

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

Date of decision: 17.07.2017

CR No.4138 of 2017 (O&M)

Rahul Chaudhary

...Petitioner

Vs.

Madhu Kumar & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vaneet Soni, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

This revision petition is directed against an order made by the Civil Judge (Junior Division), Faridabad on 3rd May, 2017 dismissing the application of the defendant, the petitioner before this Court, preferred under Order 7 Rule 11 of the CPC.

The ground taken for invoking the provision relates to Pyare Lal, arrayed as defendant 15 in the suit filed in the year 2008. The contention is that the suit qua defendant 15 was against a dead person. According to Mr. Soni, learned counsel for the petitioner, Pyare Lal died on 15th September, 2003 and in support of this fact the death certificate is attached with this petition as Annex P-3.

The Civil Judge (Junior Division), Faridabad has dismissed the application reasoning that though there may be many defendants including grandsons of defendant 15 (deceased) impleaded as parties, but it cannot be said that the suit itself is a nullity only on account of fact that it has been brought against one of the 22 defendants, who had died before the suit was instituted.

The main suit is for seeking a declaratory decree on the ground that plaintiffs acquired occupancy rights in the suit land and became owners by virtue of the provisions of the Punjab Tenants (Vesting of Proprietary Rights) Act, 1952 with respect to the suit land. The Civil Judge has aptly relied upon the ruling of this Court delivered in case Bhupender Singh & others Vs. Jagroop Singh & others, 1991 (1) CCC 651, wherein this Court held that it is true that suit against a dead person is a nullity and no suit could be instituted, but in the midst of other parties arrayed as defendants, who have common interest along with other defendants and who have been impleaded as parties, then the character of the suit is in no way affected and the suit cannot be termed as a nullity.

I agree with the reasoning adopted by the Civil Judge (Senior Division), Faridabad and find that there is no substance in this petition. The trial Judge committed no error in rejecting the application under Order 7 Rule 11 of the CPC. Accordingly, the petition is without merit and is ordered to stand dismissed.

17.07.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>