

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 4387 of 2015

Date of Decision: July 15, 2015

Gurdial Singh

.....Petitioner

Vs.

Ujjagar Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Mohit Jaggi, Advocate
for the petitioner.

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M.M.S. BEDI, J. (ORAL)

This is plaintiff's revision petition against the order dated May 6, 2015 dismissing the application of the plaintiff- petitioner for impleading the LR's of defendant No.5 Inder Singh who was already dead at the time when the plaintiff filed the suit. The trial Court has dismissed the application for impleading the LR's of defendant No.5 Inder Singh on the ground that the suit against a dead person is nullity and that for said reasons LR's cannot be allowed to be brought on the record.

Learned counsel for the petitioner, on asking of the Court, informs that the suit is at initial stage and that issues have not been framed.

Inder Singh had been impleaded as a defendant inadvertently as the plaintiff did not have any knowledge about his death at the time of filing of the suit. The plaintiff wants to rectify the inadvertent error by impleading the LRs of Inder Singh.

I have heard learned counsel for the petitioner and carefully considered the facts and circumstances of the case. Suit against a dead person is certainly not maintainable. The trial Court has rightly dismissed the application under Order 22 Rule 4 CPC but it is always open to the plaintiff- petitioner to move an application for amendment of the suit by disclosing the inadvertent mistake and seek permission to amend the successor-in-interest of Inder Singh if so advised as the trial seems to have not commenced as yet and is still at the stage of completion of pleadings.

The petitioner has also challenged another order dated May 6, 2015 allowing the application of defendants No.2 to 4 under Order 7 Rule 11 CPC directing the plaintiff to pay advalorem Court fee at market price as he has challenged the registered sale deed dated July 30, 1966 executed by his father.

I have gone through the said order and I am of the opinion that since the plaintiff - petitioner is not in possession of the property and is challenging the registered document, the trial Court has rightly relied upon **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others**, 2010 (2) CCC 510 (SC) in allowing the application under Order 7 Rule 11 CPC and directing the plaintiff- petitioner to pay advalorem Court fee.

The revision petition so far as order dated May 6, 2015 regarding payment of Court fee is concerned, is dismissed. It will be open to the petitioner to seek extension of time under Section 148 CPC read with Section 141 CPC to affix the Court fee.

Granting liberty to the plaintiff- petitioner, petition is dismissed without prejudice to the rights of the petitioner to seek amendment of the plaint in accordance with law.

July 15, 2015
sanjay

(M.M.S.BEDI)
JUDGE