

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

**Civil Revision No.5579 of 2014
Date of Decision: August 27, 2015**

Bimla Devi and others

.... Petitioners

vs.

Bal Krishan and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. K.B. Raheja, Advocate for the petitioners.

Mr. Vinod Khunger, Advocate for the respondents.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present revision petition is the order dated 19.12.2013 (Annexure P-1) passed by learned Civil Judge (Jr. Divn.), Ferozepur, vide which the suit of the plaintiff-petitioner was dismissed on account of non-filing of the application for impleading the LRs of deceased defendant Nank Chand.

Briefly stated, a suit for possession was filed by the plaintiff-petitioner. Nanak Chand-defendant No.1 appeared and contested the suit. However, during the pendency of the suit, he died. The plaintiff was directed to move an application for bringing on record the LRs of defendant Nanak Chand but he failed to do so.

However, defendant Nos.2 and 3, who happened to be the brother and wife of the deceased brother of Nanak Chand continued to appear.

After hearing learned counsel for the parties, I am of the view that the approach of the lower court in dismissing the suit is erroneous. Under Order XXII, Rule 4-A CPC, an application is required to be filed. However, the rule does not stipulate that the said application should be filed by the plaintiff. Defendant Nos.2 and 3 were appearing and contesting the case. Therefore, it was the duty of the LRs to come forward for impleading themselves as party. The plaintiff cannot be penalized for not bringing on record the LRs of deceased defendant Nanak Chand. This Rule was amended by this Court as under:

“High Court Amendment -[Punjab, Haryana and Chandigarh]. - (i) In rule 4, sub-rule (3) shall be substituted as follows:-

“(3) Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased-defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

(ii) In rule 4 the following shall be inserted as sub-rules(4), (5) and (6), namely:-

“(4) If a decree has been passed against a deceased-defendant a person claiming to be his legal representative may apply for setting aside the decree qua him and if it is proved that he was not aware of the suit or that he had not intentionally failed to make an application to bring himself on the record, the Court shall set aside the

decree upon such terms as to costs or otherwise as it thinks fit.

(5) Before setting aside the decree under sub-rule (4) the Court must be satisfied prima facie that had the legal representative been on the record a different result might have been reached in the suit.

(6) The provisions of section 5 of the Limitation Act, 1963 shall apply to applications under sub-rule(4).”

Therefore, the Court was to go by the amended Rule and could not dismiss the suit of the plaintiff even against the contesting defendants, who were appearing and contesting the matter.

It being so, the impugned order is set aside. The lower court is directed to proceed further in the matter in accordance with law.

The present revision petition is allowed accordingly.

Both the parties are directed to put in appearance before the lower court on 24.09.2015.

August 27, 2015
sarita

(KULDIP SINGH)
JUDGE