

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

**C.R. No.5726 of 2016  
Date of Decision.05.09.2016**

Surinder Pal Singh and another .....Petitioners  
Vs.  
Parkash Kaur (since deceased) through LRs and others .....Respondents

Present: Mr. R.N. Moudgil, Advocate  
for the petitioners.

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

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**AMIT RAWAL J. (ORAL)**

The petitioners are aggrieved of the impugned order where they have been allowed to be impleaded as legal representatives of Parkash Kaur.

Mr. R.N. Moudgil, learned counsel for the petitioners submits that the respondents-plaintiffs had instituted a suit seeking specific performance of the agreement to sell dated 03.06.2003 in respect of house constructed on sight measuring 8 marlas situated in Anandpur Sahib, District Rupnagar against Parkash Kaur and obtained judgment and decree dated 04.08.2011. Parkash Kaur died in the year 2014. Against the dismissal of the appeal, RSA bearing No.3535 of 2012 is pending adjudication and listed for 15.02.2017. He submits that act of Parkash Kaur of having entered into the agreement to sell had already been challenged by the petitioners vide civil suit No.94 dated 15.12.2011 (Annexure P-4) and even the third party objections in the execution application No.53 dated 24.12.2012 have been filed. Since there is clash of interest on this premise, in case, application for legal representatives is allowed, it would seriously prejudice the claim and interest of the petitioners-plaintiffs in the pending suit and third party objections. The Court could have resorted to the provisions of Section 21

Rule 32 CPC in conjunction with provisions of sub-rule 2 Rule 3 of Order 22

CPC but not in the manner and mode as has been done.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that that there is force in the submission of Mr. Moudgil. For the sake of brevity, the provisions of Order 22 (3)(2) CPC as applicable to the Punjab and Haryana High Court and Order 21 Rule 32 CPC read thus:-

***“Order 22(3). Procedure in case of death of one of several plaintiffs or of sole plaintiff.***

(1) XXX XXX XXX XXX

*(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall not abate as against the deceased plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place, and the contract between the deceased and the pleader in that event shall continue to subsist.”*

***32. Decree for specific performance for restitution of conjugal rights, or for an injunction.-*** (1) *Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it the decree may be enforced in the case of decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.*

*(2) Where the party against whom a decree for specific performance or for an injunction has been passed in a corporation the decree may be enforced by the attachment of the property of the corporation or with the leave of the court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.*

*(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for six months, if the judgment debtor has not obeyed the decree and the decree holder has applied to have attached property sold, such property may be sold; and out of the proceeds the court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment debtor on his application.*

*(4) Where the judgment debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.*

*(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree holder or some other person appointed by the court, at the cost of the judgment debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the court may direct and may be recovered as if they were included in the decree.*

*[Explanation.—For the removal of doubts, it is hereby declared that the*

*expression “the act required to be done” covers prohibitory as well as mandatory injunction.*

***Punjab and Haryana High Court amendment in Order 21, Rule 32 CPC***

*(a) in sub-rule (3), insert the following proviso, namely:-*

*“Provided that the Court may for sufficient reasons, on the application of the judgment-debtor, extend the period beyond three (now six) months; but it shall in no case exceed one year in all*

*(b) in sub-rule (4), for the words “one year” substitute “three (now six) months or such other period as may have been prescribed by the Court.”*

After conjoint reading of the aforementioned provisions, the contract between the pleader and the deceased continues. The Court could have proceeded with the execution in the absence of bringing on record the legal representatives of Parkash Kaur in the peculiar facts and circumstances by attaching property and thereafter, if situation warrants, appoint local commissioner seeking execution of decree. There was no need to implead the legal representatives of Parkash Kaur which, in my view, would seriously affect their right in the pending suit. Accordingly, with the aforementioned observations, the impugned order is set aside and the trial Court shall strictly follow the provisions of law, as referred to above, and proceed with the execution application in accordance with law.

I do not intend to issue notice of motion to opposite side as it would delay the execution of the proceedings by granting ex parte stay and defray the litigation expenses. However, if the respondents-defendants are aggrieved of the order passed by this Court, they shall be at liberty to move appropriate application. The civil revision petition is disposed of on the above terms.

**(AMIT RAWAL)**  
**JUDGE**

**September 05, 2016**

Pankaj\*

Whether reasoned/speaking Yes

Whether reportable No