



220 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2322-2014 (O&M)
Date of decision : 02.09.2025

NARINDER KUMAR

....Appellant

Versus

GENERAL PUBLIC AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sharad Aggarwal, Advocate
for the petitioner.

None for the respondents.

PANKAJ JAIN, J. (ORAL)

CM No.8319-CII of 2014

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 307 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 307 days in re-filing the instant appeal is hereby condoned.

FAO-2322-2014

Instant appeal is directed against order dated 29.09.2012 passed by Civil Judge (Senior Division), Panipat.



2. The issue involved in the present appeal is :

“Whether the Court while deciding petition for probate under Section 276 of the Indian Succession Act, 1925 could have non-suited the probate petitioner after holding that the WILL stands proved, on the ground that the title of the testator of the WILL was not proved?”

3. The appellant/petitioners filed petition under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as ‘the Act of 1925’) seeking probate of WILL dated 29.10.2002 executed by Kasturi Lal in their favour, who died on 28.08.2007.

4. The Probate Court while dismissing the petition filed by the probate petitioners, observed as under:

“11. The petitioner has proved the copy of will executed by deceased Kasturi Lal and PW3 Dharampal Namardar has also admitted his signatures on the will and the respondents Satwanti, Mamta and Sumitra for herself and being special power of attorney of respondent Parvesh and Neeru Bala have case of petitioner and they prayed that petitioners are owners in possession of properties left by deceased Kasturi Lal but there is no cogent and convincing evidence to establish the ownership of the property mentioned in the will in the name of deceased Kasturi Lal admitted the as specifically deposed by petitioner Narender Kumar hence probate of will cannot be granted in favour of petitioners. Accordingly



petition filed by petitioners fails and is hereby dismissed with cost. Xxx”

5. Counsel for the appellant has assailed the order passed by the Court. He submits that the Probate Court is only required to see whether WILL was executed in accordance with law and is not required to deal with the question of title. Reliance is being placed upon the ratio of law laid down in the case of ‘**Basanti Devi vs. Raviprakash Ramprasad Jaiswal**’, 2007(4) R.C.R. (Civil) 765, ‘**Ishwardeo Narain Singh vs. Kamta Devi and others**’, 1654 AIR (SC) 280, ‘**Ashok Upadhyay vs. Awadesh Pratap Singh and another**’, 2005(21) R.C.R.(Civil) 342 and ‘**Khem Chand and others vs. State**’, 2010(19) R.C.R.(Civil) 684.

6. I have heard counsel for the appellant and have carefully gone through records of the case.

7. Section 276 and Section 283 of the Act of 1925, read as under:

“**276. Petition for probate.**—(1) Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—

- (a) the time of the testator’s death,
- (b) that the writing annexed is his last will and testament,
- (c) that it was duly executed,
- (d) the amount of assets which are likely to come to the petitioner’s hands, and



(e) when the application is for probate, that the petitioner is the executor named in the will.

(2) In addition to these particulars, the petition shall further state,—

(a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

283. Powers of District Judge.—(1) In all cases the District Judge or District Delegate may, if he thinks proper,—

(a) examine the petitioner in person, upon oath;

(b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be;

(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) The citation shall be fixed up in some conspicuous part of the courthouse, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in



another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.”

8. The aforesaid provisions came up for consideration before the Supreme Court in *Basanti Devi's* case (supra). The Supreme Court observed as under:

“17. The provisions contained in sub-section (3) of Section 283 are mandatory in nature. Once the statutory requirements are found to have not been complied with, an application for revocation of the grant of probate would be maintainable in terms of Section 263 of the Act, apart from the fact that non-publication of citation could be one of the ground to revoke the grant of probate. Explanation (c) appended thereto in a case of this nature would be attracted. The said provision reads thus :

263. Revocation or annulment for just cause. -

The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation. - Just cause shall be deemed to exist where -

(a) & (b) ...

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or

(d) to (e) ...”

18. It may, therefore, be permissible for the appellant to show that a Will was executed by said Lakhpati Devi in her favour also on 12.03.1996. Mr. Bhat contends that the appellant had given up



the right to the property under the said Will. Even if that is so, this Court is not concerned therewith at this stage.

Appellant had merely filed an application. The said application has not been entertained although the same, in our opinion, should have been done. The question, therefore, is as to whether the said application should have been entertained.

19. Reliance has been placed by Mr. Bhat on a decision of this Court in *Ishwardeo Narain Singh v. Smt. Kamta Devi & Ors.* [AIR 1954 Supreme Court 980] wherein, *inter alia*, it was held :

"The Court of Probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate Court."

20. The Probate Court, indisputably, exercises a limited jurisdiction. It is not concerned with the question of title. But if the probate has been granted subject to compliance of the provisions of the Act, an application for revocation would also lie.

xxx

xxx

xxx"

9. Accordingly, the Probate Court was required to exercise limited jurisdiction *qua* WILL and should not have travelled beyond the same to adjudicate question of title.

10. In view thereof, the present appeal is allowed. The order passed by the Probate Court, dated 29.09.2012 impugned in the present appeal, is ordered to be set aside. Since the finding has been returned by the Probate



Court w.r.t. validity of the WILL, the same is maintained and the probate petition is ordered to be allowed.

September 02, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No