

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

**CR No. 4442 of 2017 (O&M)
Date of Decision: July 26, 2017**

Sheetal Parshad (deceased through LRs)

..Appellant(s)

Versus

Rameshwar Parshad Jain and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Vijay Sharma, Advocate
for the petitioner(s).

ANITA CHAUDHRY, J.

This revision has been filed under Article 227 of the Constitution of India seeking quashing of the order dated 16.05.2017, vide which the application filed by the legal heirs of defendant no.1 for amendment of the written statement was dismissed.

The backdrop would be necessary. Rameshwar Parshad Jain aged 71 years filed a suit arraying his brother Sheetal Parshad and others seeking partition of a house situated at Patiala. The suit was filed in 2010. The plaintiff claimed that the share of Ram Parshad, their uncle had been succeeded by the plaintiff and defendants no.1 to 6 being the legal heirs of the deceased brother. The suit was contested by the defendants. Defendant no.1 took the plea that Ram Parshad was

owner to the extent of 3/4th share and Harparshad their father was owner only to the extent of 1/4th share and the plaintiff was never in possession of the property and Ram Parshad was unmarried and was issueless and had executed a Will in his favour in 1981, which was probated and after the death of Ram Parshad he became undisputed owner of the entire property as the plaintiff had given up his right in the house as he could not pay Rs.3,000/- to him and there was an admission in this regard in a letter written in December 1975. It was also pleaded that he had sold the property to defendants no.8 & 9 and they were in possession of the property.

Sheetal Parshad died after his evidence had been closed i.e. on 18.04.2015. An application was filed in December 2016 for impleading the LRs. The application was allowed. The trial commenced. Subsequently, an application was filed on 11.04.2017 seeking permission to amend the written statement filed by Sheetal Parshad. It was pleaded that they had been impleaded as LR but the property had been sold by their father to defendants no.8 & 9 and defendants no.8 & 9 were pleading that they were bonafide purchasers and Sheetal Parshad had not left behind any property nor any property had come in their hands and therefore, they wanted to amend the written statement and raise the plea in their own capacity and add para 6 that no property had come in their hands and they had not received any sale consideration after the sale of the property. It was pleaded that the application was being filed without delay as Nitika, one of the LRs

was proceeded *ex parte* only on the last date and these are subsequent events and cause of action has accrued to them only now.

The prayer was opposed by the plaintiff and it was pleaded that the second application for amendment of the written statement was legally not permissible. It was pleaded that only two legal heirs had come forward to amend the written statement and rest of them had waived their right to defend the case and by way of amendment, the legal heirs cannot change the plea or the claim set up by defendant no.1 in his own individual capacity. It was pleaded that defendants no.8 & 9 have neither claimed any amount nor filed a counter claim. It was pleaded that plaintiff was over 75 years old and there was direction by the High Court to decide the suit within 3 months and they had completed their evidence in November 2013 and the defendants were delaying the case and were moving one application or the other.

On the last hearing the petitioner had been asked to place on record the zimni orders as well as the application filed for impleading the legal heirs. The same has been placed on record. For the reasons set out in the application (CM No.15169-CII-2017), same is allowed as prayed for and accompanying documents (Annexure P-8 & Annexure P-9) are allowed to be taken on record.

Counsel for the petitioners while relying upon ***Jagdish Chander Chatterji Vs. Shri Krishan 72 AIR (SC) 2526 and Jagdish Parshad Vs. Joshi Ram 1977 PLR 670*** contends that the legal

representatives of a deceased-defendant are entitled to make any defence appropriate to their character and they should have been given an opportunity to amend the written statement and they only wanted to protect their rights and if the amendment is not allowed then it would lead to multiplicity of suits. The counsel had extensively referred to para no.10 of the judgment of the Apex Court reported in Jagdish Chatterji's case and I would quote for ready reference. It reads as below:

“ Under sub-clause (ii) of Rule 4 of Order 22 Civil Procedure Code any person so made a party as a legal representative of the deceased respondent was entitled to make any defence appropriate his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representatives from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding, thereby a separate suit for a decision on the independent title.”

Order 22 Rule 4(2) reads as under:-

“(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.”

A reading of the above would show that it authorizes the legal representative of a deceased-defendant to file additional written

statement or raise pleas which the deceased could have raised except those which were personal to the deceased-defendant. The Apex Court in *Vidyawati Vs. Man Mohan 1995 AIR (SCW) 2594* was dealing with the right of a legal heir. There the plaintiffs laid a suit on June 5, 1984 in the Court of Senior Subordinate Judge, Delhi for possession of the suit property against first defendant Brijmohan Kapoor, deceased husband of the petitioner - second defendant. Shri Man Mohan s/o Jagmohan Kapoor was impleaded to represent the estate of Brij Mohan Kapoor. When they sought to file additional written statement claiming title to and interest in the property under a will said to have been executed by Smt. Champawati, the petition was dismissed by the trial court holding that it was not open to the present applicant to assert her own individual or hostile title to the suit. It was held that if a legal representative wanted to raise any individual point which the deceased party could not have raised then he must get himself impleaded in his personal capacity or must challenge the decree in a separate suit. In that view she was not permitted to file the additional written statement. Challenging the order a revision was filed in the High Court which was dismissed.

In the above judgment, the Apex Court referred to *Jagdish Chander Chatterji's* case (supra) and had held that if a legal heir has an independent right or title then he or she has to get himself/herself impleaded in the suit as a defendant and only then they can set up their own independent right and resist the change or make

any challenge. Para nos.4 to 6 read as under:-

In Bal Kishan vs. Om Parkash & Anr. AIR 1986 SC 1952

has said thus:

"The sub-rule (2) of Rule of Order 22 authorised the legal representative of a deceased defendant to file an additional written statement or statement of objections raising all pleas which the deceased-defendant had or could have raised except those which were personal to the deceased-defendant or respondent."

The same view was expressed in Jagdish Chander Chatterjee & Ors. vs. Sri Kishan & Anr., 1973 (1) SCR 850 wherein it said:

"The legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representative from setting up also their own independent title, in which case there could be no objection to the court impleading them not merely as the Lrs. of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the title."

6. *This being the position in law, the view of the court below is perfectly legal. It is open the petitioner to implead herself in her independent capacity under Order 1 Rule 10 or retain the right to file independent suit asserting her own right. We do not find any error of jurisdiction or material irregularity committed in the exercise of jurisdiction by the court below warranting our interference. The SLP is, accordingly, dismissed."*

The petitioners were impleaded as legal heirs of defendant no.1. They brought themselves on record one and a half year after the evidence was over. The zimni orders placed on record show that the case is at the fag end and fixed for rebuttal and arguments. The plea which the legal heirs want to take is a plea which could not have been

taken by their father. The legal heirs cannot be permitted to take a plea which is personal to them. They cannot be allowed to take a plea which their father would not have taken. If they have any independent right then there is a remedy which they could avail. I see no infirmity. The petition is dismissed in limine.

The case is over seven years old. There are already directions for expeditious trial. The trial Court would dispose of the suit at the earliest.

July 26, 2017

sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No