

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**C.R.No.1304 of 2015 (O&M)
Date of decision: 16.10.2015**

Smt. Anguri Devi and others

... Petitioners

Vs.

Vikas Bajaj and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Pawan Kumar, Senior Advocate with
Mr. Abhimanyu Batra, Advocate
for the petitioners.

Mr. Sanjay Vij, Advocate
for respondent No.1.

AMIT RAWAL J. (Oral)

The petitioners, LRs of Basti Ram have impugned the order dated 06.01.2015, whereby, the trial Court allowed the application dated 29.11.2007, filed by plaintiff/respondent No.1 under Order 1 Rule 10 and Order 6 Rule 11 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as the "CPC") by holding that LRs of Basti Ram shall be deemed to be impleaded from the date of filing of the application and the suit shall be well within period of limitation qua LRs of deceased Basti Ram as the agreement to sell was allegedly executed by Basti Ram and not by

other defendants who had executed the agreement to sell dated 30.12.2004.

Mr. Pawan Kumar, learned Senior counsel assisted by Mr. Abhimanyu Batra, Advocate submits that suit for specific performance of the agreement to sell was instituted on 26.7.2006 which was allegedly executed by all the 25 defendants including Basti Ram, who was arrayed as defendant No.1. Basti Ram had died on 25.12.2004, even prior to the execution of the agreement to sell. The written statement by other defendants was filed on 18.01.2007. The respondent-plaintiff moved an application dated 29.11.2007, (Annexure P-4) under Order 1 Rule 10, Order 6 Rule 17 read with Section 151 CPC, for impleading the LRs of Basti Ram as party and the said application was decided by the trial Court vide order dated 24.03.2014, however, said order was set aside in Civil Revision bearing No.4267 of 2014 titled as Smt. Anguri Devi and others vs. Vikas Bajaj by this Court vide order dated 03.09.2014 and the matter was remanded back to the trial Court to decide the application afresh by taking into consideration provisions of Section 21 of the Indian Limitation Act 1963 (hereinafter referred to as 1963 Act). It is after remand that the impugned order has been passed which has been assailed in this revision petition.

In support of his aforementioned contention, he relied upon the provisions of Section 21 of 1963 Act, to contend that where after institution of a suit, new plaintiff and defendant is substituted or

added, the suit shall be deemed to have been instituted when he or she has been made a party, provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

The Section 21 of 1963 Act reads thus:-

21. Effect of substituting or adding new plaintiff or defendant-

1) Where after institution of a suit, new plaintiff and defendant is substituted or added, the suit shall be deemed to have been instituted when he or she has been made a party.

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution or any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

The contents of the application does not spell out the ingredients of Section 21 of 1963 Act, much less, specific reference. He further submits that suit qua LR's of Basti Ram is ex facie time barred as the application (Annexure P-4), vide impugned order dated 06.01.2015 has been allowed after remand, whereas, suit in respect of agreement to sell was filed on 27.06.2006, therefore, almost 10 years have elapsed.

In support of his aforementioned contentions, he has relied upon the judgments of various High Courts in **Mukesh Kumar Jain vs. Ashok Shukla 2007(5) R.C.R.(Civil) 396; Om Parkash vs. Darshan Singh 2003(4) R.C.R.(Civil) 845; Gurdwara Gur Har Govind Sahib vs. Sham Singh 1992(1) R.R.R.484; Satya Devi and others vs. Sansar Chand & others 2007(5) R.C.R.(Civil) 352 and Ramalingam Chettiar vs. P.K.Pattabiraman 2001(2) R.C.R.(Civil) 187**, to contend that when suit is filed against a dead person the error could be cured by filing an application to bring on record the LR's and the newly added party would be treated to be impleaded from the "date of the order" and not from the "date of filing of the suit", much less, "application", thus, prays that impugned order be modified and the suit be treated to have been filed from the date of order and thereafter, the Court shall proceed further to decide the suit on the basis of the pleadings of the parties to the lis and adjudicate the matter ultimately at the final stage as to whether the suit vis-a-vis Basti Ram or his LR's is time barred or not.

Mr. Sanjay Vij, learned counsel appearing on behalf of plaintiff/respondent No.1 submits that act of the Court prejudice none. He further submits that application for bringing on record was filed on 29.11.2007 which was within three years from the date of execution of the agreement, i.e., 30.12.2004. The respondents had taken two years in filing the reply, which was filed on 21.01.2009 and for the first time, the order came to be passed on 24.03.2014. In essence, period of 07 years elapsed in deciding the matter, therefore, respondent/plaintiff No.1 could not be non-suited by holding that suit vis-a-vis Basti Ram or his LRs was not within a period of limitation and in this regard cited two judgments of the Hon'ble Supreme Court in **Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases by its Director- Dr. K.M.Cherian and others 2014(2) SCC 62** and **Karuppaswamy vs. C.Ramamurthy 1993 AIR (SC) 2324**.

He further submits that the application (Annexure P-4) cannot be said to be filed mala fide. At the best, it can be said an act of carelessness. In support of his aforesaid contention, he relied upon the judgment of the Hon'ble Supreme Court in **Karuppaswamy's case (supra)** to contend that where there are several defendants and the suit has been filed against dead defendant, as and when the LRs are brought on record, it was held that its effect is to begin from the date on which the application for the purpose was made and not from the date of the order. Similar

occasion arose in **Mrs. Sarah Mathew's case (supra)** and the Hon'ble Supreme Court found that where the mistake was committed in good faith to bring on record the LRs, the said newly added respondent/party would be held to be impleaded from the date of the original plaint.

Mr. Pawan Kumar, in rebuttal, has drawn attention of this Court to the provisions of Order 1 Rule 5(10) of the CPC, which provide that proceedings against the dead person, as defendant shall be deemed to have begun only upon receipt of the summons subject to the provisions of Section 21 of the 1963 Act, thus, prays that impugned order is fallacious, much less, perverse and is not liable to be sustained.

I have heard learned counsel for the parties and appraised the paper book as well as law cited, aforementioned.

There is no dispute with regard to ratio decidendi culled out in the judgments cited by Mr. Pawan Kumar, but the fact remains that each and every case has to be looked into as per its own facts. If the application was filed after expiry of three years from the date of alleged document the obviculiary position would have been different but in the instant case, the application has been filed within a period of three years of execution of agreement to sell and the petitioners have taken two years in filing the reply. In all the judgments aforementioned, situation was not similar which has arisen in the present case, whereby, the trial Court has taken 07 years in deciding

the application. It has not been envisaged or considered as to what would be consequential effect if the Court takes inordinate time in deciding the application.

Be that as it may, but the fact remains that petitioners after gap of two years, from the date of filing of the application (Annexure P-4), filed the reply which itself was an act of adoption of delaying tactics. In my view, ratio decidendi culled out by this Court in **Karam Kaur (died) vs. Dalip Singh (died) through Lrs and another 2001(1) PLJ 607**, would directly apply to the facts and circumstances of the present case as it was a case, where suit was filed against several defendants and one of the defendants had died and the Court made clear that once the application to bring on record the LRs of one of the defendants is moved, then limitation for the purpose of suit would be taken from the date of filing of application and not from the date of the order as mentioned in Section 21 of 1963 Act. In fact, proviso of Section 21 of 1963 Act had been applied by the trial Court while deciding the application, keeping in view the aforementioned facts and circumstances.

In view of what has been observed above, the impugned order cannot be said to have been passed without jurisdiction, much less, suffers from illegality and perversity. I do not intend to differ with the finding in the impugned order, which is in consonance with my view. Accordingly, the same is upheld and revision being devoid of merit is hereby dismissed.

Since the Court has taken 07 years in deciding the application, I am of the view that Court should not prejudice either of the parties to the lis.

Anything observed herein above, shall not be construed as an expression of opinion on the merits of the pending suit.

(AMIT RAWAL)
JUDGE

October 16, 2015
savita