

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

CR 3538 of 2012

Date of decision:- 8.4.2015

Ashish Singhanian and ors

Petitioner

vs.

Jagwinder Singh and anr

Respondent

Present: Mr. Rajesh Khandelwal, Advocate.
None for respondents

M.M.S.BEDI,J.

The petitioners are successors-in-interest being sons of Kuldeep Singla, who was impleaded as defendant No.1 in a suit filed by plaintiff- respondents 1 and 2. The plaintiff- respondents 1 and 2 had filed a suit for possession claiming themselves to be owners of land measuring 28 kanals, mentioned in the heading of the plaint on the basis of a Will dated 6.7.1989 executed by Gehna Singh. They had challenged the validity of sale deed dated 19.5.2003 registered in the name of Kuldeep Singla defendant No.1. The claim of the plaintiff- respondents is based upon a Will of the year 1989. With an objective to defeat the registered sale deed executed by Gehna Singh in favour of Kuldeep Singla, the father of the petitioners, the suit had been filed. It is pertinent to mention that defendant No.1 Kuldeep Singla died on 26.8.2005. On 2.9.2005 his defence was struck off. No information was given to the court by any person regarding the death of defendant No.1 Kuldeep Singla when the defence was struck off on 2.9.2005. Vide impugned order dated 10.5.2012, an application filed by the petitioners to be impleaded as legal heirs of defendant No.1 Kuldeep Singla, was allowed and they have been permitted to join the proceedings

from the date of their application i.e. 3.3.2011. This appears to have been done on account of the fact that Kuldeep Singla, father of the petitioners, had expired and no application for impleadment was filed. The grievance of the petitioners is that they being legal heirs of Kuldeep Singla, who died before his defence was struck off, could be permitted to contest the suit as they have acquired right in the property of Kuldeep Singla by natural inheritance. Kuldeep Singla was the registered owner of the property in dispute by virtue of the sale deed, which is subject matter of the civil suit. It is pertinent to observe that Binderjit Kaur defendant No.2 is none else but the real mother of the plaintiffs. She is colluding with the plaintiffs.

The short question, which is required to be adjudicated upon in this case is whether the petitioners, who are legal heirs of defendant No.1 Kuldeep Singla, who died on 26.8.2005, prior to the date of striking off the defence of Kuldeep Singla i.e. 2.9.2005, should be permitted to participate in the proceedings as legal heirs of defendant No.1 or they should be given permission to contest the claim of the plaintiff- respondents by permitting them to file written statement. It is a settled principle of law that an order passed against a dead person is not operative in the eyes of law. The order striking off the defence of Kuldeep Singla on 2.9.2005 will neither be operative on the rights of Kuldeep Singla as he had died on 26.8.2005 nor the order striking off defence of Kuldeep Singla can be imposed upon the successors-in-interest of Kuldeep Singla. It is pertinent to observe here that defendant No.2 Binderjit Kaur has appeared as a defendant and has supported her sons, who are plaintiff- respondents. On account of collusion of the plaintiffs with defendant No.2, the suit cannot be permitted to be proceeded uncontested, especially when Kuldeep Singla had a registered sale deed dated 19.5.2003 in his favour. The entire proceedings

against Kuldeep Singla after his death on 26.8.2005 are non-est and can be said to be proceedings by playing fraud on the court without intimating the court regarding his death. The entire proceedings after his death, including striking off the defence on 2.9.2005 and closing of the evidence qua defendant No.1, would not be operative on the rights of his successors-in-interest.

Accordingly the revision petition is allowed. Impugned order dated 10.5.2012 is set aside to the extent it curtails the right of the petitioners to join proceedings beyond 3.3.2011. It is ordered that legal representatives of Kuldeep Singla would be entitled to defend their legal rights, in accordance with law by filing written statement and contesting the suit on merits. Merely because of delay in joining the proceedings, cannot be treated as a bar on technical ground against them, especially when plaintiff No.2 is a non resident Indian and is being represented through general attorney, who happens to be plaintiff- respondent No.1.

I do not find any ground to pass any order qua injunction order dated 16.11.2005, which is apparently an appealable order.

April 8 , 2015
TSM

(M.M.S.BEDI)
JUDGE