

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

CR No.6182 of 2017(O&M)

Date of decision: 7.10.2017

Sardul Singh through his LR Sukhraj SinghPetitioner

VERSUS

Swinder Singh and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Amit Arora, Advocate for the petitioner.

REKHA MITTAL, J.

CM No.19379-CII of 2017

Heard.

As LR's of Sardul Singh have already been brought on record before the Court below, instant application is dismissed being not maintainable.

CR No.6182 of 2017

The present petition directs challenge against order dated 08.08.2017 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Tarn Taran whereby application under Order 22 Rule 4 of the Code of Civil Procedure, 1908 (in short 'CPC') to the extent of filing additional written statement and application under Order 1 Rule 10 CPC for allowing the legal representatives (in short 'LRs') of Sardul Singh (since deceased) to be impleaded as a party independently have been dismissed.

Counsel for the petitioner has submitted that Swinder Singh – respondent/plaintiff has filed a suit for recovery of Rs.1,68,00,000/- on the

basis of agreement to sell dated 14.08.2012 purported to be executed by Sardul Singh qua land which he (Sardul Singh) agreed to purchase from defendants No.2 to 7 vide agreement to sell dated 03.07.2017 at the rate of Rs.28,50,000/- per acre. As per plea of the respondent/plaintiff, Sardul Singh received an amount of Rs.1,50,00,000/- as earnest money from the plaintiff and further agreed to receive Rs.30,00,000/- up to 02.11.2012 with an undertaking to produce clearance certificate from the bank and get the sale deed executed from defendants No.2 to 7 in favour of the plaintiff or in the name of a person of his choice on receipt of balance sale consideration. Sardul Singh – defendant was confined in jail and he filed the written statement (Annexure P-2). Sardul Singh died during pendency of the suit and an application under Order 22 Rule 4 read with Section 151 CPC (Annexure P-3) for impleading his widow and three sons as LR's of deceased Sardul Singh with liberty to file the written statement after their impleadment was filed. Another application was filed under Order 1 Rule 10 CPC for permitting the LR's of deceased Sardul Singh to be impleaded as a party in their independent capacity. Though the trial Court permitted Ninder Kaur and others, LR's of deceased Sardul Singh, to be brought on record but the Court wrongly rejected claim of LR's to file written statement for raising a plea specifically mentioned in para 4 of the application (Annexure P-3). It is argued with vehemence that as LR's of Sardul Singh claim independent right, title and interest in the property, they have the right to file written statement on their behalf, as envisaged under Order 22 Rule 4 (2) of the CPC. In support of his contention, heavy reliance has been placed upon judgment of Hon'ble the Supreme Court of

India **Abdul Razak (D) through LRs and others Vs. Mangesh Rajaram**

Wagle and others, 2010(1) RCR (Civil) 717.

I have heard counsel for the petitioner, perused the paper-book particularly various annexures including the order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is pertinent to note certain observations made by the trial Court in the second para (un-numbered) of the impugned order, reads as follows:-

“...The only plea raised by learned counsel for the LR is that the deceased defendant no.1 was mentally incapable to prepare his written statement properly. However, the record shows that the said written statement of the defendant no.1 was not only signed by himself but also by his counsel as well as accompanied with an affidavit in this regard. Had the defendant no.1 mentally challenged, the Oath Commissioner, who administered oath to the defendant no.1 on dated 22.05.2014 could have refused to testify his affidavit or the counsel for the defendant no.1 could have intimated this fact to the court or the fact could have been revealed by the Jail Superintendent, in whose custody, the defendant no.1 was at the relevant time. Not only this, had the defendant no.1 mentally incapable, the present applicants could have intimated this fact to this court but nothing of this sort. The law relied upon by learned counsel for the applicants/LRs namely, **Abdul Razak (d) through LRs Vs. Mangesh Rajaram Wagle, 2010(1) RCR (Civil) 717(SC)** does not provides any aid to him because the LRs in the present case are not signatory to the agreement to sell, on the basis of which suit has been filed. The law relied upon by learned counsel for the applicants, namely, **Vidyawati Vs. Man Mohan & Ors. AIR 1995 SC 1653** also does not apply to the facts and circumstances of the case in hand as the applicants

are not party to the present case. Moreover, when the defendant no.1 died after filing a detailed written statement along with his affidavit, the present applicants cannot put a separate claim after discarding the facts which have been narrated by the deceased defendant no.1 from his personal knowledge. The application in this regard, being misconceived, is hereby dismissed partly, without prejudice to the merits of the case. However, all the applicants are ordered to be impleaded as legal representatives of deceased defendants no.1. Amended title be filed by the plaintiff on the next date of hearing.”

Indisputably, the respondent/plaintiff has filed a suit for recovery on the basis of agreement to sell dated 14.08.2012 purported to be executed by Sardul Singh (since deceased) who is said to have received an amount of Rs.1,50,00,000/- towards earnest money, on the basis of agreement to sell dated 03.07.2012 entered into between Sardul Singh being vendee and Narinder Singh and others - defendants No.2 to 7 as proposed vendors of land, subject matter of the aforesaid agreements. As has been noticed by the trial Court, LRs of deceased Sardul Singh or either of them is not a privy to the said agreement nor a signatory thereto in any capacity whatever. Prior to his death, Sardul Singh engaged a counsel and filed the written statement (Annexure P-2). Perusal of the written statement would reveal that he raised several preliminary objections detailed in paras 1 to 6 and denied execution of agreement dated 14.08.2012 and receipt of an amount of Rs.1,50,00,000/- towards earnest money. He altogether denied his liability to pay any amount to the respondent/plaintiff with the averments that the plaintiff joined hands with defendants No.2 to 7 and they conspired together and for that reason defendants No.2 to 7 stepped back from the agreement with defendant

No.1. In support of averments raised in the written statement, Sardul Singh filed his duly sworn affidavit. Admittedly, no such plea was raised by Sardul Singh that either he was not competent to enter into agreement to sell dated 03.07.2012 or agreement dated 14.08.2012 relied upon by respondent/plaintiff.

Order 22 Rule 4 CPC deals with procedure in case of death of one of several defendants or of sole defendant. Sub-Rule (2) of Rule 4 of Order 22, relevant in the present context, reads as follows:-

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

Sub-Rule (2) of Rule 4 was interpreted by Hon’ble the Supreme Court of India in **J.C. Chatterjee v. Sri Kishan, (1972) 2 SCC 461** as quoted in para 23 of the referred judgment in **Abdul Razak’s case** (supra), reads as follows:-

“23. In J.C. Chatterjee's case, this Court interpreted the above reproduced provision and held:

Under sub-clause (ii) of Rule 4 of Order 22 of the Civil Procedure Code any person so made a party as a 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 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.”

A plain reading of the aforesaid extract makes it evident that the heirs and legal representatives can urge all contentions which the deceased would have urged except only those which were personal to the deceased. At the same time, the legal representatives are not prevented from setting up their own independent title in which case there could be no objection to the Court impleading them not merely as legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the independent title.

To be fair to the petitioner, a plea has been raised by LRs in the application that they have independent right, title and interest in the property but counsel for the petitioner has failed to substantiate this plea either by raising any averments in the application or advancing any arguments before this Court. Perusal of the application (Annexure P-3) leaves no manner of doubt that LRs of deceased wanted to file the written statement for raising a plea that the deceased was actually unsound and was not competent to enter into agreement to sell with respect to the property in question. This plea was personal to the deceased and as no such plea was raised by the deceased, there is no question of permitting the LRs to file their own written statement by raising such a plea. In this view of the matter, petitioner cannot derive any advantage to his contention from the referred authority, to find fault in the order impugned. That being so, no patent error much less illegality can be noticed in the impugned order

warranting intervention in exercise of supervisory jurisdiction of this Court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine. Nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

OCTOBER 7, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no