

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

CR No.4180 of 2013 (O&M)

Date of decision: 26.11.2015

Karam Singh

... Petitioner

versus

Major Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr.Dinesh Kumar, Advocate for the petitioner.

Mr. Jatinder Singh, Advocate for

Mr. R.S.Pandher, Advocate for respondent No.3.

K.Kannan, J.(Oral)

The plaintiff, who filed the suit to set aside the sale in favour of first defendant as having been obtained by fraud, died pending suit. Fourth defendant is subsequent purchaser of a portion of the property covered in suit. Fourth defendant appears to have independently filed a suit against the plaintiff in which first defendant was claiming title of the property by virtue of his purchase and obtained a decree. When the plaintiff died, fourth defendant filed an application to transpose himself as a plaintiff. The court has declined the relief and dismissed the suit as having abated.

I will find no error in declining the transposition of the fourth defendant, who cannot be said to represent the entire estate of

the plaintiff since he has himself purchased only 6 Kanals 2 Marlas of land, while the suit property is by extent to over 30 Kanals. Since the whole of the right of the plaintiff is not transmitted to him, the transposition will create a new problem of locus standi of a person who cannot claim whole of the ownership of the property.

Learned counsel argues that the Courts, while it allowed an abatement of the suit, has transgressed the powers and violate the circumstance contemplated under Order 22 Rule 4-A.

The provision states that if the Court is of the view that there is no legal representative, it may allow for appointment of General Administrator or an officer of the Court or such a person as it thinks fit to represent the estate of the deceased for the purpose of the suit and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent, as he would have been bound, if a personal representative of the deceased person had been a party to the suit. There is a need to elicit whether there is any legal representation who would be willing to prosecute the suit or who could represent the State.

In my view, appropriate procedure would be to cause publication in the village and invite any person, who may volunteer to prosecute case and who may represent the estate of the deceased.

The order already passed is modified and the matter is remitted to the Court below to cause publication by inviting for details

of any legal representative who could represent the estate under the provisions of Section 8 of the Hindu Succession Act or in the absence of any information about the local information, the Court may appoint an officer of Court and follow the procedure prescribed under Order 22 Rule 4-A (2) of the CPC.

The impugned order is modified and the matter is remitted to the Court below on the above terms. Parties shall appear before the Court below on 5.1.2016.

(K.KANNAN)
JUDGE

26.11.2015
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