

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

Civil Revision No.1007 of 2017

Date of decision: February 13, 2017

Kulwinder Singh

...Petitioner

Versus

Lakha Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. K.S. Rekhi, Advocate for the petitioner.

Rajan Gupta, J.

Present revision is directed against the two orders dated 8.12.2016, passed by Civil Judge (Jr. Division), Batala, whereby application (Annexure P-4) filed by respondent No.1/plaintiff for bringing on record legal heirs of defendant No.2 Baldev Singh and defendant No.5 Piar Kaur, has been allowed, whereas application (Annexure P-5) filed by the petitioner for dismissing the suit has been dismissed.

Learned counsel for the petitioner has assailed the order. He submits that defendants No.2 and 5 had already expired before institution of the suit, therefore, application for bringing their legal heirs on record was not maintainable. He further submits that the trial court has wrongly dismissed application filed by the petitioner for dismissing the suit against defendants No.2 and 5.

I have heard learned counsel for the petitioner and given

careful thought to the facts of the case.

It appears, plaintiff/respondent No.1 Lakha Singh filed a suit for declaration claiming possession of land measuring 38 Kanals, situated in the revenue estate of village Chaura, District Gurdaspur. Suit was filed on 5.9.2013. During pendency of suit, on 8.7.2016, petitioner/defendant filed an application for dismissal of suit as against defendants No.2 to 5 on the ground that said defendants had already expired before institution of the suit. Thereafter, on 16.8.2016, plaintiff Lakha Singh filed application for bringing on record legal heirs of defendants No.2 and 5, on the ground that he was not aware of the fact that these defendants had already expired. This fact only came to his notice when application for dismissal of the suit was filed by the petitioner. Moreover, defendants also did not disclose this fact in their written statement. Trial court allowed this application of the plaintiff, whereas it dismissed application filed by petitioner/defendant for dismissing the suit, observing that omission to implead legal representatives of deceased defendants was due to bonafide mistake. I find no legal infirmity with the order. It is settled law that if suit is filed against a dead person and one of the legal representatives is already on record, suit is not void *ab initio*. Moreover, defendants No.1, 3 & 4, who are real brothers of defendant No.2 and sons of defendant No.5, also did not disclose the fact regarding death of these defendants in their written statement. There is nothing on record to show that plaintiff was aware of the death of defendants No.2 and 5 at the time of institution of the suit. I am of the considered view that application filed by the petitioner for dismissing the suit was not maintainable and

the trial court has rightly dismissed the same. The revision petition is without any merit and is hereby dismissed.

(RAJAN GUPTA)
JUDGE

February 13, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No