

Satinder Singh and Another Vs. Bhupinder Kaur and Others

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Court : Punjab and Haryana

Decided On : Mar-05-1991

Reported in : AIR1992P& H29

Judge : A.L. Bahri, J.

Acts : [Succession Act, 1925](#) - Sections 2, 226, 258 and 368; [Code of Civil Procedure \(CPC\), 1908](#) - Order 22, Rule 2

Appeal No. : Civil Misc. No. 3273-CII of 1989 in Probate Appln. No. 8 of 1986

Appellant : Satinder Singh and Another

Respondent : Bhupinder Kaur and Others

Advocate for Def. : H.S. Sangha, Sr. Adv.,; Kirti Kumar,; B.S. Shant and

Advocate for Pet/Ap. : Rajive Bhalla, Adv.

Judgement :

ORDER

1. The short question involved in this application is as to whether legal heirs of an executor named in the will can be substituted as respondents to be made liable for loss occasioned on account of negligence of the executor in the management of the properties.

2. Gurdial Kaur deceased left behind a Will naming four persons as executors, namely, Umrao Singh, Pritam Kaur, Bhu-pinder Kaur and Brig. Jasbir Singh. Likewise Pritam Kaur aforesaid left behind a Will naming four persons as executors, namely, Umrao Singh, Gurdial Kaur aforesaid Bhu-pinder Kaur and Brig. Jasbir Singh. Both Gurdial Kaur and Pritam Kaur were wives of Umrao Singh. The beneficiaries Satinder Singh and others filed a petition u/S. 368 of the Succession Act for taking action against the executors for causing loss to the estate of the two deceased aforesaid. A direction was required to be given to the executors to make good the loss. At that time only two executors were supposed to manage the properties; namely, Bhupinder Kaur and Brig. Jasbir Singh. It was during the pendency of the aforesaid petition that Bhupinder Kaur died. On an application filed Ravinder Kaur, her daughter was impleaded as a party in place of Bhupinder Kaur. This order was passed on May 18, 1989. After she was served, Ravinder Kaur filed objections which are being disposed of. The objections are that she should not be impleaded as a party as legal heirs on the death of Bhupinder Kaur as she could not act as executor either to meet the loss occurred or to minimise it. The personal liability of Bhupinder Kaur, if any, extinguished with her death. These objections are opposed by the beneficiaries. I have heard learned counsel for the parties.

3. On behalf of the objector reliance has been placed on Ss. 226 and 258 of the Succession Act, which are reproduced below:--

'226. Accrual of representation to surviving executor:-- When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

258. Grant of effects unadministered:-- If an executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.'

4. The contention of Sh. B. S. Shaht, learned counsel, (on?) the death of Bhupinder Kaur, one of the executors, it is the remaining executor Brig. Jasbir Singh, who is to act as executor to manage the properties of the deceased u/S.

226 of the Act and further if one of the executors was not properly managing the properties, the Court could appoint another one for the purposes of administering the part of the estate. Ravinder Kaur could not be appointed as an executor to manage the properties of the two deceased in view of Ss. 226 and 258 of the Act and, therefore, Ravinder Kaur is not a necessary party to be impleaded or substituted in place of Bhupinder Kaur deceased. Reference has also been made to the definition of the word 'executor' as provided u/S. 2(c) of this Act. The 'executor' means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided. Ravinder Kaur, the objector, thus cannot be treated as an executor. These arguments, though appearing to be fancy and attractive, are without any merit. There is no question of appointment of a new executor on account of the death of named executor in the Will involved in this case. Admittedly Bhupinder Kaur, one of the named executors, has already died and the properties of the two deceased can well be managed by the remaining executor namely Brig. Jasbir Singh.

5. The purpose of filing a petition under S. 368 of the Succession Act is to fix liability of the executor for mis-applying the estate of the deceased or causing loss or damage thereto which is to be made good. Once this liability is determined, the same can be recovered from the executor or from his estate. If estate of the deceased-executor is inherited by his real heirs, to that extent, the legal heirs would be liable.

6. The perusal of S. 368 of the Succession Act would further show that on account of negligence, action or inaction on the part of the executor, loss to the estate of the deceased may occur. Furthermore, in some cases it may result in gain to the executor. In that eventuality also the executor or his legal heirs inheriting his estate would be liable to meet the liability. In *Prish Chandra Nandy v. Supravat Chandra*, AIR 1940 Calcutta 337. The Division Bench in the case while dealing with the liabilities of the trustees and the legal representatives observed as under :--

'The loss occasioned by the negligent acts and omissions or wilful defaults of the late trustee must be made good from his assets in the hands of his legal representative. The cause of action survives as the loss is the result not of a mere

tort committed by the late trustee but of the breach of a fiduciary relation, of a failure to perform a duty.'

The ratio of the decision of the Calcutta High Court can aptly be applied to the case of an executor appointed under the Will. The position of an executor would be more or less alike with that of the trustee. Thus, there is no merit in the objection petition filed by Ravinder Kaur and the same is dismissed. No further comment on merits of the case is required at this stage as on merits decision would be given after affording opportunity to the parties to prove their respective allegations.

7. Petition dismissed.

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