

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

CR No.1461 of 2017.

Date of Decision: 01.03.2017.

Kamaljit Singh

....Petitioner.

VERSUS

Sushila Kumari @ Sheela Devi through L.Rs. Salma Khan etc. and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. C.M. Munjal, Advocate for the petitioner.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 03.02.2017 passed by learned Additional District Judge, Mansa (wrongly typed as Additional Sessions Judge in the order) by virtue of which the application filed by respondent No.1-appellant-plaintiff for impleading legal representatives of deceased Sher Singh (respondent No.2 herein but respondent No.1 in the appeal), was allowed.

The submissions made by Mr. C.M. Munjal, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner submits that respondent Sher Singh, who was defendant No.1 in the suit, had died during pendency of the trial of the suit i.e. much before the appeal was filed by respondent No.1-appellant. The appeal having been filed against a dead person was nonest

and should have been dismissed by learned first appellate Court instead of

allowing the appellant to implead legal representatives of the deceased respondent.

The reasons given by learned first appellate Court for allowing the application are as under:-

“Perusal of the record indicates that respondent No.1 namely Sher Singh has been duly represented by his counsel before the learned trial Court and in the judgment dated 01.03.2014, he has not been shown to have died and represented by his Lrs. Appellant filed the appeal on the basis of judgment and decree dated 01.03.2014. Notice of appeal was served upon respondents whereupon report came that respondent No.1 has died and accordingly, appellant has preferred the instant application seeking impleadment of Lrs of respondent No.1. The contention being raised by learned counsel for the respondents that appeal against a dead person is to treated as nonest and further limitation has expired for filing the appeal qua respondent no.1, does not commend to this Court being wholly fallacious. Order 22 R (2A) of CPC (as applicable in Punjab & Haryana) clearly postulates that every advocate appearing in a case who becomes aware of the death of a party to the litigation must give intimation about the death of that party to the Court and to the person who is dominus litus. Rule 2(B) further postulates that the duty to bring on record the Lrs of the deceased defendant shall be of the heirs of the deceased and not of the person who is dominus litus. Further the suit was not only against Sher Singh but against

other defendants as well. Similarly appeal has also been filed against other respondents. In this view of the matter, the appeal would not be treated as nonest having been filed against one of the dead respondent without impleadings his Lrs.

It is the case of the petitioner himself that respondent Sher Singh died during pendency of the suit. As noticed by learned first appellate Court, the counsel representing the deceased respondent carried on to appear on his behalf during the trial of the case. Neither he nor the legal heirs of the deceased brought to the notice of learned trial Court that the said respondent had expired. Since the respondent had died after notice of the suit, it was the duty of the legal heirs to come forward on their own and implead the legal representatives of the deceased respondent. There was no occasion for respondent No.1-appellant to assume that respondent Sher Singh had died when he was being represented by a counsel. It was only when it was reported on the notice sent to him that he had expired, that respondent No.1-appellant filed an application to implead his legal representatives. Although the application was filed for impleading only the widow and sons of the deceased, but learned trial Court has rightly ordered for impleading all the class-I legal heirs/representatives of the deceased.

Thus, there being no merit in the petition, it is hereby dismissed.

(SNEH PRASHAR)
JUDGE

01.03.2017.
jitender sharma

Whether speaking/ reasoned : **Yes/ No**

Whether Reportable : **Yes/ No**