

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

C.R. No. 3475 of 2017 (O&M)

Date of Decision:- 15.05.2017

Rajbala

....Petitioner

vs.

Tejpal and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. R.S. Sangwan, Advocate,
for the petitioner.

DAYA CHAUDHARY, J.)

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 6.4.2017 (Annexure P-2) passed by the Civil Judge (Junior Division), Charkhi Dadri whereby application filed by the petitioner has been disposed of.

Briefly, the facts of the case as made out in the revision petition, are that the election for the post of Sarpanch, Gram Panchayat Village Rawaldhi, was challenged by way of filing election petition. During pendency of that petition, plaintiff No.2 Inder Singh had expired. An application was moved by plaintiff-respondent No.1 to delete name of late Inder Singh from the array of plaintiffs. Said application was contested and ultimately it was allowed without summoning the legal heirs of the

deceased. While allowing the application, it has been held by the Civil Judge that every person qualified to vote at the election has right to sue and petitioner No.1 is qualified to cast vote at the election. Provisions of Order 22 Rule 2 CPC are applicable in the case. Suit was ordered to be proceeded at the instance of surviving petitioner and the application was disposed of accordingly.

Order dated 6.4.2017 passed by the Civil Judge (Sr. Division), Charkhi Dadri is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the impugned order is not based on proper appreciation of facts and law. The trial Court should have adopted the approach to summon the legal representatives of deceased-plaintiff and the application should have been decided after hearing the effected persons. Learned counsel further submits that without issuing notice to legal representatives of deceased-plaintiff No.2 and without asking for any reply to the application, the order has been passed.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order and other documents available on the file.

Admittedly, election petition was filed by two persons namely, Tejpal and Inder Singh. During pendency of the suit, plaintiff-Inder Singh had expired. An application was moved by other plaintiff No.1 to delete name of deceased-Inder Singh from the array of plaintiffs. Said application was decided by holding that plaintiff No.1 being qualified to cast vote at the election is sufficient to pursue the case and the suit was proceeded at the instance of surviving plaintiff.

The present revision petition has been filed only on the ground that the LRs of deceased Inder Singh should have been given an opportunity to file reply to the application. Learned counsel has not shown any law in support of his argument as to how the legal representatives of deceased-plaintiff are necessary to be impleaded as party in the election petition.

Provisions of Order 22 Rule 2 are relevant in the case which are as under:-

“ORDER XXII

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.- Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.”

As per said provision, in case there are more than one plaintiff or defendant, and any one of them dies, in such a situation, the right to sue survives to the surviving plaintiff or plaintiffs. In the present case, plaintiff No.2 had died whereas, plaintiff No.1 survives. As per provisions of Order 22 Rule 2 CPC, he can proceed with the suit and no such survivor is required to be impleaded as plaintiff being legal

representative of deceased-plaintiff.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the revision petition being devoid of any merit is hereby dismissed.

May 15, 2017
poonam

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No