

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 24.11.2023

Pronounced on: 22.12.2023

MCC No. 62/2018

- 1. Rajni Devi, age 48 years W/o** Applicants(s)/Petitioner(s)
Vinod Kumar R/o Village Aghar
Balian Tehsil Reasi District
Reasi.
- 2. Bhawani Devi D/o late Sh.**
Vinod Kumar Bali, R/o village
Aghar Balian, Tehsil Reasi,
District Reasi.

Through: Mr. S. C. Mansotra, Advocate

Vs

- 1. Chander Shekhar Gupta, S/o Sh.** Non-applicants(s)
Girdhari Lal Gupta, Advocate J&K
High Court at Jammu.
- 2. Vishav Bandhu Gupta**
S/O Sh. Girdhari Lal Gupta,
R/O H. No. 25 Sec. 6, Channi Himmat,
Jammu.
- 3. Ashok Vijay Gupta**
S/o Sh. Girdhari Lal Gupta
Sr. Advocate High Court of Jammu and
Kashmir at Jammu.
- 4. Dr. Sureshta Gupta,**
D/o Shri Girdhari Lal Gupta
W/o Sh. Narinder Nath Gupta R/o New
Plots, Jammu
- 5. Mrs. Kruna Gupta D/o Shri Girdhari**
Lal Gupta W/o Sh. R. C. Gupta R/o
Udhampur.

Through: Mr. Ajay Sharma, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. This is an application under Section 151 and 153 of J&K CPC read with
-67 (2) J&K High Court Rules 1999 for rectifying the incomplete cause

title of the revision petition which was dismissed by this Court vide order dated 05.05.2018, by addition of some more respondents.

2. It is stated that the revision petition No. 55 of 2009 was filed by the non-applicants against one Charan Dass, who was the sole respondent (plaintiff before the trial court). On 16.01.2012, Sh. Charan Dass expired and application bearing MP No. 78/2012 was filed by the non-applicants under Order 22 Rule 4 CPC for impleading the legal representatives of the deceased respondent. During the pendency of the MP No. 78/2012, the legal representative of the deceased respondent No.3-Vinod Kumar Bali also expired on 01.02.2015 and one more application bearing MP No. D-26/2015 was filed by the non-applicants/petitioners in the revision petition. The said application was allowed, thereby impleading the legal representatives of Vinod Kumar Bali, namely, Rajni Devi, Bhawani Devi and Devanshu as respondents in the revision petition. It is stated that though the counsel representing the legal representatives of Charan Dass had filed power of attorney for respondent Nos. 1, 3, 4 and 5, but no formal order allowing the MP No. 78/2012 could be passed despite the fact that the Registry had made a noting dated 20.04.2016 in the case file. It is further stated that the Registry had put another noting dated 27.05.2016 wherein it is stated that the legal representatives of Shri Charan Dass and Vinod Kumar Bali had been brought on record, but at the same time Registry fell in mistake by making a mention of the legal heirs in MP No. D-26/2012 only and inadvertently legal heirs of Sh. Charan Dass were not formally impleaded as respondents by allowing the said MP bearing No. 78/2012. Due to inadvertent mistake

of the counsels representing the either side, the legal heirs of late Charan Dass in MP No. 78/2012 except late Vinod Kumar Bali could not be formally impleaded as respondents. In nutshell, the contention of the petitioner is that the MP No. 78/2012 was left undecided despite the fact that the learned counsel had filed power of attorney on behalf of respondent Nos. 1, 2, 4, 5, 6 and 7 therein but only MP No. D-26/2015 was allowed.

3. The non applicants/petitioners have filed their response stating therein that the application is misconceived and deserves to be dismissed as once the revision petition has been decided, the Court has become functus officio. Non-applicants have admitted the demise of Charan Dass, the only respondent in the revision petition and filing of application by the non-applicants within time for bringing on record the legal representatives of deceased Charan Dass. Non applicants/petitioners have further admitted that during the pendency of the said application, one of the legal heirs of Charan Dass i.e. Sh. Vinod Kumar Bali also expired, as such, the non-applicants filed another application for bringing on record the legal representatives of Vinod Kumar Bali. The respondents have admitted that the application bearing MP No. 78/2012 for bringing on record the legal representatives of the deceased Charan Dass has still not been decided. It is further stated that the learned Single Judge could not have decided the revision petition without deciding MP No. 78/2012.
4. Mr. S. C. Mansotra, learned counsel for the applicants vehemently argued that an error has crept-in in the proceedings of the Court, as the

application bearing MP No. 78/2012 was not decided and remained pending, whereas the subsequent application for bringing on record the legal representatives of one of the legal representatives of the deceased-Charan Dass was allowed. He further submits that the then learned counsel for the applicants had conceded both the applications but the Court in its order dated 25.05.2016 had only recorded no objections in respect of application for bringing on record the legal representatives of deceased Vinod Kumar Bali.

5. Per contra, Mr. Ajay Sharma, learned counsel for the non-applicants submitted that the application bearing MP No. 78/2012 has not been decided till date and now the same cannot be decided as this Court has now become functus officio. He further submitted that the applicants besides filing the present application have also filed an application before the trial court for their substitution in the suit.
6. Heard learned counsel for the parties and perused the record.
7. The record depicts that the application dated 30.10.2012 bearing MP No. 78/2012 was filed by the non-applicants herein in the revision petition for bringing on record the legal representatives of the only respondent i.e. Charan Dass. The particulars of the seven legal representatives of the deceased-Charan Dass were mentioned in the Para 3 of the application. The said application was listed before the Court on 30.11.2012 and notice was issued to the legal representatives of the respondent on 17.12.2012. Notice was issued to the legal representatives of the deceased respondent, who were Sh. M K Bali, Sh. Varinder Kumar Bali, Sh. Vinod Kumar Bali, Sh. Davinder Bali, Smt. Vijay Kumari, Smt

Kamlesh Rani and Smt. Raj Mohini. Initially Sh. K.K Pangotra, Advocate filed power of attorney on behalf of the legal representative Nos. 1, 2, 4, 5 and 7. Before MP No. 78/2012 could be decided one of the legal heirs of Charan Dass, namely, Vinod Kumar Bali also died and the non-applicants filed an application bearing MP No. D-26/2015 for bringing on record the legal representatives of Vinod Kumar Bali. A perusal of order dated 25.05.2016 would reveal that notice was issued in the application bearing MP No. D-26/2015, which was waived by Mr. K. K. Pangotra on behalf of the surviving respondents as also the legal representatives sought to be impleaded and after recording no objection that application was allowed. It appears that the order dated 25.05.2016 has been passed by the Court with an impression that the legal representatives of the deceased-Charan Dass had already been brought on record and it appears that because of this reason only the Court noted that “Learned counsel for the respondents waives notice on behalf of the surviving respondents as also legal representatives sought to be impleaded.” but the fact remains that the MP No. 78/2012 was also listed before the Court and no formal order was passed in respect of the disposal of the said application bearing MP No. 78/2012.

8. The Court has committed a error and long ago it has been said that **actus curiae Neminem gravabit i.e.** act of the Court shall prejudice no man. This maxim is founded upon justice and good sense and acts as a guide for the administration of the law. The Court ought to have taken note of CMA No. 78/2012, which was already pending before the Court, but it is evident that both the learned counsels representing the

contesting parties therein did not bring to the notice of the Court that the said application was still pending and it was required to be decided first, before deciding the MP No. D-26/2015 i.e. the application for bringing on record the legal representatives of the deceased-Vinod Kumar Bali, who was one of the legal representatives of the only respondent-Charan Dass. It is evident from the record that the revision petition was decided by the Court vide order dated 05.05.2018 after hearing the learned counsels appearing for the parties and while deciding the civil revision, still no order was passed by the Court in respect of MP No. 78/2012.

9. Be that as it may, as this Court has already stated that it was an error which is apparent on the face of the record and such an error would not have any effect on the merits of the claims of the parties, more particularly when the estate of the deceased respondent was duly represented by few of the legal representatives of Charan Dass. This Court is otherwise a Court of record and has every power to rectify its own record. There is no force in the contentions raised by the non-applicants that this court has become functus-officio and the applicants have already filed the application for substitution before the learned trial court, as such, the application is required to be rejected.
10. In view of above, this Court deems it proper to rectify the mistake committed by the court and hereby allows the MP No. 78/2012 filed by the non-applicants/petitioners in the revision petition and the legal representatives of the deceased respondent-Charan Das except Vinod Kumar Bali are brought on record. It needs to be noted that legal representatives of deceased Vinod Kumar Bali have already been

brought on record. The registry to update the index accordingly. This order shall form part and parcel of the order dated 25.05.2016.

(RAJNESH OSWAL)
JUDGE

Jammu
22.12.2023
Sahil Padha

Whether the order is speaking: Yes/No.
Whether the order is reportable: Yes/No.

