

Punjab-Haryana High Court

Shri Nirmal Panchaiti Akhara Po ... vs General Public And Others on 7 April, 2009

Civil Revision No.1187 of 2006

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No. 1187 of 2006

Date of decision: July 23, 2009

Shri Nirmal Panchaiti Akhara PO Kankhal, District Hardwar through its
duly constituted Attorney-Sant Nahar Singh.

.....PETITIONER

Versus

General Public and others.

.....RESPONDENTS

CORAM: HON'BLE MR JUSTICE T.P.S.MANN

PRESENT: Mr Sanjay Majithia, Sr Advocate with
Mr Shailendra Sharma, Advocate
for the petitioner.

Ms Deipa Asdhir Dubey, Advocate
for respondent No.2.

Mr K.S.Dadwal, Advocate
for respondent No.5.

T.P.S.MANN, J. (Oral):

Sant Ram Singh Chela Sant Baba Bishan Singh filed a petition under the Indian Succession Act for the grant of probate after the death of constituted Mahant Sant Man Singh Chela Sant Baba Bishan Singh. This petition was tried by the learned Civil Judge (Sr. Division), Hoshiarpur, who vide order dated 26.3.2002 granted the succession certificate. Thereafter, the petitioner filed an application under Section 151 of the Code of Civil Procedure, read-with Section 384 of the Indian Succession Act (hereinafter referred to as "the Act") for granting permission to file an appeal as an intervener against the aforementioned judgment and decree dated 26.3.2002. Vide order dated 19.4.2002, learned Additional District Judge, Hoshiarpur allowed the application filed by the petitioner and granted it the right to file the appeal against the aforementioned judgment and decree. It was also

ordered that in the meanwhile, the judgment and decree shall remain stayed and status quo in respect of operation of the bank locker be maintained. The appeal so filed was finally allowed on 27.5.2002, whereby the judgement passed by the trial Court was set aside and the matter remanded to the trial Court for deciding the same afresh in accordance with law, after impleading the petitioner as a party-respondent. This was followed by an application moved by the petitioner before the learned District Judge, Hoshiarpur for withdrawal of the succession case from the Court of Sh. M.S.Randhawa, Civil Judge (Sr. Division), Hoshiarpur and for marking the same to any other Court of competent jurisdiction, for the reasons that the application for the grant of succession certificate had become contentious and, therefore, only the District Judge was competent to try and dispose of the main petition. In view of the law laid down in Yashwant Singh Yadav and others vs Sharda Yadav, 2002 (2) PLJ 156, wherein it was held that District Judge's Delegate was not competent to grant letter of administration or probate in contentious applications and only in non- contentious cases, the District Judge's Delegate was empowered to deal with the application for issuance of letter of administration, learned District Judge, Hoshiarpur vide order dated 28.10.2002 held that as the matter was a contentious one, therefore, it be withdrawn from the Court of Civil Judge (Sr. Division), Hoshiarpur and entrusted to Additional District Judge, Hoshiarpur for disposal, according to law.

Without noticing the fact that the learned District Judge had already entrusted the trial of the case to the Court of Additional District Judge, Hoshiarpur vide order dated 28.10.2002, Sh. Balbir Singh, learned Additional District Judge, Hoshiarpur vide order dated 8.12.2005 observed that the case was triable by the Court of Civil Judge and in the event of the trial held by his Court, one right of appeal to the Court of District Judge would be curtailed. He, therefore, felt it desirable that the case be transferred to the Court of Civil Judge and, accordingly, directed for putting up of the file before the learned District Judge, Hoshiarpur on 13.12.2005, with a request to transfer the same to the Court of Civil Judge. After receipt of the reference and perusing the same, learned District Judge, Hoshiarpur vide order dated 13.12.2005 entrusted the case to the Court of learned Civil Judge (Sr.Division), Hoshiarpur to try and dispose of the same as per law.

The aforementioned orders passed by learned Additional District Judge, Hoshiarpur on 8.12.2005 and learned District Judge, Hoshiarpur on 13.12.2005 have been challenged by the petitioner by filing the present revision under Article 227 of the Constitution of India.

It is not disputed that after impleadment of the petitioner as a party to the petition under the Act, the matter had become contentious. In such a situation, the judgment in the case of Yashwant Singh Yadav's (supra) was straightway attracted, requiring the trial of such a case by the District Judge and not by the District Judge's Delegate i.e. Civil Judge. Such an order was passed by learned District Judge, Hoshiarpur on 28.10.2002 by entrusting the case to the Court of Additional District Judge, Hoshiarpur for disposal according to law. However, without noticing the said order, learned Additional District Judge, Hoshiarpur once again referred the matter to learned District Judge, Hoshiarpur to transfer it to the Court of Civil Judge, which request was accepted, though wrongly.

In view of the above, the present revision is accepted. The orders passed by learned Additional District Judge, Hoshiarpur on 8.12.2005 and by learned District Judge, Hoshiarpur on 13.12.2005

are set aside. The District Judge, Hoshiarpur shall try and dispose of the case himself or entrust the same to any other Additional District, Hoshiarpur, if he so wishes.

The parties through their counsel shall appear before the learned District Judge, Hoshiarpur on 24.8.2009 for further proceedings in the case.

July 23, 2009
Pds

(T.P.S.MANN)
JUDGE