH : HON'BLE MRS. JUSTICE ALKA SARIN
Date of Decision: 19th April 2024**

CRIMINAL REVISION NO. 6277 OF 2015 (O&M)
With
CRIMINAL REVISION NO. 7297 OF 2016 (O&M)

INDERJIT SINGH ...PETITIONER

VERSUS

**AVTAR SINGH through his alleged wife HARJINDER KAUR
...RESPONDENT**

Legislation:

Order 1 Rule 10, Order 22 Rule 3 of the of the Civil Procedure Code (CPC)

Subject: Revision petitions concerning execution proceedings in a civil matter involving disputes over legal representation and rights of inheritance following the death of one party.

Headnotes:

Legal Representation and Right to Pursue Execution – Revision Petitions Analysis – Held – The High Court set aside the Executing Court's decision allowing Harjinder Kaur, who could not prove her legal marriage to the deceased Avtar Singh, to continue the execution proceedings. The High Court found no evidence supporting her status as the legally wedded wife, despite her being permitted to represent the deceased's estate in previous proceedings. The contradictory findings of the Executing Court were highlighted, leading to a remand to decide the issues afresh. The court emphasized the lack of any legal basis for her participation in the execution proceedings. [Para 6-7]

Issues of Legal Heir Status and Documentary Evidence – Discussion – The High Court critiqued the lower court's reliance on marked but unexhibited documents to determine the legal heir status of Harjinder Kaur. Both counsel admitted the absence of evidence proving the documents, leading to legal questions over the appropriate procedures and rules for filing applications under the Civil Procedure Code. The High Court highlighted procedural missteps in handling documentary evidence and legal heir applications, calling for a reconsideration of the same. [Para 3-4, 6]

Decision – Remand of Case to Executing Court – Due to the conflicting and unsupported findings by the Executing Court regarding the legal heir status of Harjinder Kaur and her rights to pursue execution, the High Court remanded the matter for a fresh decision. The court directed parties to reappear before the Executing Court with proper legal representation to resolve the outstanding legal and procedural issues. All pending applications related to the case were also disposed of as part of this order. [Para 7]

Referred Cases: None.

Representing Advocates:

Mr. Dheeraj Mahajan, Advocate for the petitioner in CR-6277-2015 and for the respondent in CR-7297-2016.

Mr. Mudit Gosain, Advocate for Mr. Ashish Aggarwal, Advocate for the respondent in CR-6277-2015 and for the petitioner in CR-7297-2016.

JUDGEMENT

ALKA SARIN, J. (ORAL)

1. The present order shall dispose off both the above-captioned revision petitions (CR-6277-2015 and CR-7297-2016).

2. Brief facts relevant to the present lis are that Avtar Singh filed a suit seeking relief of possession and mandatory injunction against his own son, namely, Inderjit Singh who is the petitioner in CR-6277-2015. The suit was decreed vide judgment and decree dated 11.08.2005. An appeal was preferred by Inderjit Singh which was dismissed vide judgment and decree dated 18.01.2010. Execution was filed by Avtar Singh. However, during the pendency of the execution petition, Avtar Singh died on 24.03.2011. In the execution petition, an application was filed by Harjinder Kaur, who is the petitioner in CR-7297-2016, claiming herself to be the legal heir of Avtar Singh. Harjinder Kaur filed an application in the execution proceedings that she had a right to represent the estate of deceased Avtar Singh being his legally wedded wife. It was also the stand taken by Harjinder Kaur that Avtar Singh had left behind a son and a daughter who had both been disinherited. It is apt to note that the judgment debtor in the present case was only Inderjit Singh and not the daughter. Vide the impugned order dated 06.08.2015 the Executing Court returned a finding on issue No.1 that Harjinder Kaur failed to prove that she was the legally wedded wife of Avtar Singh. However on issue No.2 the Executing Court gave a totally contrary finding. Aggrieved by the same, CR-6277-2015 has been preferred by Inderjit Singh and CR-7297-

2016 has been preferred by Harjinder Kaur challenging the impugned order dated 06.08.2015 qua finding on Issue No.1.

3. Learned counsel for the petitioner in CR-6277-2015 and for the respondent in CR-7297-2016 would contend that there was not an iota of evidence on the record and findings were given by the Executing Court simply on the basis of marked documents which had not been exhibited and therefore it could not be held that Harjinder Kaur was the legally wedded wife of Avtar Singh. Having held so, the Executing Court had permitted Harjinder Kaur to pursue the execution proceedings only on the ground that Inderjit Singh had been disinherited by his father - Avtar Singh. It is further the contention of the learned counsel that even if the Court had to go into the issue as to whether Inderjit Singh would step into the shoes of Avtar Singh, the Court could have done it on its own and decided the issue whether a disinherited son could claim any right.

4. Per contra, the learned counsel for the respondent in CR-62772015 and for the petitioner in CR-7297-2016 has candidly admitted that none of the documents produced by Harjinder Kaur were proved on the record and all were marked documents. It is however the contention of the learned counsel that inadvertently a wrong application was filed under Order 1 Rule 10 CPC and the application ought to have been filed under Order 22 Rule 3 CPC.

5. I have heard the learned counsel for the parties.

6. In the present case admittedly there is no evidence on the record to show that Harjinder Kaur was the legally wedded wife of Avtar Singh. All the documents on the record produced by Harjinder Kaur were marked documents. The Executing Court on the basis of the pleadings and the evidence on the record came to a conclusion that merely on the basis of the marked documents it could not be held that Harjinder Kaur was the legally wedded wife of the deceased - Avtar Singh. Having held that, the Executing Court allowed the

application permitting Harjinder Kaur to be impleaded as a party. There is no reason forthcoming as to how Harjinder Kaur who was held to be not the legally wedded wife of Avtar Singh would have any right, title or interest to pursue the proceedings. The Executing Court has given contrary findings in the same order.

7. In view of the above, this Court deems it appropriate to set aside the impugned order dated 06.08.2015 and remand the matter to the Executing Court to decide afresh. Parties through their counsel to appear before the Executing Court on 13.05.2024. Pending applications, if any, also stand disposed off.

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