

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

C.R. No. 5359-2017

Date of decision:- 11.08.2017

Raj Kumar Batra

...Petitioner

Versus

Smt Kunti Devi (since deceased) through her LR's & ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Deepak Sonak, Advocate
for the petitioner.

RITU BAHRI J. (Oral)

This petition under Article 227 of the Constitution of India is for setting aside order dated 25.07.2017 (Annexure P-1) passed by learned District Judge, Rewari whereby the application filed by respondent No. 1 was allowed under Order 22 Rule 3 to implead him as legal heir of the deceased i.e appellant-plaintiff Smt Kunti Devi.

A bare perusal of the impugned order shows that Kunti Devi who was unmarried and issueless, died on 25.11.2016. The applicant and his brother Bhushan Lal Chawla were the only legal heirs, being brothers of the deceased. Bhushan Lal Chawla also expired and his widow is already proforma respondents. The only argument raised by learned counsel for the defendant-petitioner that the application is barred by limitation as per provisions of Order XXII Rule 3(2) of CPC was found to be totally misconceived because as per notification dated 21.02.1992, the provisions of Order XXII Rule 3(2) of CPC has been amended and substituted to say that if L.R's of a deceased party are not brought within the prescribed period the suit shall not abate for the aforesaid reason. The substituted Order XXII Rule 3(2) of CPC reads as under:-

“Where within the time limited by law no application is

made under Sub-rule (1), the suit shall not abate as against the deceased-plaintiff and the judgment may be pronounced notwithstanding his death which shall have the same effect as if it has been pronounced before the death took place and the contract between the deceased and the pleader in that event shall continue to subsist.”

The Court below relied upon the judgments of this Court in cases of ***Lal Chand and others vs. Raghu Nath and others, 2010(1) CCC 440 (P&H) and Bijender Singh vs. Smt. Phool Kaur, (2011-1) PLR 493*** and it was reiterated that as on today there is no limitation to the LR's of deceased party to a litigation, which obviously includes a appeal also saying that “Thus, on the basis of the aforesaid discussion, a conclusion can safely be drawn that the local amendment made by this Court, vide notification dated 21.02.1992 does not stand repealed by the Amending Act, 2002.

The judgment relied upon by learned counsel for the petitioner i.e Gurnam Singh (D) through LR's and othes v. Gurbachan Kaur (D) by LR's and others, passed in Civil appeal No. 5671-2017 has not considered the substituted Order XXII Rule 3(2) of CPC and thus, the Court below has rightly allowed the application of Jagdish Chawla to be impleaded as legal heir of Smt. Kunti Devi (since deceased).

Accordingly, order dated 25.07.2017 (Annexure P-1) passed by learned District Judge, Rewari does not require any interference by this Court.

The petition is dismissed.

August 11, 2017
G Arora

(***RITU BAHRI***)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No