

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

CR No. 6689 of 2017

Date of Decision: 28.09.2017

BIKRAM DUTT

-PETITIONER

VS

BIMAL SOODEN & ANR

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Anupam Sharma, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed the order dated 21.07.2017 passed by Civil Judge (Junior Division), Khanna vide which application under Order 1 Rule 10 CPC filed by respondents No.1,4 to 7 was allowed.

A civil suit for permanent injunction was filed by the plaintiff restraining the defendants from interfering in possession of the plaintiff. The civil suit was filed on 22.11.2010 impleading Kuldeep Rai as defendant No.2 who has already expired on 25.11.2005. In a way, the suit was filed against a dead person.

Proposed legal representatives namely Bimal Sooden wd/o defendant No.2 and Archana Tangri, Sonia Duggal, Enakshi

Kapoor and Aprajita Tangri being daughters filed an application under Order 1 Rule 10 CPC for being impleaded to represent the estate of defendant No.2 as right to sue or to be sued survived to them being legal representatives of deceased-respondent No.2. Defendant No.1 Bimal Sooden had already appeared in the suit on 01.09.2011 through the Advocate but she did not file the written statement despite several opportunities. On 13.11.2013, she engaged a new counsel and pleaded that defendant No.2 had already expired. The case was adjourned for production of death certificate and she was proceeded against exparte on 23.12.2013.

Under Order 22 Rule 4 CPC, the legal representatives can bring themselves on record during pendency of the suit, however, in case of previous death, Order 1 Rule 10 CPC can be resorted to.

Defendant No.1 being exparte in her personal/individual capacity cannot be estopped from claiming her status as that of widow of defendant No.2 Kuldeep Rai along with other legal representatives.

The order passed by the trial Court cannot be faulted with nor the same is found to have suffered with any error of jurisdiction.

Accordingly, the present revision is dismissed.

28.09.2017
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No