

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

Civil Revision No.3875 of 2014 (O&M)

Date of decision: 18.3.2016

Sukhwinder Singh

... Petitioner

Versus

Balbir Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present: Ms.Bhupinder Kaur, Advocate,
for the petitioner.

Mr.Gurcharan Dass, Advocate,
for respondents No.1 to 3.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

K.KANNAN, J. (Oral)

The power of attorney for the plaintiff moved an application for impleading himself as a party to prosecute the case through an application filed under Order XXII Rule 3 CPC claiming as representative-in-interest of the deceased plaintiff. The original Will was not produced and the applicant did not give details of other legal heirs who could be interested in the estate, if not for the Will. The Court below dismissed the application.

The Court impleading a party at the stage of application under Order XXII Rule 3 CPC ought to have some basis to treat the applicant as a legal representative who could represent the estate. Even if there is no legal representative, the Court is empowered under Order XXII Rule 4-A to allow

on the application of any party to the suit to proceed in the absence of a person representing the estate of the deceased person or may even appoint the Administrator General or an officer of the Court or such other person as it thinks fit to represent the estate.

I treat the application filed by the petitioner under Order XXII Rule 3 CPC as requiring a consideration under Order XXII Rule 4-A CPC, particularly on the inability of the petitioner to file the original Will and seek for substitution as a legal representative.

It would become essential for the Court to treat such an applicant as a legal representative only if it orders notice of the application to be given to such persons having an interest in the estate of the deceased as the Court may think fit.

I set aside the order and remand the matter to the Court below allowing for the applicant to give the details of Class-I heirs of the deceased and if such information is produced, the Court will order notice to them. The Court will also order general publication to be given as regards the institution of the suit and need for prosecution of the suit after the death of the deceased plaintiff.

The Court will adopt the procedure as given under Order XXII Rule 4-A (1) and (2) and pass appropriate fresh orders.

The impugned order is set aside and remitted to lower court and revision petition is allowed in the above terms.

(K.KANNAN)
JUDGE

March 18, 2016