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

ESA No.17 of 2017(O&M)
Date of Decision:14.12.2017

Sheela Wanti deceased through her LRs .....Appellants
Vs
Krishan Lal Arneja and others .....Respondents

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Mr. Sanjay Tangri, Advocate
for the appellants.

Mr. A.K. Jain, Advocate
for respondent No.1.

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RAJ MOHAN SINGH, J.

[1]. Legal representatives of Sheela Wanti (deceased) have preferred this execution second appeal against the order dated 08.03.2017 passed by the Additional District Judge, Jalandhar whereby order dated 29.09.2014 passed by the Additional Civil Judge (Senior Division), Jalandhar was set aside and the objections filed by Sheela Wanti (deceased) through LRs were dismissed.

[2]. Brief facts culminating in filing the present appeal are that on 12.01.1980, agreement to sell was executed between Sheela Wanti and Krishan Lal Arneja. Krishan Lal Arneja/respondent No.1 filed a suit for specific performance which was decreed vide judgment and decree dated 04.08.1986 by the trial Court. Decree holder was directed to deposit the

balance sale consideration of Rs.7000/- by 04.02.1987 and get permission under Urban Land Ceiling Act. Appeal filed by Sheela Wanti before the Lower Appellate Court was dismissed on 30.03.1989. Judgment debtor Sheela Wanti remained unsuccessful in regular second appeal which was dismissed vide order dated 09.08.1989. SLP(C) No.13611 of 1989 was filed by judgment debtor Sheela Wanti against the decree holder. It was ordered by the Hon'ble Apex Court that the judgment debtor would pay an amount of Rs.7 lacs within four months from 04.08.1995 and thereafter, the decree would be deemed to have been set aside. In case, the amount was not paid, the appeal would be deemed to have been dismissed. For ready reference, operative part of the order dated 04.08.1995 passed by the Hon'ble Apex Court reads as under:-

> *"Pursuant to notice the plaintiff-respondent has entered appearance. After some arguments, counsel appearing for the appellant as well as respondent informed the Court that a settlement has been arrived at between the parties. The appellant as well as the respondent are present in Court. The appellant shall pay an amount of Rs.7 lakhs (Seven Lakhs) within four months from today by a demand draft in favour of the respondent. After such payment is made it will be deemed that the decrees passed by the Courts below have been set aside and no right/claim survives against the appellant. In case, the aforesaid amount is not paid by the aforesaid time as fixed above, this appeal shall*

be deemed to have been dismissed."

[3]. According to the learned counsel for the appellants, judgment debtor Sheela Wanti made payment of Rs.7 lacs to the decree holder against receipts dated 08.10.1995, 05.11.1995 and 02.12.1995. Judgment debtor Sheela Wanti died on 20.08.1999, leaving behind nine legal heirs namely Pritam Dass (husband), five sons namely Parshotam dass, Prem Rattan, Ramesh Kumar, Sat Paul, Vishal Kumar and three daughters namely Asha Rani, Parveen and Kiran. The execution petition was filed on 29.11.2007 against the deceased Sheela Wanti. According to the learned counsel, the filing of the execution was after 21 years, 3 months and 25 days from the date of decree and 11 years, 11 months and 25 days from the date of order passed by the Hon'ble Supreme Court. The execution petition was filed for execution of the decree dated 04.08.1986 against the judgment debtor Sheela Wanti who was already dead. It was alleged that the payment as ordered by the Hon'ble Supreme Court was not paid.

[4]. Learned counsel submitted that after 12 years, 10 months and 12 days from the date of order dated 04.12.1995, the decree holder filed an application for impleading the legal representatives of deceased judgment debtor on 16.10.2008 and even before the said date, one of the legal heirs/representatives i.e Pritam Dass (husband) had already

died on 30.04.2008. Vide the aforesaid application, husband and three sons of deceased Sheela Wanti were sought to be impleaded as legal heirs/legal representatives. No application was filed to implead other legal representatives of deceased Sheela Wanti. The application was allowed on 17.11.2008 and the deceased husband and three sons of the judgment debtor Sheela Wanti (deceased) were brought on record. No other legal representatives was impleaded. In the month of March, 2012, the sale deed was executed through the process of the Court even in the absence of all the legal heirs of the judgment debtor. The objections filed by the appellants were accepted by the Executing Court vide order dated 29.09.2014 and it was held that the execution was beyond the period of limitation. However, the Appellate Court vide order dated 08.03.2017 has reversed the order of the Executing Court. Learned counsel contended that the execution was filed against a dead person. Even all the legal representatives were not brought on record and therefore, the execution was beyond the period of limitation.

[5]. Learned counsel relied upon ***Anguri Devi and others Vs. Vikas Bajaj, 2015(2) Civil Court Cases 210 (P&H), Presidency Industrial Bank Ltd. Vs. Hindustan Leather Industries Ltd. and others, 1969 AIR (Bombay) 84, Pranip Kumar Roy and another Vs. M/s Tata Iron and Steel***

Company (TISCO), 2007(1) JCR 593, Yogeshwar Education Trust Vs. Simarjit Kaur and others, 2004(1) RCR (Civil) 408, Gulabsingh and another Vs. Nathu and another, AIR (31) 1944 Nagpur 145 and Joginder Singh and others Vs. Krishan Lal and others, AIR 1977 Punjab and Haryana 180 and contended that substitution of legal heirs in a suit filed against a dead person would be a nullity and the legal representatives cannot be substituted with the aid of Order 22 Rule 4 CPC. Learned counsel further submitted that according to Article 136 of the Limitation Act, a period of 12 years is prescribed for execution of any decree for the time when it becomes enforceable. The filing of the execution against a dead person was patently time barred. The filing of execution against a dead person at the fag end of limitation and filing of application for substitution of legal representatives in place of original judgment debtor beyond 12 years was nullity and *non est* in the eyes of law. Any application for substitution of legal representatives filed beyond the period of 12 years from the date of decree cannot be entertained.

[6]. Learned counsel further contended that though Order 22 Rules 3 and 4 CPC are not applicable in execution proceedings as provided under Order 22 Rule 12 CPC, but substitution has to be made within limitation. The execution

against a dead judgment debtor is not in accordance with law, nor step-in-aid. Good faith has no place in such circumstances.

[7]. On the other hand, learned counsel for the respondents submitted that applicability of Rules 3, 4 and 8 of Order 22 CPC has been excluded from the execution proceedings. The limitation for execution of decree would start running from the date when decree became enforceable. The decree became enforceable only with effect from the date of order passed by the Hon'ble Apex Court on 04.08.1995. Learned counsel contended that death of the decree holder or judgment debtor during pendency of the execution or before would not abate the execution and the execution can proceed even after death of the party after impleading the legal heirs. Execution would continue by or against the legal representatives of deceased party on the application made for that purpose. No limitation is provided for making such an application. Learned counsel further submitted that under Order 22 Rules 4 and 11 CPC, it is not necessary in every case to bring on record all the legal representatives on record.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. In ***V. Uthirapathi Vs. Ashrab Ali, 1998(1) RCR (Rent) 340***, the Hon'ble Apex Court held that applicability of Rules 3, 4 and 8 of Order 22 CPC has been excluded from the execution

proceedings. The normal principle arising in a suit before the decree is passed in the context of abatement of suit is not applicable to the cases of death of decree holder or judgment debtor in execution proceedings. No limitation is prescribed for bringing legal representatives on record. The execution petition cannot be dismissed in default in their absence except in the case where the application is not filed within the time prescribed by the Court itself. In ***N.K. Mohd. Sulaiman Sahib Vs. N.C. Mohd. Ismail Saheb and others, 1966 AIR (SC) 792***, it was held that under Order 22 Rules 3 and 4 CPC, the decree passed against the persons impleaded as legal heirs, binds the estate even though other persons interested in the estate were not brought on the record. Ordinarily the Court does not regard a decree binding upon a person who was not impleaded therein, but there is an exception to this rule, however aforesaid exception is a recognized exception. Para No.14 of the aforesaid judgment reads as under:-

> *"14. Ordinarily the Court does not regard a decree binding upon a person who was not impleaded eo nomine in the action. But to that rule there are certain recognised exceptions. Where by the personal law governing the absent heir the heir impleaded represents his interest in the estate of the deceased. There is yet another exception which is evolved in the larger interest of administration of justice. If there be a debt justly due and no prejudice is shown to the absent heir, the decree in an action where the*

plaintiff has after bona fide enquiry impleaded all the heirs known to him will ordinarily be held binding upon all persons interested in the estate. The Court will undoubtedly investigate, if invited, whether the decree was obtained by fraud, collusion or other means intended to overreach the Court. The Court will also enquire whether there was a real contest in the suit, and may for that purpose ascertain whether there was any special defence which the absent defendant could put forward, but which was not put forward. Where however on account of a bona fide error, the plaintiff seeking relief institutes his suit against a person who is not representing the estate of a deceased person against whom the plaintiff has a claim either at all or even partially, in the absence of fraud or collusion or other ground which taint the decree, a decree passed against the persons impleaded as heirs binds the estate, even though other persons interested in the estate are not brought on the record. This principle applies to all parties irrespective of their religious persuation."

[10]. The aforesaid view has been followed by this Court in ***Jasminder Singh Kular and others Vs. Manjit Singh and others, 2014(24) RCR (Civil) 34*** and it was endorsed that in the event of death of plaintiff or defendant during pendency of the execution, the same would not abate and the execution can proceed even after death of the decree holder after impleading the legal heirs. Order 22 Rules 3, 4 and 8 are not applicable to execution proceedings. No limitation is provided for making an application for bringing on record the legal representatives of the deceased. Even if, all the legal heirs are not brought on

record, the same would not be of any consequence as the only requirement is that the estate of the deceased is effectively represented. Reference can be made to ***Savitri Devi Vs. Shimla Devi, 1993(3) PLR 658*** and ***Sardara Singh and another Vs. Harbhajan Singh and others, 1974 PLJ 341 (DB)***.

[11]. In view of aforesaid legal position, I find that even if, all the legal heirs/legal representatives of the judgment debtor were not brought on record, the same would not cause any impediment in execution of the decree. The limitation for filing the execution started w.e.f. 04.12.1995 when the Hon'ble Apex Court decided the case, thereby granting period of four months for making the payment to the decree holder. In order, it was recited that the payment was to be made by demand draft. The issuance of receipt in the context of story propounded by the judgment debtor could not be substantiated with reference to evidence on record. The record of the case would show that receipts dated 08.10.1995, 05.11.1995 and 02.12.1995 could not be explained as per order dated 04.08.1995, whereby demand drafts were ordered to be issued in favour of the decree holder. Judgment debtor was reluctant to pay the amount in cash and no certification of the payment was got done from the Court as was allegedly assailed by the decree holder. The execution of receipts with reference to executant and the

attesting witnesses remained conspicuously missing. On 29.11.2007 i.e. earlier to the objections filed by the appellants, objections were filed by Parshotam Lal and others i.e. sons of Sheela Wanti (deceased) and the same were dismissed by the Civil Judge (Senior Division), Jalandhar on 19.11.2011. Thereafter, second objection petition was fled by Sat Paul and others, which was also dismissed and the appeal filed against the said order was also dismissed as withdrawn. Thereafter, present objections were filed by the daughters of judgment debtor Sheela Wanti (deceased) namely Asha Rani, Parveen and Kiran. The silence of the decree holder for a long time would not infer anything beyond the material on record especially when the execution was filed within 12 years of the accrual of cause of action after order of the Hon'ble Supreme Court.

[12]. In view of aforesaid legal position, no exception can be made out in favour of the appellants. The present appeal is found to be totally devoid of merits and the same is accordingly dismissed.

14.12. 2017 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No