

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

6th MAY, 2024

CIVIL REVISION NO. 87 OF 2022

Shail Kumar Dutta and OthersRevisionists

Versus

Sanjeev Ratra and OthersRespondents

Counsel for the Revisionists : Mr. B.P. Nautiyal,
Senior Advocate
(through video conferencing)
assisted by Mr. Mohd.
Matlub, Advocate.

Counsel for the Respondent : Mr. Rajendra Dobhal,
Nos. 7 to 9. Senior Advocate, assisted by
Mr. Bhupendra Bora,
Advocate.

Hon'ble Alok Kumar Verma, J.

The revisionist no.1 and revisionist no. 2-plaintiffs and one Bhupendra Kumar Dutta filed a SCC Suit (SCC Case No.18 of 2016) before the Trial Court against the respondent no. 1 to respondent no.6-defendants. The plaintiff no.2-Bhupendra Kumar Dutta died during the trial. After his death, one substitution application was filed by Narendra Kumar Bhandari, the revisionist no.3, stating that the deceased Bhupendra Kumar Dutta had executed a will of the suit property in his favour on 07.11.2020. The original will dated 07.11.2020 and the affidavit of its attesting witnesses Shail Kumar Dutta and R.S. Bhatia were filed with the substitution application. An another substitution application was filed on behalf of late Bhupendra Kumar Dutta's son's widow, her minor son and daughter of the deceased, respondent no.7, 8 and respondent no.9 respectively. Shail Kumar Dutta was

cross-examined. After the inquiry, it was found by the Trial Court that suspicious circumstances existed regarding the execution of the said will and Mr. Narendra Kumar Bhandari did not appear in the inquiry to clarify the said suspicious circumstances, therefore, while allowing the substitution application, filed on behalf of the respondent no.7, respondent no.8 and respondent no.9, the Trial Court has dismissed the substitution application, filed by the revisionist no.3, vide impugned order dated 07.10.2022.

2. Heard Mr. B.P. Nautiyal (through video conferencing), learned Senior Advocate assisted by Mr. Mohd. Matlub, learned counsel for the revisionists and Mr. Rajendra Dobhal, learned Senior Advocate assisted by Mr. Bhupendra Bora, learned counsel for the respondent nos. 7 to 9.

3. Mr. B.P. Nautiyal, learned Senior Advocate, contended that when there are rival applications, one claiming under a will and the other as a legal heir, the proper course is to implead both of them as the legal representatives of the deceased.

4. In support of his contentions, he has relied upon a judgment, passed by the Hon'ble Supreme Court in "**Suresh Kumar Bansal Vs. Krishna Bansal and Another**", (2010) 2 SCC 162.

5. Mr. Rajendra Dobhal, learned Senior Advocate appearing for respondent no. 7 to respondent no. 9, argued that the said judgment does not apply to the present case.

6. In Suresh Kumar Bansal's case, one Shri Mohanlal Bansal (since deceased) as a plaintiff had instituted a suit for eviction and recovery of arrears of rent against one Shri Bhogiram (since deceased) in respect of a shop. During the pendency of the said suit, the plaintiff had expired on 20.06.1989 and thereafter his widow filed an application for substitution as an heir and legal representative of the

deceased. The brother of the deceased-plaintiff also filed an application for substitution/impleadment as heir and legal representative of the deceased-plaintiff claiming the suit premises on the allegation that the deceased-plaintiff had executed a will in his favour on 11.06.1989.

7. Hon'ble Supreme Court held,

20. It is now well settled that determination of the question as to who is the legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of the Code of Civil Procedure is only for the purpose of bringing legal representatives on record for the conducting of those legal proceedings only and does not operate as res judicata and the inter se dispute between the rival legal representatives has to be independently tried and decided in probate proceedings. If this is allowed to be carried on for a decision of an eviction suit or other allied suits, the suits would be delayed, by which only the tenants will be benefited.

21. In order to shorten the litigation and to consider the rival claims of the parties, in our view, the proper course to follow is to bring all the heirs and legal representatives of the deceased plaintiff on record including the legal representatives who are claiming on the basis of the will of the deceased plaintiff so that all the legal representatives, namely, the appellant and the natural heirs and legal representatives of the deceased plaintiff can represent the estate of the deceased for the ultimate benefit of the real legal representatives. If this process is followed, this would also avoid delay in disposal of the suit."

8. In view of above, the present Civil Revision (CLR No.87 of 2022) is allowed. The impugned order dated 07.10.2022 is set aside and restore the Substitution Application, filed by revisionist no.3 for re-consideration by the Trial Court in accordance with law. The Trial Court shall consider the substitution application, filed by respondent no.3, without granting any unnecessary adjournment to the parties.

ALOK KUMAR VERMA, J.

Dt:06.05.2024
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