

Supreme Court of India

Satish Kumar Grover And Ors. vs Surinder Kumar Grover And Ors. on 10 March, 1997

Equivalent citations: JT 1998 (7) SC 508, (1998) 9 SCC 158

Bench: M Punchhi, K Thomas

ORDER

1. Leave granted.

2. The parties to this litigation are closely related. It appears from the record that the deceased Smt. Sheelawati had three sons and four daughters. Allegedly, she had a property which was tenanted with one Naval Kishore Jain. It is stated that on 6-2-1989, she made a Will in favour of her husband bequeathing the tenanted property to him absolutely. It also transpires that on 10-5-1989, she made another Will in respect of the same property in favour of Surinder Kumar, one of her sons, to the exclusion of her husband and her other two sons and four daughters.

3. On the basis of the Will dated 10-5-1989, Surinder Kumar, the respondent herein, moved the Rent Court for eviction of the tenant on the ground of his being in arrears of rent on account of default in timely payment thereof. Amongst others, the tenant raised the objection that he did not accept Surinder Kumar as his landlord pleading that there were six other heirs of the landlady who had succeeded to her estate. The trial court directed that those six left-outs be impleaded as parties to the eviction petition. The High Court in revision made an order to the contrary on the basis of proceedings which took place in the Probate Court, which has a distinct facet. There, it appears that the father of the parties who had projected Will dated 6-2-1989 in his favour made a statement that in the presence of the Will dated 10-5-1989, he was withdrawing claim to probate the Will in his favour, but it is otherwise the admitted position that probate proceedings regarding Will dated 10-5-1989 continue, in which all the natural heirs of the legator are parties, where the question of the validity of the Will has arisen, as the left-out heirs have pleaded that the Will is a forgery.

4. The High Court seems to have proceeded on the assumption that the six left-out heirs represent the estate of their father and if the latter had given up his claim under the Will dated 6-2-1989 and had not chosen to contest the Will dated 10-5-1989, the six left-out heirs had no basis to intermingle in the matter. Rather such view has been taken in putting this plea in the mouth of the learned counsel appearing for those six persons. We think that this was an undesirable way of looking into the matter because but for the Will dated 6-2-1989, the father of the parties was not a natural heir to the estate of Smt. Sheelawati, legator. Natural heir to her estate were her three sons and four daughters. The six left-out heirs had thus a right of their own to put to challenge the Will of 10-5-1989 and are rightly in contest before the Probate Court in respect of that Will. Their plea of being natural heirs of the deceased being not open to question, they had a right to be impleaded in the eviction petition on the basis of their being co-owners of the property unless on successful probate of the Will, Surinder Kumar gets possession, divesting the other natural heirs. We therefore think that the High Court instead of clarifying the matter, rather complicated it; more so when attempting to clarify it further by means of a review order.

5. For the foregoing reasons, we allow this appeal, set aside both the orders of the High Court and restore that of the trial court whereunder the six left-out heirs were ordered to be impleaded as respondents to the petition. It is made clear that their impleadment would be subject to the result of the probate proceedings, when finalised. There shall be no orders as to costs.