

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.6495 of 2011 (O&M)

Date of decision:05.02.2015

Des Raj & another

....Petitioners

Versus

Rajiv Kataria

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Chetan Mittal, Sr.Advocate
with Mr.Varun Issar, Advocate, for the petitioners.

Mr.Arun Jain, Sr.Advocate
with Mr.Arn timer Sood, Advocate, for respondent No.1
along with respondent No.1-in-person.

G.S.Sandhawal timer J.

Challenge in the present revision petition, by the plaintiff/petitioners, is to the order dated 04.08.2011 (Annexure P8), whereby the Trial Court has declined the impleadment of the legal representatives of the deceased-defendant No.2 on the ground that nobody had approached the Court for impleading him and as per the provisions of Order 22 CPC, as amended by this Court and the plaintiff need not move such like application for impleading the LRs of the deceased defendant.

The suit for possession by way of specific performance of the agreement to sell dated 23.07.2003, pertaining to House No.2132, Sector 15-C, Chandigarh, was filed on 07.06.2004 by the petitioner-plaintiff against respondent No.1 and Puran Singh, who was arrayed as defendant No.2. The said defendant No.2 was alleged to have expired on 13.05.2008. Accordingly, an application dated 21.07.2009 was filed by the petitioners that the said fact be confirmed regarding his death, which was replied by the common counsel filing

Thereafter, an application dated 14.10.2009 was filed under Section 151 CPC, asking the counsel for defendant No.1 to clarify the exact date and place of death, the name and address of the legal representatives of defendant No.2 for impleading him as a party in the suit for possession since they were represented by one counsel.

The application was contested by filing reply that the name of the said wife of the deceased was Raksha Rani, but it was not known where she was residing and the family had been living at Amb, District Una, which is in Himachal Pradesh. It was further stated that two sons and a daughter had been left behind by the deceased. Resultantly, the application dated 07.08.2010 under Order 22 Rule 4 (1) CPC was filed by the petitioners, asking for service to be effected upon said Raksha Rani, so that she could be made party and also that she could reveal the names of the other LR's. The application was contested by respondent No.1 on the ground that the LR's could not be substituted and the suit stood abated. The said application, now, by virtue of the impugned order, has been dismissed on the ground that no one had approached to implead the LR's of the deceased-defendant and therefore, it was their duty to approach the Court. Thus the present revision petition has been filed by the plaintiffs.

The matter, in the meantime, was resolved with the plaintiffs on 30.07.2013 and the statement of counsel for the plaintiffs was recorded that the total amount of ₹1,65,00,000/- would be paid by 31.10.2013, by defendant No.1, failing which, the suit of the plaintiffs would be decreed with costs. The settlement was to be a complete settlement with the rest of the defendants also and on the failure, the suit of the plaintiffs would be decreed with costs. The said statement reads as under:

“Statement of Sh.Des Raj, plaintiff no.1 with counsel Sh.Varinder Issar, Adv and Sh. Varinder Issar on behalf of plaintiff no.2. On SA

The matter in suit has been amicably settled and defendant no.1 has agreed to pay the total amount of Rs.1,65,00,000/- on or before 31.10.2013 failing which the suit of the plaintiff be deemed to be decreed with cost. However, defendant no.1 will not sell his house in question to anyone for ten years and if at all he intends to sell it then he shall be selling it only to plaintiff. This settlement will amount to settlement of the complete suit with the rest of the defendants also. This statement will also be binding upon plaintiff no.2 and under the said compromise I withdraw the present suit. The same may kindly be dismissed as withdrawn and be disposed of in the Lok Adalat on 01.06.2013.”

The said statement was accepted by defendant/respondent No.1, who is an Advocate of this Court, appearing in person, along with his counsel. He undertook to pay the said amount, failing which, the suit was deemed to be decreed. The statement reads as under:

“Statement of Sh. Rajiv Kataria, defendant no.1 with counsel Sh. N.K.Jain, Adv. On SA.

I have read the statement of the plaintiff no.1 and I accept the same. I am bound by the terms and conditions as mentioned in his statement. I undertook to pay the total amount of Rs.1,65,00,000/- on or before 31.10.2013 failing which suit of the plaintiff be deemed to be decreed with cost. I further undertook not to sell the house in question to anyone for 10 years and if at all I intend to sell it then I will sell the same to the plaintiffs. The statement of plaintiff is also to be read as the statement of plaintiff no.2 as well. This case may kindly be disposed of in the Lok Adalat on 01.06.2013.”

In pursuance of the said statements, recorded on 01.06.2013, the suit was disposed of, as per the compromise and parties were directed to remain bound by their statements. The operative part reads as under:

“Heard. In view of the aforesaid statements of the parties, the present suit stands disposed of as per the compromise in the Lok Adalat. Parties are directed to remain bound by their statements. File is ordered to be consigned to the record room after due compliance. Court fee be refunded if any as per rules.”

It is a matter of fact that the payment has not been made as per the terms of the compromise. Resultantly, it is apparent that the suit was deemed to be decreed in view of the said conditional compromise arrived at between the parties.

Learned Sr.Counsel for the petitioners has vehemently submitted that in pursuance of the said settlement arrived, the order dated 04.08.2011 would stand in the way, in the final adjudication in execution proceedings also, as it would leave a lacuna in the execution proceedings that the application for impleadment of LR's had been dismissed. It is further pertinent to mention that out of the same set of proceedings, pertaining to the *ad interim* injunction, which was pending before the Lower Appellate Court, an application was filed for impleadment and after considering the provisions of Order 22 Rule 4 (3) CPC, as amended by this Court, Smt.Raksha Rani was brought on record as the legal heir of the deceased-Puran Singh, for the disposal of the Civil Misc. Appeal, vide order dated 05.04.2011 (Annexure P7). It was also mentioned that the names of the other legal representative of the deceased-Puran Singh had not been disclosed.

Accordingly, keeping in view the above sequence of events, this Court is of the opinion that the order passed by the Trial Court, is not sustainable in view of the amendment made by this Court in the provisions of Order 22 Rule 4 (3) CPC. The Trial Court was not justified in holding that an application had to be filed on behalf of the defendant to bring on record the LR's. The relevant amendment in Order 22 Rules 3 to 6 reads as under:

“4. Procedure in case of death of one of several defendants or of sole defendant:-(1)Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court on an application made in that behalf, shall cause the legal representative of the

deceased defendant to be made a party and shall proceed with the suit.

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Punjab, Haryana and Chandigarh -(i) In its application to the State of Punjab, Haryana and Chandigarh, the following shall be substituted for the existing sub-rule (3) to Rule 4 of Order XXII:

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 it had been pronounced before the death took place."

(ii) The following shall be inserted as sub-rule (4), (5) and (6) to Rule 4 of Order XXII:

"(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 provided 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 different result might have been reached in the suit."

"(6) The provisions of Section 5 of the Indian Limitation Act (36 of 1963) shall apply to applications under sub-rule (4)"

The amendment is for the purpose that the suit shall not abate, however, once it comes to the knowledge of the plaintiffs that the identity of some of the LRs is known, then, in order to avoid complexity, it is proper to bring on record the said LRs. In such circumstances, the orders passed are not justified. The details of Raksha Rani were known and the application dated 07.08.2010 was filed for the purpose of issuing notice to the legal heirs. If the Court would have issued notice to her, the other LRs could also have come and the Court could have examined her to get the details of the other legal heirs, so that notice

could be duly served upon them in order to avoid any objections being raised in the future, for the fruits of the decree, at a subsequent point of time.

Sub-rule (4) provides the legal representative to apply for setting aside the decree on the ground that he was not aware of the suit and that he had not intentionally failed to make an application to bring the heirs on record.

The said provisions, as substituted by this Court, was subject matter of decision of the Full Bench in **Smt. Chand Kaur Vs. Jang Singh & others 1979 AIR (Punjab) 16** and it was held that the said amendment was not inconsistent of the provisions of the Code of Civil Procedure, 1908. In **Saraswati Devi & others Vs. Hazari Lal & others 1989 PLR 670**, in view of the amendment dated 11.04.1975, it was held by this Court that the suit shall not abate against the deceased-defendant and the judgment pronounced, notwithstanding the death shall have the same force and effect as if it had been pronounced before the death took place.

Similar view was taken in **Narota Singh Vs. Sawaya Singh (deceased) by his Lrs 1992 PLJ 302** and **Banta Singh Vs. Khajan Singh 2001 (3) PLR 333**. In **Lal Chand & others Vs. Raghu Nath & others 2009 (3) PLR 584**, it was held that the applications should not be dismissed which are filed under Order 22 Rule 4 and the contract between the deceased and the pleader shall continue to subsist. Thereafter, in **Bijender Singh Vs. Smt. Phool Kaur 2011 (1) PLR 493**, the objections raised that the LRs of the deceased-defendant could not be brought on record were rejected, in view of the amendments made by holding that in view of the amendment, there was no limitation.

In **Sukhdev Singh Vs. Charanjit Singh & others 2011 (4) PLR 596**, the amendment made by this Court was again discussed in detail and the judgment of the Apex Court in **Kulwant Kaur Vs. Gurdial Singh Mann (dead)**

no limitation for bringing on record the legal representatives of the deceased-litigants and the argument that the application for bringing on record the legal representatives of the deceased-defendants could not be allowed, was rejected.

In such circumstances, though the suit has already been decided, as noticed above, this Court is of the opinion that the order dated 04.08.2011 (Annexure P8) is not justified and is, accordingly, set aside. It is, however, made clear that it will always be open to the petitioners to execute the decree as per the terms of the compromise.

At this stage, Learned Sr.Counsel for the respondent No.1 has agitated against the present order. However, in the opinion of this Court, counsel for respondent No.1 has no *locus standi* to raise such an objection since, admittedly, he is only representing respondent No.1 before this Court and can not object to the present revision petition.

With the abovesaid observations, the present revision petition stands allowed.

05.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE