

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CR No. 4 of 2003

Reserved on: 29.12.2007

Decided on : 31.12.2007

Khem Raj and others

Petitioner

Versus

Rattan Chand and others

Respondents

Coram:

The Hon'ble Mr Justice Surinder Singh,J.

Whether approved for reporting ?¹yes

For the Petitioner: Mr. Ajay Sharma, Advocate.

**For the Respondents: Mr. R.K.Gautam, Senior Advocate with
Ms. Archana Dutt, Advocate.**

Surinder Singh,J.

In this revision petition, the defendants-petitioners have assailed the order dated 9.12.2002 whereby the learned trial court allowed the application, under order 22 Rule 3 of the Code of Civil Procedure, to bring on record the legal representatives of deceased plaintiff, in a suit for possession qua Khasra No.274/1, measuring 0-06-70 hectares.

¹ *Whether the reporters of Local Papers may be allowed to see the judgment ?yes*

During the proceedings of the suit before the trial court, Smt. Savitri Devi had died on 20.8.1989. The present respondents are the statutory heirs with few others but in the application under order 22 Rule 3 of the Code of Civil Procedure they claimed testamentary succession for bringing them on record as the LRs of the deceased. Admittedly, the suit land is not covered under the Will.

Thus, according to the petitioners herein, the respondents were wrongly impleaded as LRs of the deceased plaintiff, and all the statutory heirs were not brought on record, therefore, the impugned order is perverse, hence deserves to be set aside.

On the consideration of the matter, I find that despite the fact that the impugned land was not covered under the Will, propounded by the respondents, but otherwise they are the statutory heirs and in a suit for possession, the right to sue accrues to them and relief sought in the suit enures for the benefit of all, the statutory heirs who have succeeded her estate including those who otherwise have not been impleaded as a party to the suit.

Thus I do not find that the learned trial court has illegally exercised its jurisdiction nor there is any material irregularity worth interference in the impugned order, therefore, the order passed by the learned trial court is upheld.

In result, revision petition is dismissed.

The parties are directed to appear before the learned trial court on 18.2.2008. The suit be decided expeditiously by the trial court.

CMP No.5 of 2003

Interim order dated 6.1.2003 is vacated. The application stands disposed of.

December 31, 2007
(D)

(Surinder Singh), J.