

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

CR No.2921 of 2014 (O&M)

Date of decision: 30.07.2015

Jaideep Kaur and another

... Petitioners

versus

Gurmail Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan, Advocate for the petitioners.

Mr. Ajay Pal Singh, Advocate for the respondents.

K.Kannan, J.

The legal representative of the defendant in a suit for specific performance contended that even apart from the continuance of the proceedings as such representative of the deceased defendant, he was independently entitled to the right in the property through a settlement brought about with Gulab Kaur, the widow of Gobinder Singh. The Court did not allow for such a contention to be brought at the instance of the legal representative.

The legal representative, if he claims only as such representative, cannot be permitted to take any plea other than what such a representative status permits him to do. But, if that person incidentally has independent right of the property and not traced through the deceased

defendant, he cannot by such participation in the suit lose the independent right. The petitioner sought for permission to canvass for his own independent right in the property and that was declined. Learned senior counsel appearing on behalf of the petitioner has a grievance that he cannot lose a right over the property of what he does not claim through his mother, i.e, the deceased defendant. He will be even satisfied if the Court makes it clear that it is only adjudicating on a right of the deceased defendant to the extent to which it falls to succession for his son so that the petitioner will not be prevented from espousing his own right to the property. The counsel appearing on behalf of the respondent has serious objection for such a permission to be granted, for, according to him the new right which the petitioner claims is a right which is obtained pending suit.

I find the denial of allowing of independent right to be claimed by the legal representative of the deceased defendant to be erroneous. The principle of *lis pendense* will affect only the right claimed under the party to the proceedings. If a person obtains a right in relation to the property through a transaction other than the party then the principle does not apply at all. A right which the petitioner claims independently of the deceased mother ought to be permitted to be taken. The Court that is called upon to adjudicate on enforcement of right to obtain a sale from a deceased defendant has the necessary information before it of whether such enforcement is possible against the property in the hands of the petitioner, who fulfils a dual capacity, one as a representative of the deceased defendant as a party to the agreement and another, as a person who has

secured some other interest in the property with a person who was not a party.

The order impugned is set aside and the right is reserved to the petitioner to plead for his own independent case in relation to the suit property to the extent to which he has an independent claim other than as a representative of his grand-mother.

The civil revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

30.07.2015

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