

ESA No.28 of 2013 (O&M)

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

ESA No.28 of 2013 (O&M)

Date of decision:11.02.2015

Deenu and another

...Appellants

Versus

Kamru and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sanjeev Kumar Bawa, Advocate,
for the appellants.

Rakesh Kumar Jain, J.

This appeal is filed by the plaintiffs, who have filed a suit against one Dalli S/o Rahim Khan for specific performance of the agreement to sell dated 22.12.2005. During the pendency of the suit, legal representatives of defendant Dalli were brought on record but they were proceeded against *ex parte* on 25.03.2008 and the suit for specific performance was decreed *ex parte against* the legal representatives of Dalli.

After the decree, the plaintiffs filed the execution application and the sale deed was registered in their favour on 12.01.2009. When they tried to take possession, at that time, respondent no.1 Kamru S/o Deen Mohammad filed the objection against delivery of possession on the ground that he is a *bona fide* purchaser of the suit land by way of registered sale deed dated 10.05.2007 bearing vasika No.177 executed by the legal representatives of Dalli and a mutation has also been sanctioned in his favour. It was further alleged that the suit was filed against Dalli when he was already dead. On the objections, 3 issues were framed, the parties led

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their evidence, the Executing Court dismissed the execution and further passed the order for cancellation of the sale deed dated 12.01.2009 executed in favour of the plaintiffs through the Local Commissioner. It was held that the suit was filed by the plaintiffs against a dead person, filed on 05.04.2007, whereas Dalli had already expired on 05.04.2006. The first appeal was also dismissed by the Appellate Court observing that the legal representatives of Dalli were in connivance with the plaintiffs as they did not contest the suit.

Learned counsel for the appellants has argued that the Courts below have committed an error in not appreciating the fact that the decree was passed against the legal representatives of Dalli who were impleaded as a party but they did not choose to contest the suit. In this regard, he has relied upon two judgments of the Andhra Pradesh High Court in the cases of **Khaja Begum v. Gulam Mohiuddin and others**, 1976 AIR (A.P.) 65 and **Rasetty Rajyalakshamma and others v. Rajamuru Kannaiah**, 1978 AIR (A.P.) 279 to contend that if the suit is filed against the defendant who had already died but the death is known subsequently, the suit is not void *ab initio* and can be continued against the legal representatives if their substitution is made within the period of limitation.

After hearing learned counsel for the appellants and examining the available record, I am of the considered opinion that there is no merit in the present appeal because admittedly the suit was filed on 05.04.2007, Dalli S/o Rahim Khan had already expired on 05.04.2006, Kamru S/o Deen Mohammad purchased the suit property from the legal representatives of Dalli on 10.05.2007, LRs of Dalli were impleaded in the suit on 02.11.2007

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i.e. after execution of the sale deed in favour of Kamru and the legal representatives of Dalli did not contest the suit and remained *ex parte*.

The question thus would be as to who were the legal representative of Dalli. As per Section 2(11) of the CPC, the legal representative means any person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased.

Accordingly, though the defendants were the children of Dalli but after the death of Dalli and execution of sale deed of the property in dispute in favour of Kamru before they could have been impleaded as a party in the suit filed by the plaintiffs, they were no more legal representatives of Dalli in respect of the suit property as the suit property was in the hands of Kamru S/o Deen Mohammad by way of purchase against a valid sale consideration and hence, Kamru was the legal representative of Dalli in respect of the suit property who should have been impleaded as a party. It cannot be believed that the plaintiffs were not aware of the sale deed in favour of Kamru as they are the residents of same village.

Thus, there is no error in the orders of the Courts below and the judgment relied upon by learned counsel for the appellants are not applicable to the facts and circumstances of the present case.

Consequently, I do not find any error in the present appeal and hence, the same is hereby dismissed.

February 11, 2015
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(Rakesh Kumar Jain)
Judge